

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**CIVIL APPEAL NO. E003 OF 2023**

ROLLINGSTONE NJUKI NJAGI.....1<sup>ST</sup> APPELLANT

NANCY KARIMI NYAGA.....2<sup>ND</sup> APPELLANT

VERSUS

LEWIS MAWIRA.....3<sup>RD</sup> RESPONDENT

*(Being and appeal from the judgement of the Hon. Oscar Wakina (R.M), in Chuka Chief Magistrate's Court Criminal Case No. E189 of 2022 delivered on 18<sup>th</sup> March, 2024.)*

**JUDGEMENT**

1. This Appeal emanates from the judgment and decree of Hon. Oscar Wakina (R.M) in Chuka CMCC No. E189 of 2022. By way of a Plaint dated 21<sup>st</sup> September 2022 the Plaintiff had sued the Defendants seeking special and general damages arising out of a road traffic accident. The Plaintiff's case was that on or about 5<sup>th</sup> July 2022 at Magunas area along Chuka-Embu road the 1<sup>st</sup>

Defendant/Appellant being the driver of motor vehicle registration number KCW 559K drove the said motor vehicle so negligently and carelessly that the said motor vehicle veered off its lawful lane and hit motor cycle registration number KMEK 692C on which the Plaintiff was a rider as a result of which a road traffic accident occurred and the Plaintiff suffered serious bodily injuries. The Plaintiff blamed the 1<sup>st</sup> Defendant for the accident for the accident whose actions the 2<sup>nd</sup> Defendant is vicariously liable for.

2. The Defendants filed a statement of defence dated 9<sup>th</sup> December 2022 denying the averments in the Plaint in particular it was denied that the 2<sup>nd</sup> Defendant was the owner of motor vehicle registration number KCW 559K and that the 1<sup>st</sup> Defendant was the driver of the said motor vehicle. The Defendant stated that if the said accident did occur, then the same was substantially caused

and/or majorly contributed to by the negligence of the Plaintiff.

3. The matter proceeded for hearing with two witnesses testifying for the Plaintiff and one witness for the Defendants. Judgment was then entered in favour of the Plaintiff in the following terms: -

- i. Liability 100% against the Defendants
- ii. General damages Kshs. 250,000/=
- iii. Special damages Kshs. 31, 068/=
- iv. Costs and interest.

4. Aggrieved with the judgment, the Appellants lodged the Appeal vide the amended Memorandum of Appeal dated 12<sup>th</sup> April 2025 raised on the following grounds:-

- i. That the learned magistrate erred in law in awarding general damage for pain and suffering at Kshs. 250,000/= which amount is manifestly excessive and high

considering the injuries sustained by the Respondent.

- ii. That the learned magistrate erred in law and in fact in failing to consider the written submissions of the Appellant on record and the authorities annexed therein in support of the Appellants' case while arriving at the award in general damages.
- iii. That the learned magistrate misdirected himself by using wrong principles and failing to consider other conventional awards in the assessment of damages payable.
- iv. That the learned magistrate erred in law and in fact by failing to follow rules of precedence in awarding general damages.
- v. That the judgment of the learned trial magistrate is against the law and weight

of the evidence on record and against the doctrine of stare decisis.

5. The Appellant prayed that the Appeal be allowed, the judgment of the lower court be set aside and costs of the Appeal be granted to the Appellants.

6. My duty as the first appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. This principle was espoused in the Court of Appeal case of **Kiilu & Another-v-Republic (2005) 1 KLR 174** where the Court of Appeal stated: -

***“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court’s own decision on the evidence. The first appellate court must itself weight***

***conflicting evidence and draw its own conclusions.***

***It is not the function of a 1<sup>st</sup> appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses."***

7. The Appeal was canvassed by way of written submissions as directed by the court. The Appellants filed written submissions dated 7<sup>th</sup> August 2024. The Respondent filed written submissions dated 17<sup>th</sup> October 2024.

8. Both parties raised the issue of quantum of general damages for pain and suffering. The Appellant urged that the award was excessive while the Respondent urged that it was appropriate.
9. Having considered the record, grounds of appeal, and the respective submissions, the one broad issue for my determination is whether the award of Kshs. 250,000/= as general damages for pain and suffering was manifestly excessive in light of the injuries sustained.
10. It is trite that assessment of damages is discretionary. As a general rule, appellate courts are slow to interfere with the exercise of such discretion unless it is shown that the trial court proceeded on a wrong principle, misapprehended the evidence, or made an award that is so inordinately high or low as to represent an erroneous estimate of the damage suffered.

11. This principles above were clearly enunciated by the Court of Appeal in **Butt v Khan [1982-88] 1 KAR 1**, where the court of appeal held:

***“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the trial court proceeded on wrong principles, or that it misapprehended the evidence in some material respect, or took into account an irrelevant factor, or left out a relevant one.”***

12. The same position was reaffirmed in **Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd [2013] eKLR**, where the Court of Appeal emphasized that:

***“The assessment of damages is a matter of discretion by the trial court and an appellate court will be slow to interfere unless it is shown that the trial court acted on a wrong principle of law, or the award is inordinately high or low.”***

13. In this case, the Plaintiff sustained multiple bruises and abrasions on the right elbow and left knee lacerations as captured in the medical report dated 15<sup>th</sup> December 2022 corroborated by the P3 form.

14. The Appellants urged that the award of Kshs. 250,000/= was manifestly excessive in light of the injuries sustained by the Respondent. They proposed a sum of Kshs. 150,000/= as general damages. In support of their argument, they relied on the following authorities: -

- i. **Pascal v Jacob [2023] KEHC 24432 (KLR)** where the appellate court reduced

the award of Kshs. 200,000/= to Kshs. 150,000/= for injuries involving chest contusion, blunt trauma to the back, blunt trauma to the to the lower limbs.

ii. **Justine Nyamweya Ochoki & Another v Jumaa Karisa Kipingwa [2020] eKLR**

where the Respondent suffered blunt object injury to the lower lip, blunt object injury to the chest and blunt object injury to the left wrist and the appellate court reduced the award of the trial court from Kshs. 300,000/= to Kshs. 150,000/=.

iii. **John Wambua v Mathew Makau Mwololo & Another [2020] eKLR** where

the high court affirmed an award of Kshs. 120,000/= for blunt injury to the right shoulder and a blunt injury to the right injury to the big toe.

15. The Appellants submitted that the trial court in awarding Kshs. 250,000 relied on the case of **Anthony Nyamwaya v Jackline Moraa Nyandemo [2022] eKLR** where the lower court's award of Kshs. 250,000/= was upheld yet the injuries sustained by the Respondent were more severe than the ones sustained by the Respondent in the present case.

16. On his part, the Respondent contends that the award of Kshs. 250,000/= was not manifestly excessive considering the nature of injuries and the rate of inflation. In support of his argument, he relied on the following authorities: -

- i. **Michael Okello v Priscilla Atieno [2021] KEHC 7266 (KLR)** where a sum of Kshs. 250,000/= was awarded for soft tissue injuries.
- ii. **Joseph Mwangi Kiarie & Another V Isaac Otieno [2019] eKLR** where the

award of Kshs. 250,000 was reduced to Kshs. 180,000 for soft tissue injuries.

- iii. **Michael Odiwour Obonyo v Clarice Odera Obunde [2021] KEHC 4677 (KLR)** where the award of Kshs. 500,000/= was reduced to Kshs. 200,000/= for soft tissue injuries.

17. The trial court in the present case relied on **Anthony Nyamwaya v Jackline Moraa Nyandemo [2022] eKLR**, where the injuries were more severe than in the present matter but the award was still Kshs. 250,000/=. Clearly this was a departure from comparable awards for similar injuries.

18. In the case of **Francis Omari Ogaro v JAO (minor suing through next friend and father GOD [2021] eKLR** an award of Kshs.180,00.00 was given for the following injuries multiple cut

wounds, multiple bruises, and multiple lacerations on the face, forehead, abdomen, and elbows.

19. Considering the above precedent, the nature of injuries, and current inflationary trends, I find the award of Kshs. 250,000/= was inordinately high in view of the injuries suffered by the Plaintiff.

20. In the end, the appeal succeeds to the extent that:-

- (i) the award of Kshs. 250,000/= by the trial court is set aside and substituted with an award of Kshs. 180,000/= for general damages for pain and suffering.
- (ii) The rest of the award, not having been contested, is upheld.
- (iii) Each party shall bear their costs in this appeal while costs and interest in the suit remain as awarded by the trial court.

**Judgement delivered, dated and signed at Chuka  
this 11<sup>th</sup> day of November, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Judgment delivered in the absence of the parties  
who had notice. Muriuki (Court Assistant.)**

ORIGINAL