



Ngure v JMN (Minor Suing Through His Mother and Next Friend WM) (Civil Appeal E140 of 2025) [2025] KEHC 15852 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15852 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E140 OF 2025
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

PETER GITONGA NGURE APPELLANT

AND

**JMN (MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND
WM) RESPONDENT**

*(Being an appeal on from the judgment and decree of Hon. P. Biwott
(CM) Dated 4/7/2024 in OGEMBO CMCC NO. E209 OF 2019)*

JUDGMENT

1. Vide plaint dated 18/9/2019, the respondent filed the suit before the lower court on grounds that on 25/6/2019, he was walking off the road along Nyangusu-Keroka road when the appellant or their agent drove the subject vehicle registration number KCG XXXX negligently and it knocked the respondent from behind and he sustained injuries. That the appellant was the registered owner of the subject motor vehicle. The respondent thus sought judgment against the appellant for special damages of Kshs. 15,000/=, general damages, costs and interest.
2. The appellant filed a statement of defence dated 10/11//2019 denying liability and blamed the respondent for the accident and sought orders that the suit be dismissed with costs. He averred that the respondent minor was walking unattended and he unexpectedly crossed the road when running and dashed into the path of the subject vehicle thus the accident was inevitable. He blamed the minor and his next friend for the accident.
3. The matter proceeded for hearing and both parties called their witnesses. Vide judgment delivered on 6/8/2024, the trial court entered liability at 100% as against the appellant and awarded the respondent Kshs. 650,000/= for quantum and special damages of Kshs. 15,000/=.



4. The appellant was dissatisfied with that judgment and filed the memorandum of appeal dated 1/8/2024.

The Appeal

5. The appellants filed the memorandum of appeal on record on the issue of quantum on grounds that the award was excessive. The appellant sought orders that the trial court's award on quantum be reviewed.
6. The appeal proceeded by way of submissions. The appellant's were dated 28/8/2025 whereas the respondent's were dated 2/9/2025.

Analysis and Determination

7. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions see Court of Appeal for East Africa in Peters –vs- Sunday Post Limited [1958] EA 424.
8. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of Kemfro Africa Limited t/a “Meru Express Services (1976)” & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR where the court held that: -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

Whether the award of Kshs. 650,000/= for general damages was inordinately high or low.

9. The main issue for consideration is whether the trial court erred in awarding Kshs. 650,000/= for general damages. This Court is called to assess whether the award was inordinately high or low. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. This position finds support in the case of Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR where the Court of Appeal held: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

10. The appellant submitted that the award of inordinately high and that there was no proof that the respondent was undergoing further treatment. He relied on the case of REAMIC Investment Limited VS Joaz Amenya Samuel (2021) Eklr where the award of Kshs. 600,000/= was substituted with that of Kshs. 350,000/= for injuries including femure fracture, abrasion on the left knee, face, neck, right upper limb and left upper lip as well as contusion on the anterior chest.
11. He also quoted Civicon Limited vs Richard Njomo Omwancha & 2 others (2019) eklr where an award of Kshs. 450,000/= was issued where the major injury was fracture of the left tibia and fibula and dislocation of the left hip joint among other soft tissue injuries. The respondent also relied on Munene vs Mbarire Civil Appeal 488 of 2015 (2023) where an award of Kshs. 350,000/= was enhanced to Kshs.



450,000/= where the plaintiff sustained fracture of the tibia, fracture of the fibula and femur fracture. The appellant submitted that an amount of Kshs. 350,000/= was reasonable.

12. The respondent on the other hand submitted that the award was commensurate with the nature of injuries suffered and was consistent with precedent awards. The respondent relied on various authorities including Kihara & Another vs Mutuku (2022) KEHC 15626 (KLR) where the claimant was awarded Kshs. 700,000/= for blunt injuries, bruises and fracture of the right femur. I do note that a fracture of a femur bone is more severe than the one suffered by the respondent.
13. The respondent also quoted the case of Philip Kipkorir Cheruiyot vs Nebco K Ltd & Another (2006) KEHC 2795 (KLR), I doubt the authority is applicable noting that the claimant was awarded Kshs. 600,000/= for more severe injuries including fracture of the right humerus, injury to the right radial nerve, fracture of the head of the right humerus with dislocation of the right shoulder joint.
14. I have carefully considered the record before me. As per the medical report by Dr. Morebu dated 3/7/2019, treatment notes from Gesusu Sub- County Referral Hospital and Kisii Teaching & Referral Hospital as well as the P3 copy issued on 27/6/2019, the respondent suffered left humerus fracture, head injury and bruises on the back, frontal region, upper limbs and lower limbs.
15. In accessing whether the award was inordinately high or low, I rely on the following cases: -

Alex Wanjala v Pwani Oil Products Limited & Another (2019) eKLR where the appellant sustained a closed head injury leading to loss of consciousness for several weeks, closed fracture of the right humerus and closed fracture of the right femur with the court awarding Kshs. 600,000 for general damages. Those injuries were more severe.

Philip Mwago v Lilian Njeri Thuo (2019) eKLR where the plaintiff suffered fracture of the left humerus with 8% permanent disability and was awarded Kshs. 500,000/=.

Nguku Joseph & Another VS Gerald Kihui Maina (2020) KEHC 7670 (KLR) where the claimant suffered a fracture of the midshaft humerus, condyles and shoulder girdle with pain and psychological effects. The award for Kshs. 600,000/= was revised to Kshs. 350,000/=.

16. I have also considered the authorities quoted before this Court.
17. From the above and taking into consideration the lapse in time and changing economic circumstances between when the authorities were delivered and now, and further taking into consideration that no amount can reconstitute the claimant to exactly how he was before the accident occurred or even take away his pain and suffering, I find that an award of Kshs. 650,000/= was inordinately high and hereby substitute the same with an award of Kshs. 400,000/=.
18. Each party shall bear their own costs.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025 .

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J.K.NG'ARNG'AR

JUDGE

In the presence of:

Siele:CA

Kipyegon for the appellant



Maronga for the respondent

