



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omango v Odhiambo (Civil Appeal E055 of 2024)  
[2025] KEHC 16559 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16559 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E055 OF 2024  
DK KEMEL, J  
NOVEMBER 14, 2025**

**BETWEEN**

**FREDRICK OCHIENG OMANGO ..... APPELLANT**

**AND**

**MESHACK ANTHONY ODHIAMBO ..... RESPONDENT**

*(An appeal from the judgment and decree of Hon. T.K. Nambisia (R.M)  
delivered on 8th October 2024 in Ukwala PMCC No. E086 of 2023)*

**JUDGMENT**

1. The Appellant had sued the Respondent in the lower court vide a plaint dated 10<sup>th</sup> August 2023 and sought several reliefs inter alia; general damages, special damages of Ksh 118 490 = costs and interest after he sustained injuries in a road traffic accident that occurred on 5<sup>th</sup> October 2022 along Ugunja-Busia road involving the Respondent's motorcycle Registration number KMGC 605A wherein he was a pillion passenger and that the same was negligently ridden and or controlled that it veered onto the lane of an oncoming bus registration number KBB 188E. That the Appellant was tossed off the motorcycle and was ran over by the bus's right rear wheel and thereby sustained the injuries complained of. The Respondent filed his defence dated 4<sup>th</sup> September 2023 denying the Appellant's claim and urged the court to dismiss the suit with costs.
2. After a full hearing, a judgment was rendered by the learned trial magistrate as hereunder:
  - i) Liability at 85% to 15% between the Appellant and Respondent respectively.
  - ii) General damages of Ksh 1,000,000 =.
  - iii) Special damages of Ksh 96,980 =.
  - iv) Costs and interest in favour of the plaintiff Appellant.



3. Aggrieved, the Appellant filed his Memorandum of Appeal dated 5 11 2024 wherein he raised the following grounds of appeal:
- i. That the learned trial magistrate erred in law and fact in awarding the Appellant general damages for pain and suffering and loss of amenities which were inordinately low and not commensurate with the injuries suffered.
  - ii. That the learned trial magistrate erred in law and fact by failing to consider and award the Appellant damages for loss of earning capacity which is a claim that can be awarded under general damages.
  - iii. That the learned trial magistrate erred in law and fact by failing to critically analyze the evidence and submissions on quantum together with authorities submitted by the parties consequently arriving at a wrong conclusion on quantum.
  - iv. That the learned trial magistrate erred in law and fact in writing a judgment on quantum which is at variance with the pleadings, against the weight of the evidence, and contrary to the principle as established by precedent.

The Appellant thus prays that the trial court's judgment on quantum be set aside, this court to make its own findings based on the evidence and submissions on record, and award costs of the appeal to the Appellant.

4. Being the first appellate court, its duty is well spelt out namely to re-evaluate the evidence tendered before the trial court and subject it to a fresh exhaustive scrutiny so as to arrive at its own findings and independent conclusion on whether or not to uphold the decision of the trial court. In carrying out this task, the court must bear in mind that it neither saw nor heard the witnesses as they testified and therefore to give due allowance for that. (See *Selle & Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123; *Peters v. Sunday Post Ltd* (1958) EA 424; *Mary Wanjiku Gachigi v Ruth Muthoni Kamau* (Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA); *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* Civil Appeal No. 345 of G2000. (Okubasi, Githinji & Waki JJA).
5. Fredrick Ochieng Omango (PW1) adopted his witness statement dated 6<sup>th</sup> February 2023. He stated that on 5<sup>th</sup> October 2022 as he travelled as a lawful passenger on board motorcycle registration No. KMGC 605A from Sigomere to Ukwala, upon reaching Ligege area along Ugunja –Busia road the aforesaid motor cycle which was headed towards Busia general direction was so negligently, recklessly and carelessly controlled by its rider that it lost control, veered towards its right and getting to the opposite lane and rammed into an oncoming motor vehicle registration number KDB 188E bus. Upon knocking the side of the bus, the motorcycle bounced back to its left side as he fell onto the tarmac beneath the bus and that the bus's right rear wheel ran over his lower limbs. He sustained severe bodily injuries, loss and damages for which he holds the Defendant (now Respondent) liable. It was his testimony that he was taken to Siaya County Referral Hospital where he was admitted for five days then referred to Jaramogi Odinga Oginga for further treatment where he was admitted for one month and two weeks. Upon discharge, he could not pay the hospital bill and thus had to stay longer in hospital until 13<sup>th</sup> December 2022 when he managed to raise the hospital bill of Ksh 118, 490 = then he left the hospital. He testified further that during his admission in hospital, he was fitted with an exofix at Bliss Hospital where he incurred a total bill of Ksh 30,000 =. That upon discharge, he reported the incident to Ugunja police station where he was issued with a P3 form that was duly filled at Jaramogi Teaching and Referral hospital. He produced the following documents: copy of ID- (Exhibit 1), discharge summary from Jaramogi O.O. R. H. – (P exhibit 2), X-ray request form- (Pexhit



3), X-ray report- (Exhibit 4), invoice and bundle of receipts (P-Exhibit 5(a) and (b), copy of receipt – Bliss-Pharma-(Exhibit 6), P3 form (Exhibit 7), copy of insurance sticker-(Exhibit 8), Demand letter – (Exhibit 9). He prayed that he is compensated as per the plaint.

On cross examinations, he stated inter alia: that he has not recovered since the accident; that the injuries sustained are as per the P3 Form and discharge summary; that one leg was amputated and that the other bone is fractured; that he was disabled after the accident.

On re-examination, he stated that he suffered the injuries as pleaded.

6. That marked the close of the Appellant’s case.
7. The Respondent produced the medical report dated 1<sup>st</sup> July 2024 and closed the defense case.
8. The appeal was canvassed by way of written submissions. Both parties duly complied.
9. The appellant vide submissions dated 15 7 2025 submitted on quantum only. It was his submissions that an appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which is either inordinately high or low. (See Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR).
10. He submitted that the general damages for pain, suffering and loss of amenities were inordinately low and prays that this honorable court substitute the amount from ksh 1000 000 = to ksh 5 000 000 =. He pivoted his submissions on the case of Kornelius Kweya Ebiche vs C&P Shoe Industries Ltd & Another Nairobi HCCC No. 1152 of 2002, where the plaintiff was awarded ksh 1000 000 = for injuries comparable to those suffered by the plaintiff in the instant case.  
  
Also in the year 2014, Kasango J in the case of Alphonse Muli Nzuki vs Brian Charles Ochuodho, MBSA HCCA No. 141 of 2011 the court awarded Ksh 800,000 = where the injuries of the plaintiff then were comparable to the instant injuries.
11. The Appellant submitted further that the trial magistrate was in error in not awarding the plaintiff for loss of earning capacity. He submitted further that “whilst loss of earning capacity or earning power should be included as an item of general damages, it is not improper to award it under its own heading adding that once it is in principle accepted that the victim of personal injuries who has lost his earning capacity is entitled to compensation in the form of damages, it is of little materiality whether the award is under the composite head of general damages or as an item on its own, as a loss of earning capacity. At any rate, what is in a name if the damages are payable.” (See Mumias Sugar Company Limited vs Francis Wanalo (2007) eKLR at the Court of Appeal).
12. He submitted further that ‘a person’s loss of earning capacity occurs where as a result of injury, his chances in the future of any work in the labor market or work, as well paid as before the accident are lessened by his injury. (See Butler vs Butler (1984)KLR 225)

He submitted as guided by the case of Alpharama Limited vs Joseph Kariuki Cebon (2017) eKLR where the court stated thus:

“The court would be properly entitled to make a global award because there is a general agreement in decisions rendered by courts that there is no formula for assessing damages for lost or diminished earning capacity.”



13. He concluded by praying that the appeal be allowed, the lower court judgment on quantum be set aside and replaced with Kshs 5000,000 = for general damages and Ksh 1000 000 = for loss of earning capacity all totaling to Ksh 6000, 000 =.
14. On the other hand, the Respondent submitted vide his submissions dated 14<sup>th</sup> July 2025 that the medical report by Dr. Oketch indicated that there was no fracture on the Appellant's left leg as alleged. That the doctor formed the conclusion that the Appellant was healed with a deformed right leg and scars. It was his submissions that the general damages as awarded by the trial magistrate were commensurate with the injuries suffered. He placed reliance on the case of Naivasha HCCA No. E042 of 2022 where the claimant suffered similar injuries with 20% disability and that the court awarded him general damages of Ksh 800,000 =. On appeal the award was upheld.  
He concluded that the appeal lacks merit and that the same should be dismissed with costs to the Respondent.
15. I have considered the record of appeal, rival submissions and all the relevant authorities relied on by the parties. I find the issue for determination is whether the appeal has merit.
16. By and large, the Appellant's contention is on quantum of damages only. The Appellant seeks that the general damages for pain and suffering and loss of amenities be increased from ksh 1 000 000 = to Ksh 5000 000 =. Further the Appellant seeks for an award of Ksh 1000 000 = for loss of earning capacity.
17. Delving into the issue of general damages the Appellant suffered injuries inter alia; spiral displaced fracture of the right mid-distal tibia, with callus formation, spiral displaced fracture of the right distal fibula, transverse lateral malleolus non-displaced fracture of the right lower limb, soft tissue swelling of the right ankle joint, non- displaced medial malleolus fracture of left ankle, left distal fibula fracture, soft tissue swelling of the left ankle, multiple degloving wounds on both legs, splinted left foot at the ankle joint, traumatic amputated left calcaneal foot pad, obvious fractures of the tibia and fibula of the right leg, splinted right foot at the ankle joint, swollen right foot and cut wounds on both legs.
18. I have perused the P3 form (Exhibit 7) thoroughly and find that the degree of injury has been classified as grievous harm. The Respondent also produced the Appellant's second medical report by Dr Oketch which indicated that the Appellant had healed but with scars and deformed right leg due to malunited fractures of the bones. It is noted that the Appellant did not seek to have the Respondent's doctor to be called to testify so that the Appellant could cross-examine him if needed and as such the assessment as per the doctor regarding the second medical examination must be taken as the truth of the Appellant's condition at the time of examination. Besides, the P3 form was issued earlier before the medical examination and hence the injuries were expected to have healed somewhat and thus the opinion of the doctor.
19. In the case of Kornelius Kweya Ebiche vs C&P Shoe Industries Ltd & Another Nairobi HCCC No. 1152 of 2002, the plaintiff was awarded Ksh 1000 000 = for injuries comparable to those suffered by the Appellant in the instant case. Likewise, in the year 2014, Kasango J in the case of Alphonse Muli Nzuki vs Brian Charles Ochuodho, MBSA HCCA No. 141 of 2011 awarded Ksh 800,000 = where the injuries of the plaintiff then were comparable to the instant injuries.  
Also, in the case of Maria Waithira Kimita Vs Travel Budget Express & Another Naivasha HCCA No. E042 of 2022 a claimant who sustained fractures of left and right tibia and fibula as well as deep cut wounds and which were classified as grievous harm with a permanent disability of 20% was awarded Kshs 800, 000 by the trial court and upheld on appeal



Guided by the above authorities, the principle of stare decisis and effects of inflation on the economy, I find that an award of Ksh 1,000,000 = is reasonable and fair in the circumstances. Hence, the award by the trial court was reasonable and ought to be upheld.

Again, in the case of Pestony Ltd & Another Vs Samuel Itonye Kagoko NBI HCCA No. 167 of 2020 the claimant suffered a fracture of the femur and soft tissue injuries and then predisposed to early onset of osteoarthritis was awarded Kshs 800,000 after the lower court's award of Kshs 1,400,000 was revised.

It is noted that the foregoing cases reflect the type of injuries which are at par with those of the Appellant herein. Consequently, it is my considered view that the learned trial magistrate's assessment was quite proper and that she did not take into consideration irrelevant factors and that the award is not inordinately low as to represent an erroneous estimate of the damages. I find that award to be within the range of those awardable for such injuries.

20. On the issue of an award for loss of earning capacity, a person's loss of earning capacity occurs where as a result of injury, his chances in the future of any work in the labor market or work, as well paid as before the accident are lessened by his injury. (See *Butler vs Butler* (1984) KLR 225).

Under this limb, courts have in unison been in agreement that there is no particular formula of assessing the said damages. They thus were in unison in using a global sum which is usually guided by the age of the claimant, his qualifications, and the circumstances of the case.

I have perused the Appellant's plaint dated 10 8 2023 and note that he has not made any claim for loss of future earning capacity and nowhere is it shown the kind of work he used to do prior to the accident. Again, the Appellant's statement dated 6 2 2023 is silent on the issue. Further, the court proceedings do not indicate any such claim by the Appellant. I find that it was incumbent upon the Appellant to have pleaded for such a prayer and to go ahead and give evidence thereon but not to expect the trial court to decide for him. The trial court could not just pluck a figure from nowhere and give it to the Appellant without any prompting. The Appellant seems to suggest that the claim for loss of earning capacity was captured in his submissions. I find that even if that was so, then the trial court was under no obligation to consider it in view of the fact that the same had not been pleaded. Under those circumstances, the trial court could not be blamed. I find the trial court considered the evidence and injuries sustained and arrived at the award of general damages of Kshs 1,000,000 for pain, suffering and loss of amenities as reasonable compensation to the Appellant. I find that the trial court did not err at all by not factoring an award for loss of earning capacity.

21. In view of the foregoing observations, it is my finding that the Appellant's appeal lacks merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED AT SIAYA THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

N A Okoth.....for Appellant

Shiloya.....for Respondent

Maureen.....Court Assistant

