



**Onkundi & another v Okari (Civil Appeal E140 of 2023)
[2025] KEHC 15839 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E140 OF 2023
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

DAVID MOGERE ONKUNDI 1ST APPELLANT

PETER KEGONYE ONYANCHA 2ND APPELLANT

AND

BIRANSIO KIMWOMI OKARI RESPONDENT

*(Being an appeal on from the judgment and decree of Hon. D.O. Mac'andere
(SRM) Dated 23/10/2023 in Kisii in CMCC NO. E394 OF 2022)*

JUDGMENT

1. Vide plaint dated 6/6/2022, the respondent filed the suit before the lower court on grounds that on 7/1/2022, he was a lawful passenger onboard motor vehicle KCF 077T along Kisii-Migori Road when the appellant's driver negligently drove motor vehicle registration number KBM 744Q (herein after the subject motor vehicle) and it lost control, veered off the road and collided with motor vehicle KCF 077T.
2. The 1st appellant filed a statement of defence dated 23/8/2022 denying liability and blamed the respondent for the accident and sought orders that the suit be dismissed with costs.
3. The matter proceeded for hearing and both parties called their witnesses. Vide judgment delivered on 23/10/2023, the trial court entered liability at 100% in favour of the claimant as against the respondent and awarded the respondent KShs. 13,960/= for special damages and KShs. 400,000/= for quantum.
4. The appellant was dissatisfied with that judgment and filed the memorandum of appeal on 17/11/2023 on the issue of quantum only.



The Appeal

5. The grounds of the appeal were that the award was excessive and was arrived at without taking into consideration the evidence, submissions and principles of assessment of damages. The appellant sought orders that the trial court's award on quantum be set aside.
6. The appeal proceeded by way of submissions. The appellant's were dated 17/12/2024 whereas the respondent's were dated 27/12/2024.

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. 400,000/= for general damages was inordinately high or low.

9. The issue for consideration is whether the trial court erred in awarding Kshs. 400,000/= 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

10. I take note of the P3 form issued on 7/1/2022, treatment notes from Iyabe Subcounty Hospital and the medical report dated 14/2/2022. The respondent sustained soft injuries including; - blunt traumas, back contusion, bruising on both legs.

11. In assessing whether the award was inordinately high or low, I rely on the following cases: -

Kim Pho Choo V Camden & Islington Area Health Authority (1979) I, Aller 332 cited in the case of Nancy Oseko V Board of Governors Masai Girls' High School [2011] eKLR where the court stated: -

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.”



HB (minor suing through mother & next friend DKM) V Jasper Nchonga Magari & another [2021] eKLR where Nyakundi J upheld the lower court award of Kshs. 60,000/= for blunt injury to the head, neck, thorax, abdomen and limbs.

Ephraim Wagura Muthui 2 others V Toyota Kenya Limited & 2 others [2019] eKLR where Majanja J set aside the lower court award of Kshs. 55,000/= for cut wound on the parietal area of the head, contusion on the neck, blunt trauma to the chest, cut wound on the left leg and blunt trauma to the back and substituted it with an award of Kshs. 100,000/=. The plaintiff in that case however suffered more injuries than the case before court.

Nyambati Nyaswabu Erick Vs Toyota Kenya Limited & 2 others [2019] eKLR where Majanja J set aside an award of Kshs. 55,000/= for a deep cut on the scalp extending to the maxillary area, blunt injury to the left side of the chest, contusion on the back and contusion on both legs and substituted it with one of Kshs. 90,000/=.

In the case of Godwin Ileri v Franklin Gitonga [2018] eKLR the plaintiff had sustained the following injuries: Contusion on the neck, left midleg and chest, blunt trauma to both shoulders and lower back, bruises on the right knee, left arm and hand and subluxation of left ankle. The plaintiff was awarded Kshs 90,000/=.

12. In the instant case, the learned trial magistrate in arriving at the award of Kshs. 400,000/- considered the nature of injuries sustained and the authorities cited by both parties. Taking into consideration that comparable injuries ought to attract comparable awards, it is my considered view that the sum of Kshs. 400,000/- is inordinately high for the injuries sustained by the respondent. As such, it warrants this court's interference with the trial court's finding on the award of general damages.
13. It is therefore my considered view that Kshs. 200,000/- would be reasonable compensation as general damages for pain, suffering and loss of amenities.
14. The upshot is that the appeal is found to be merited and the same is allowed.
15. Each party to bear their own costs.

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

In the presence of:

Siele:CA

N/A for the appellant

Maronga for the respondent

.....

J.K.NG'ARNG'AR

JUDGE

