

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMABAY
CIVIL APPEAL NO. E023 OF 2024

DANNIS EKISORE MOSOTI.....1ST APPELLANT
GEORGE OUKO ATUYA.....2ND APPELLANT
VERSUS
PARTICK OWINO OUKO.....RESPONDENT

JUDGMENT

1. The appellant appealed against the Judgment of Hon Toroitich (R.M) dated 22.3.24 in Homabay CMCC E. 015 of 2022 on liability and quantum.
2. The history of the matter is that the respondent filed that matter herein seeking damages for a road traffic accident which occurred on 1.12.21. The facts of the case as per the plaint and evidence of respondent are that on or about 1.12.21 Patrick Awinno Ouko (Pw2), the respondent herein was driving motor vehicle registration no. KCX 277 N Toyota Wish along Homabay -Mbita road and on reaching Adongo area the 1st appellant who was driving the 2nd appellant' s motor vehicle registration No. KCT 264 M Toyota matatu negligently drove that vehicle causing it to collide with the respondent's motor vehicle and hence the respondent sustained the following Injuries;
 - a. fracture to the 2nd left rib.
 - b. fracture of the 4th right rib.
 - c. Blunt chest injuries.
3. PW1 Dr Michael Ocholla who saw the respondent at Homabay County Referral Hospital confirmed the injuries of the respondent and produced his treatment notes, P3 forms, x-ray films and medical report (pexh 1 – 4). He said the fractures were expected to heal and that he did not assess any disability.
PW3 Sergeant Alice Awino of Homa Department produced the police abstract confirming occurrence of the accident between Motor vehicles KCA 227 N

driven by PW2 & KCT 264M driven by the 1st respondent. The 1st respondent was charged for causing the accident but he jumped bail.

The appellant did not call any witness.

The trial court entered judgment as follows as follows:

- a. Liability 100%
 - b. General damages – Kshs 600,000/=
 - c. Costs and interest from the date of Judgment till payment in full
4. The appellant raised 6 grounds of appeal which I will condense into 3;
 - i. That the trial court erred in fact find 100 % Liability
 - ii. That the trial magistrate erred in law and fact by taking into account extraneous circumstances in awarding general damages in the sum of Kshs. 600,000/= which was excessive.
 5. This is a first appellate court whose duty is to re-evaluate the court whose duty is to the entire evidence on record and arrive at its own conclusion bearing in mind that it neither saw nor heard the witnesses during their testimony as was held in the case of **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR**.
 6. The issues for determination are;
 - a. Whether the trial magistrate erred in finding 100 % Liability against the appellant.
 - b. Whether the award of general damages of Kshs 600,000/= was excessive.
 7. On the issue of Liability, the respondent testified that the 1st respondent was speeding and hence he lost control of the vehicle and swerved to his lane and knocked his vehicle. Those was supported by the evidence of PW3 the police officer who said that the 1st respondent was charged for the accident but he jumped bond. This evidence was not controverted as no evidence was called by the respondents to state their side of the story. In the case of **Khambi and Another v Mahithi and Another [1968] EA 70**, it was held that:

“It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.”

8. The above was the position in the cases of **Isabella Wanjiru Karangu v Washington Malele Civil Appeal No. 50 of 1981 [1983] KLR 142 and Mahendra M Malde v George M Angira Civil Appeal No. 12 of 1981**, where it was held that apportionment of blame represents an exercise of discretion with which the appellate court will interfere only when it is clearly wrong, or based on no evidence or on the application of a wrong principle. On ownership of motor vehicle KCT 264M, the copy of records of the motor vehicle (Pexh 5) indicates that the registered owner is George Ouko Atuya while the police abstract indicates that Dannis Okisore Moseti the 2nd defendant is the owner. It is clear that the 1st appellant was the beneficial owner of the vehicle at the material time.
9. The learned trial magistrate found no error on the part of the respondent and found the appellants 100 % liable for the accident Jointly and severally. The appellants did not adduce any evidence to rebut the evidence of the respondent on liability I see no error on the part of the learned trial magistrate on her finding of liability as it is clear that the proximate cause of the accident was negligence of 1st respondent who was speeding and thus lost control of the motor vehicle causing it to hit respondent’s vehicle. I uphold the finding of the Trial magistrate on 100% liability against t defendants jointly and severally.
10. Assessment of damages is at the discretion of the trial court, and the appellate court will only disturb the discretion where the trial court committed an error in principle or the award is completely erroneous estimate of damages. The Court of Appeal in the case of **Kemfro Africa Limited t/a as Meru Express Service, Gathogo Kanini v A.M Lubia and Olive Lubia (1987) KLR 30** stated that: -
“The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are 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 damages.”

See also; Gabriel Maina Mungai v Jane Wanjiku Mwaura [2019] eKLR

11. Also, in the case of **Butt vs Khan (1977) 1 KAR** it was stated that: -

“An Appellate court will not disturb an award for 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 was either inordinately high or low.”

12. On whether the trial court erred in assessing general damages at Kshs. 600,000/=. It is not disputed that the respondent sustained injuries to fracture to the 2nd left rib, fracture of the 4th right rib and blunt chest injuries. The trial court relied on the case of KB Sangani vs Lydia Wanjiku Njuguna and others (2016) EKLR where the plaintiff sustained fracture of the 9th right rib, and 5th, 6th, 7th, 8th and 9th left ribs, bruised knees and chest complications and he was awarded general damages in the sum of Kshs. 450,000/=. The appellant did not file any submissions herein, however in the lower court he had relied on the case of versus George Kinyanjui T/AClimax coaches and another vs Hassan Musa Agai (2016)eKLR where the respondent was awarded general damages in the sum of Kshs 450,000/= in the year 2016 for two loose teeth; blunt trauma to the neck and chest; fracture of the left clavicle; fractures of the 4th and 5th left ribs; blunt trauma to the spinal column and right scapula area; and, dislocation of the left shoulder joint.

13. Respondent cited the case **K.B SANGHANI V LYDIA WANJIKU NJUGUNA & 2 OTHERS [2016] eKLR,**

He also cited the case of PETER MULANDA WANJE V CAPTURE TRANSPORT LIMITED & 2 OTHERS [2022] KEHC 699 (KLR) 31.3.2022 where the was awarded to the appellant who has sustained fracture

- a) Fracture of the left radius forearm bone;
- b) Fractures of the chest center bone (sternum);
- c) Fracture of the right ribs (5th & 6th);
- d) Severe blunt injury to the abdomen with bleeding (haemoperitoneum);
- e) Bladder injury (tear);
- f) Severe blunt injury to the chest with traumatic air mass (pneumothorax);
- g) Cuts on the neck, chest, right index finger and right middle finger;
- h) Blunt injury to the left knee.

He was awarded general damages in the sum of Ksh. 1,800,000/= on 31.3.22.

14. The injuries in the Peter Mulanda case (Supra) were more serious than the ones sustained by the respondent herein. The cited Sangani and Climax cases are comparable to the ones sustained by the respondent herein; however, the decisions were made 10 years ago. The injuries sustained by the respondent. I have considered the nature of the injuries comparable awards for similar injuries, the inflation factor and all the necessary factors. I find that the award of general damages in the sum of Kshs 600,000/= was adequate in the t circumstances. The Learned Trial Magistrate thus did not err in awarding the general damages in the sum of Kshs. 600,000/= I see no reason to disturb the same. The appeal is thus devoid of merit and I proceed to dismiss it.

15. I award costs of this appeal and costs of the lower court to the respondent.

T.A ODERA
JUDGE
20.11.25

Delivered Virtually on this 20th day of November 2025 in the Presence of

Mr. Ongoro holding brief for Miss Kuke for the Appellant

No Appearance for the Respondent

Court Assistant- Ogendo