

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
THE CIVIL APPELLATE DIVISION
[Coram: A.C. Mrima, J.]
CIVIL APPEAL NO. E871 OF 2024

-between-

1. **HOTTENSIAH WAMBUI NJUGUNA**
 2. **STEPHEN GITAU MUIRURI**.....
- APPELLANTS**

-versus-

IRENE NAFULA
BARASA.....**RESPONDENT**

*[Being an appeal from the Judgment and Decree of Hon. B.M Cheloti (PM) in Milimani
Commercial Court No. E2414 of 2023 delivered on 1st July 2024]*

JUDGMENT

Background:

1. *Irene Nafula Barasa*, the Respondent herein, instituted *Milimani Chief Magistrates Commercial Court No. E2414 of 2023* (hereinafter referred to as '**the suit**') against *Hottensiah Wambui Njuguna* and *Stephen Gitau Muiruri*, the Appellants herein. She sought compensation for various bodily injuries, including bruises to the chest and lower abdomen, swollen and bruised left pal and right elbow, she sustained while riding as a pillion passenger in the motorcycle registration No. KMDZ 040R (hereinafter referred to as '**the motor cycle**') owned and ridden by the 1st and 2nd Appellants respectively.
2. Despite defending the suit, the Appellants entered a partial consent on liability in the ration of 15% : 85% in favour of the Respondent. In its judgment, the trial Court awarded the Respondent general damages of Kshs. 550,000/- for pain and suffering and loss of amenities.
3. The Appellants were dissatisfied with the quantum, hence, the instant appeal.

The Appeal:

4. Through a Memorandum of Appeal dated 30th July 2024, the Appellants sought that the quantum of damages be varied and reduced on the following grounds: -
 1. *THAT the Learned Magistrate's award of damages in particular considering the injuries sustained by the Respondent was inordinately high, in that it was an erroneous estimate of damages without due regard being made to the true and correct injuries sustained by the Respondent and the comparable cases.*
 2. *THAT the Learned Magistrate erred in law and in fact in awarding the sum of Kshs.550,000.00 as general damages which amount was inordinately high considering the true and correct injuries sustained by the Respondent and comparable case law.*
 3. *THAT the Learned Magistrate erred in her assessment of damages awarded to the Respondent as the same was based on the wrong principle and the amount arrived at was inordinately high and injustice would be occasioned.*

The submissions:

5. In their written submissions dated 12th May 2025, the Appellants argued that the general damages award of Kshs. 550,000/- was inordinately high and manifestly excessive and disproportionate to the injuries sustained. They referred to their rebuttal medical report by *Dr. P.M. Wambugu*, which concluded the Respondent sustained minor soft tissue injuries (bruises, swelling) with no permanent incapacitation. They also pointed out that the X-rays and scans were normal. The Appellants faulted the Learned Trial Magistrate for failing to apply the established legal principle that comparable injuries attract comparable awards. They claimed that the trial Court was wrongly persuaded by the decisions in *Habiba Abdi Mohamed -vs- Peter Maleve* and *Vincent Cheruiyot Rono -vs- Mombasa Maize Millers Ltd*, cited by the Respondent,

which they argued involved more severe injuries, such as spinal injuries and long hospitalization.

6. In urging this Court to allow the appeal, the Appellants drew support from the case in *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini -vs- A M Lubia and Olive Lubia* [1982-88] 1 KAR 727 where it was observed that an appellate Court can interfere with an award of damages by a trial Court if the trial Court it took into account an irrelevant factor, or left out of account a relevant one, or if the amount is so inordinately low or so inordinately high. The Appellants submitted that instead the decisions they relied upon in the trial Court were more comparable and urged this Court to reassesses the damages and substitute the award with a lower sum of Kshs. 70,000/=.
7. The Appellants drew support from the case of *HB (Minor suing through mother & next friend DKM) -vs- Jasper Nchongs Magari & another* [2021] eKLR, *Eldoret Still Mills Ltd -vs- Charles Owino* [2018] eKLR and *FM (Minor suing through mother and next friend MWW) -vs- JNM & Another* (2020) eKLR where an where the Courts awarded Kshs. 60,000/- for soft tissue injuries.
8. In conclusion, the Appellants asserted that the Learned Magistrate's judgment was fundamentally flawed and unconscionable. They prayed for the appeal to be allowed, the suit to be dismissed with costs, or alternatively, for the quantum of damages to be varied and reduced.

The Respondent's case:

9. Irene Nafula Barasa, challenged the appeal through written submissions dated 10th July 2025. It was her case that the only issue for the determination is whether the trial Magistrate awarded excessive damages for the injuries sustained. She contended that her injuries, which included bruises on the chest and lower abdomen, a swollen and bruised left palm and right elbow bruises and wounds on the left knee and right ankle, were not challenged and were proven by a medical report from Dr. Mwaura.

10. It was the Respondent's submission that the award of Kshs. 550,000/- was within the range awarded by Courts for comparable injuries. To support this position, she relied on authorities such as *Leah Wambui Ngugi -vs- George Mbugua Karanja & 2 others* [2016] eKLR, where Kshs. 350,000/= was awarded for comparable injuries, and *Francis Njunge Karanu v Rose Ndinda Kitema* [2021] eKLR, where Kshs. 500,000/= was awarded for blunt soft tissue injuries. The Respondent further argued that it is trite law that an appellate Court should only interfere with an award if it is demonstrably wrong, based on a wrong principle, or so manifestly excessive. She cited the findings in *Nyambati Nyaswabu Erick -vs- Toyota Kenya Limited & 2 others* [2019] eKLR, where it was observed that Courts must consider factors like inflation and the age of past awards.
11. In conclusion, the Respondent submitted that there was no evidence that the trial Court acted on wrong principles or made a wholly erroneous estimate of the damages. She urged this Court to find no merit in the appeal and dismiss it with costs.

Analysis:

12. From the above rendition, the only issue for determination is whether the trial Court's award of Kshs. 550,000/- as general damages was inordinately high considering the injuries the Respondent sustained. The duty of this Court as a first appellate Court is to review all the evidence, make its own findings and draw its own conclusions, while giving allowance for the fact that it did not see or hear the witnesses.
13. In ***Selle -vs- Associated Motor Boat Company Ltd*** [1968] E.A. 123, the predecessor of the Kenyan Court of Appeal laid down the classic statement on the duty of a first appellate Court as follows: -

.... An appeal from a High Court is by way of rehearing and the Court of Appeal is a first appellate court. It is not sufficient to merely scrutinize the evidence and say whether the trial Judge was right or wrong. An appellate court is not bound to accept the trial Judge's findings of fact if it appears either that he failed to take account of particular circumstances or

probabilities or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

14. As the appeal is on quantum of damages, the guiding principle in the award of general damages by a trial Court was set out by the Court of Appeal in ***Kemfro Africa Ltd t/a Meru Express & Another -vs- A. M. Lubia and Another*** [1982-1988] KAR, where it was observed that the trial Court exercises discretion and such can only be interfered with on appeal where the trial Court considered an irrelevant factor or left out a relevant. The discretion can also be interfered with if the award is inordinately high or low as to represent an erroneous estimate.
15. The injuries sustained by the Respondent are central to this appeal. The Appellants, citing their medical report by Dr. P.M. Wambugu, categorize them as minor soft tissue injuries (bruises, swelling) with no permanent incapacitation. The Respondent's medical report from Dr. Mwaura detailed bruises on the chest and lower abdomen, a swollen and bruised left palm and right elbow, and bruises and wounds on the left knee and right ankle. From the foregoing, both parties agree that the injuries were soft-tissue in nature. The appeal, therefore, turns on the concept of comparable awards in the authorities cited for comparable injuries.
16. The Appellants argued that the award was disproportionate and proposed a sum of Kshs. 70,000/-. They relied on cases such as *HB (Minor) -vs- Jasper Nchongs Magari & another* [2021] eKLR, which upheld Kshs. 60,000/-, and *Eldoret Still Mills Ltd -vs- Charles Owino* [2018] eKLR, which awarded Kshs. 60,000/-. They also cited *FM (Minor) -vs- JNM & Another* (2020) eKLR, where an award of Kshs. 60,000/- was enhanced to Kshs. 100,000/-. They contended the trial court wrongly considered authorities with more severe injuries, such as spinal injuries.
17. Conversely, the Respondent argued the award was within the proper range. She relied on *Leah Wambui Ngugi -vs- George Mbugua Karanja & 2 others* [2016] eKLR, where Kshs. 350,000/- was awarded, and *Francis Njunge Karanu -vs- Rose Ndinda Kitema* [2021] eKLR, where the court awarded Kshs. 500,000/-

for blunt soft tissue injuries. The Respondent also submitted that the Court must consider factors like inflation, citing ***Nyambati Nyaswabu Erick -vs- Toyota Kenya Limited & 2 others*** [2019] eKLR.

18. In comparing the authorities, this Court notes a significant discrepancy. While the Appellants' authorities from 2018 - 2021 suggest a range of Kshs. 60,000/- to Kshs. 100,000/-, the Respondent has provided a 2021 authority, *Francis Njunge Karanu*, that specifically awarded Kshs. 500,000/- for blunt soft tissue injuries. Whereas the trial Court's award of Kshs. 550,000/- delivered on 1st July 2024 is proximate to the Kshs. 500,000/- awarded in the *Francis Njunge Karanu* case in 2021, this Court is of the assessment that the increase was too drastic as to justify the cost of inflation and passage of time. In ***Oyaro -vs- Morris*** (2025) KEHC 5361, the injured party sustained bruises, abrasions, and blunt trauma to the chest, abdomen, knee, back, and other areas, with no permanent disability. The trial Court originally awarded general damages of Kshs. 300,000 but the High Court on appeal reduced it to Kshs. 130,000/= considering the injuries to be soft tissue with no lasting impairment.
19. In the foregoing decision, the Court cited the decision in *Joseph Wahinya -vs- Benson Lucheveli*, 2022 eKLR where Kshs. 200,000/= for similar injuries was awarded and the one in *East Africa Institute -vs- Francis Saha Lewis*, 2024 eKLR where an award of Kshs. 300,000/- was made. Therefore, the general damages range for soft tissue injuries identified as bruises, swollen and bruised limbs, and wounds like those on the chest, abdomen, palm, elbow, knee, and ankle in Kenya generally fall between about Kshs. 130,000 and Kshs. 350,000 depending on the severity and impact.
20. Returning to the appeal, this Court must point out that the decision in ***Habida Mohammed -vs- Peter Maleve*** (2000) KEHC 144 and the one in ***Vincent Cheruiyot Rono -vs- Mombasa Maize Millers Ltd*** (2006) KEHC, relied upon by the trial Court were not an accurate representation of the nature and extent of injuries suffered by the Respondent. They were not comparable injuries. In the two cases, the were elements of

head injury, and internal injuries including cervical and lumbosacral spine which led to an award of Kshs. 400,000/-. Equally important is the fact that, as evidenced by the Medical report by the Appellant's Doctor, the Respondent was managed as an outpatient. In ***Habida Mohammed -vs- Peter Maleve*** case [supra] the victim was admitted in hospital for a period of almost one month. It is also not lost on this Court that the Respondent did not suffer permanent incapacitation and has since recovered fully.

21. Cumulatively, therefore, despite the passage of time and the inflationary trends and having in mind the concept of comparable awards for comparable injuries, this Court is of the finding that the trial Court fell into error and exercised discretion that yielded an award that was inordinately high as to represent an erroneous estimate of damages. The appeal is, hence, merited and the award on general damages ought to be reviewed downwards.

Disposition:

22. Drawing from the foregoing, this Court hereby makes the following final orders: -

[a] The appeal on quantum be and is hereby allowed.

[b] The award of general damages of Kshs. 550,000/- is set aside and hereby substituted with an award of Kshs. 250,000/-.

[c] In view of the revised award on damages, each party to bear its own costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 19th day of November, 2025.

**A. C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Miss. Olung'a, Learned Counsel for the Appellants.

Mr. Maina for Mr. Kiptanui, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.