



Ali alias Mohamed Sharama & another v FW alias WF (A minor suing through next friend one Agnes Kirigo Ng (Civil Appeal E128 of 2024) [2025] KEHC 17799 (KLR) (28 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E128 OF 2024
EM MURIITHI, J
NOVEMBER 28, 2025**

BETWEEN

MOHAMED SHARAMO ALI ALIAS MOHAMED SHARAMA .. 1ST APPELLANT

YAHYA ADAN HASSAN 2ND APPELLANT

AND

FW ALIAS WF (A MINOR SUING THROUGH NEXT FRIEND ONE AGNES KIRIGO NGENDO) RESPONDENT

(Appeal from the judgment of the learned magistrate, Hon. D.M Ireri (PM), delivered on 22/11/2024 in Baricho CMCC No. E051 of 2023)

JUDGMENT

1. By an amended plaint dated 12/10/2023, the Respondent sued the Appellants seeking general damages for pain, suffering and loss of amenities, special damages of Ksh. 109,120, general damages for reduced/diminished earning capacity, cost of corrective surgery estimated at Ksh. 500,000 to Ksh. 600,000, cost of bone infection treatment estimated at Ksh. 800,000 to Ksh. 1,000,000 and costs of the suit plus interest. The Respondent pleaded that on or about 19/10/2021 at about 5.00 pm, the minor had lawfully completed crossing the Sagana - Karatina road at Kibirigwi area, when the 2nd Appellant so carelessly and negligently drove, managed and/or controlled Motor Vehicle Registration No. KBZ 095 J that it lost control and violently knocked down the minor, thereby occasioning her severe personal injuries. The minor can no longer engage effectively in any economic venture and her ability to compete in the labour market was severely diminished, and she claims damages for reduced earning capacity. The minor further claims future medical expenses to undergo a corrective surgery of the deformed left leg.
2. The Appellants denied the claim vide their amended statement of defence dated 5/12/2023 and prayed for the Respondent's suit to be dismissed with costs.



3. Upon full hearing, the trial court apportioned liability at 100% and awarded general damages for pain, suffering and loss of amenities of Ksh. 1,200,000, damages loss of earning capacity of Ksh. 700,000, future medical expenses of Ksh. 800,000 and special damages of Ksh. 101,920 together with costs and interest.

The appeal

4. On appeal, the Appellants vide their memorandum of appeal dated 15/12/2024 set out 6 grounds as follows:
 1. The learned trial magistrate erred in fact and law by awarding inordinately high general damages to the Respondent.
 2. The learned trial magistrate erred in fact and law by failing to consider the appellant's submissions and authorities on quantum hence arriving at an erroneous decision.
 3. The learned trial magistrate erred in fact and law by awarding damages that were inordinately high to constitute a miscarriage of justice in the circumstances of the case.
 4. The learned trial magistrate erred in fact and law by awarding diminished earning capacity that was never proved contrary to the decisions of superior courts.
 5. The learned trial magistrate erred in fact and law by awarding a loss of earning capacity of Kshs. 700,000 and for pain, suffering and loss of amenities of Kshs. 1,200,000.
 6. The learned trial magistrate's judgment was wholly not supported in law by evidence tendered in court by the parties.

Duty of the Court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).

Evidence

6. PW1 Isaiah Mwaniki Kinyua from Kibirigwi, adopted his statement dated 4/5/2023 as his evidence in chief. He went on to state that, "I am a boda boda rider. The accident was off the road. There is a school near the scene."
7. On cross examination, he stated that, "I was coming from Kibirigwi heading towards Mwega at the time of accident. I did not record a statement with the police."
8. In re-examination, he stated that, "I witnessed the accident."
9. PW2 Agnes Kirigo Ngendo, the Respondent herein adopted her witness statement dated 12/10/2023 as her evidence in chief and produced the list of documents as exhibits. She went on to state that, "I reside at Kibingoti. I am a business lady. Fidelis Wanjiru is my daughter. The child has not yet healed. Her left leg has pain and while the wound has not fully healed. The leg is not yet straight. My daughter is using crutches as at now. She cannot play or do anything by herself. The injuries have interfered with her education. She is grade 6 instead of grade 8. She has been seeking treatment for 2 years hence the reason she is in grade 6 instead of grade 8. She cannot play without the crutches. She cannot wash the clothes she used to prior to the accident. She is still undergoing treatment. She requires future



- treatment Kibirigwi Primary School is near the scene of the accident. I pray for compensation as per my plaint.”
10. On cross examination, she stated that, “Julius Gitonga informed me about the accident. I was referred to doctors. My daughter is now aged 13 years old and she attends school using crutches.”
 11. In re-examination, she stated that, “Julius Gitonga did not witness the accident.”
 12. PW3 F.W.M, the minor herein adopted her statement dated 12/10/2023 as her evidence in chief. She testified that, “I attend [particulars withheld] School in Grade 6. I was involved in an accident on a date. I cannot remember. I was off the road when the vehicle hit me. I was coming from school which is near the scene of the accident. I was wearing my uniform. I have not healed. I feel pain on my leg. I use crutches while walking. My leg is not straight (the witness has one crutch/walking aid) I am supposed to be in grade 8.”
 13. The minor was not cross examined.
 14. PW4 Dr. Washington Wokabi, a surgeon, produced the medical reports dated 24/01/2023 and 14/09/2023 and the court attendance receipt as exhibits. She testified that, “My today’s attendance cost is Kshs. 10,000/=. The 1st estimate for Kshs. 500,000/= was to correct the deformity of the leg but it was not done due to an infection of the bone. My 2nd estimation cancelled the 1st one. The deformity and infection is still persisting and surgery is necessary Kshs. 800,000/= to Kshs.1,000,000/= will treat the infection and also correct the deformity Kshs. 290,000/= is not enough for such a surgery. I have explained my estimate. A minimum of Kshs. 1 million will help in clearing the bone infection and correcting the deformity.”
 15. On cross examination, she stated that, “My recent estimation covers the treatment of infection and correction of the deformity.”
 16. PW5 CPL Timothy Syengo from Sagana Police Station performing Traffic duties, produced the police abstract as an exhibit. He testified that, “The accident was on 19/10/20221 along Sagana-Karatina road at Kibirigwi area involving motor vehicle KBZ 095J Toyota crown driven by Yaya Aden. Hassan and a pedestrian one Fidelis Wanjiru aged 11 years old. The driver was heading towards Sagana from Karatina direction. On reaching the scene he hit and knocked down the pedestrian with the right side mirror. The victim sustained a fracture on the left leg and cut on the face and she was rushed to Karatina Hospital where she was admitted in serious condition. I am the Investigating Officer. The driver of the motor vehicle made the report to the police. I visited the scene. The possible point of the impact was off the road on the right side as one faces Sagana. Kibirigwi Primary School is nearby. I wish to produce the police abstract. I was paid Kshs.7,000/= for my attendance today.”
 17. On cross examination, he stated that, “The driver took me to the scene after around 3 hours. I did not get eye witness since it was at night. I did not get Isaiah at the scene. I do not have the police file now but it is there. I am reading OB NO.40 of 19/10/2021. By the time the abstract was issued no one had been charged and no one has been charged as yet.”
 18. In re-examination, he stated that, “The driver was blamed although he was not charged.”
 19. The Appellants closed their case without calling any witnesses.

ubmissions

20. The Appellants urge that they do not challenge the special damages of Ksh. 101,920, the same having been specifically pleaded and strictly proved. They propose an award of Ksh. 500,000 for pain and suffering, in view of the ongoing recovery of the minor, and cite *Civicon Limited v Richard Njomo*



Omwancha & 2 Others [2019] KEHC 8373 (KLR) and Musembi v Kiptala & another (Civil Appeal E092 of 2023) KEHC 10126 (KLR) (14 July 2025). They fault the trial court for awarding loss of earning capacity despite the favourable prognosis and continued recovery of the minor and lack of evidence that the minor's future aspirations had been affected or whether there had been any interruption to her long term academic or career prospects. They urge that the minor's ability to function and participate in future work life had not been extinguished, as any long term effect remained uncertain and unproven, and cite Multi Hauliers Limited & another v JMN (Suing as the father and next friend of AMM (Minor) [2024] KEHC 3612 (KLR). They urge that the award of Ksh. 800,000 for future medical expenses was not supported by credible and consistent medical evidence, and cite Shadrack Mathias & another v Agnes Muluki Wambua (2021) eKLR and Riaga v Mumbo (Civil Appeal E1337 of 2023) [2024] KEHC 16750 (KLR). They urge the court to award Ksh. 290,000 under that head as proposed by Dr. Etemesi and pray for the appeal to be allowed with costs.

21. The Respondent cites *Selle v Associated Motor Boat Company Limited* (1968) E.A 123, *Kemfri Africa Ltd & Another v Lubia & Another* (1982-88) KLR, *Catholic Diocese of Kisumu v Sophia Achieng Tete* (Civil Appeal 284 of 2001) [2004] KECA 154 (KLR) (1 June 2004) (Judgment) and *Gitobu Imanyara & 2 Others v Attorney General* (2016) eKLR, on the duty of the appellate court. She urges that the award for loss of earning capacity was justified and cites *Butler v Butler* (1984) KLR 225, *Ndoro Kaka Kakondo v Slat Manufacturers (K) Limited* [2016] KEELRC 984 (KLR), *John Kanyungu Njogu v Daniel Kimani Maingi* (2000) eKLR, *Mumias Sugar Company Limited v Francis Wanalo* (2007) eKLR, *Mariga v Musila* (1984) eKLR, *Njoka v Siboyi & Another* [2023] KEHC 24184 (KLR), *Magdaline Nzilani Mutende v Kennedy Mutwii* (2019) eKLR and *SJ v Francesco Di Nello & Another* (2015) eKLR. She urges that Dr. Etemesi's medical report was inconsistent with the other evidence which was adduced, and cites *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros v Augustine Munyao Kioko* (2006) eKLR, *Martin Kidake v Wilson Simiyu Siambi* (2014) eKLR, *Stephen Kinini Wang'ondv v The ARK Limited* (2016) eKLR, *Peter Kamau Gathoro v David Waweru Nganga* (2020) eKLR, *Mohamed Ali Baadi and Others v Attorney General & 11 Others* (2018) eKLR, *Henry Binya Oyala v Sabera O. Itira* (2011) eKLR and *Joseph Kahinda Maina v Evans Kamau Mwaura & 2 Others* (2014) eKLR.

Analysis and determination

22. From the grounds of appeal as framed, the twin issues for determination are whether the awards made were excessive and whether the Appellants' submissions were considered.

Excessive damages

23. This court has previously considered the principles for appellate interference with an award of damages by a trial court in *Crown Bus Services Ltd & 2 others v BM (Minor suing through his mother & Next Friend) SMA* [2020] eKLR as follows:

“The well-known principles for interference of an award of damages by a trial court are laid down by the Privy Council in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601, 613 and applied in East Africa by Sir K. O'Connor (with whom Sir Alastair Forbes, V.-P. and Newbold, J.A. agreed) in *Henry H. Ilanga v. M. Manyoka* [1961] EA 705, 713 as follows: “The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied



either that the judge, in assessing the damages, applied a wrong principle of law (as taking in some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (Flint v Lovell, [1935] 1 K.B.), approved by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. [1942] A.C. 601.”

24. The injuries sustained by the minor are particularized in the medical report of Dr. Ndirangu Karomo dated 31/10/2022 as blunt and sharp injury to the chest, severe head injury leading to loss of consciousness for hours, deep cut wound above the left eye with blunt injury to the same eye, swelling of the left forearm, compound fractures of the right tibia and fibula bones and open deep cut wound on the left leg. At the time of examination, the minor walked with crutches, had pain and swelling of the right leg below the knee, and a wound on the anteromedial right leg, which still drained pus mixed with pieces of bone. The doctor estimated the cost of future medical expenses at Ksh. 600,000, and assessed the degree of incapacity at 20%. In the doctor’s opinion, the minor, “developed osteomyelitis of the tibial bone. She requires more surgery to remove the dead bone and possible bone grafting. Extensive physiotherapy will be required to enable her to regain full function of the limb.”
25. When the minor was examined by Dr. W.M Wokabi on 18/1/2023, she was still walking with the aid of crutches, the left leg was deformed at the midshin, the deformity at the fracture site was clinically solid, comminuted multiple fragment fractures of the midshafts of the left tibia and fibula, signs of bone union with gross deformity and a scar on the left forehead. The doctor opined that, “For a long period of time her activities and movements were encumbered by the exofix. The fractures have united with gross deformity. The deformity is not acceptable and it will require to be corrected surgically (corrective osteotomy). I estimate such surgery to cost Sh 500,000. Left alone she will remain very disabled. She will be stigmatized in her condition. She will not be active physically. She will not be able to play sports, games, walking to school will be very difficult and tiring. Present disability is 25%.”
26. Dr. Wokabi noted in his subsequent examination of the minor on 13/9/2023 that she was still limping profoundly, there was an active sinus on the left midshin and signs of active bone infection at the fracture site. He estimated the cost of future medical expenses at Ksh. 800,000 to Ksh. 1,000,000 and assessed disability at 18%.
27. The minor was equally examined by Dr. Evelyn Etemesi, the Appellants’ doctor, on 13/9/2023, who noted that she had a scar on the right frontal area of the scalp, was walking with the aid of crutches and had an obvious deformity of the left lower limb, with a healed wound with a sinus. The doctor opined that the minor developed osteomyelitis over the course of her treatment, which would require corrective surgery in the future at an estimated cost of Ksh. 290,000. The doctor then assessed the degree of permanent incapacity at 16%.
28. The minor was admitted at Central Provincial General Hospital, Nyeri, from 19/10/2021 to 20/12/2021 and then readmitted in the same facility on 13/2/2021 to 31/3/2021.
29. The injuries sustained by the Respondent were severe, and despite prolonged hospitalization, full recovery has not yet been achieved, necessitating future medical intervention.
30. This court thus finds that the award of Ksh. 1,200,000 was reasonable and commensurate with the pain suffered by the minor.
31. On future medical expenses, the record shows that the minor’s prognosis has considerably improved, and there exists a real prospect of complete recovery upon the performance of the recommended corrective surgery.



32. This court finds that the trial court properly balanced the estimates for future medical expenses given by the 3 distinct doctors in awarding Ksh. 800,000.
33. On loss of earning capacity, Dr. Wokabi was categorical in her report that, upon successful performance of the corrective surgery, the minor's life would, to the greatest extent possible, return to normalcy.
34. In *Multi Hauliers Limited & another v JMN (Suing as the father and next friend AMM (Minor) (Civil Appeal E124 of 2019) [2024] KEHC 3612 (KLR) (7 March 2024) (Judgment)*, cited by the Appellants, the court (M.W Muigai J.) upheld an award of Ksh. 300,000 for loss of earnings for a claimant who sustained a fracture of the right humeral neck, traumatic amputation of the right forearm, degloving injury on the left ankle, deep cut on the right foot, deep cut on the left ear and blunt injury on the upper left jaw and 50% permanent incapacity.
35. The injuries and the resultant permanent incapacity in the above-cited case were far more grievous, rendering them incomparable to those sustained by the minor herein.
36. Consequently, the award of Ksh.700,000 was not only excessive in the circumstances, but also unjustified.

Consideration of the Appellants' submissions

37. The Appellants fault the trial court for disregarding their submissions and authorities. From the Judgment it is not clear that the Court did not consider the submissions and if the trial court was not persuaded by or did not refer to the submissions made by the Appellants, it does not follow that they were disregarded altogether. Moreover, on first appeal, the appellate court considers the evidence, and submissions, presented before the trial court afresh.

ORDERS

38. Accordingly, for the reasons set out above, this court finds that the appeal is partially merited and it is allowed in the following terms:
 1. The award of Ksh.700,000 for loss of earning capacity is set aside in its entirety.
 2. The other awards remain unchanged.
39. Each party to bear its own costs.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kamau Muriuki for the Appellant.

Mr. Musyomi for Mr. Mutua for the Respondent.

