

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
HIGH COURT CIVIL APPEAL NO. E022 OF 2025

P.E.O.

AGENCY.....APPELLANT

VERSUS

LYDIA ATIENO MATSWA.....
RESPONDENT

(Being an appeal from the judgment/decree of the Honourable T.K. Nambisia (RM) delivered on 27/9/2024 in Ukwala PMCC No. E016 of 2024)

BETWEEN

LYDIA ATIENO MATSWA.....PLAINTIFF

VERSUS

P.E.O. AGENCY.....
.....DEFENDANT

JUDGMENT

1. The Respondent herein had sued the Appellant vide a plaint dated 21/3/2022 as a result of a road traffic accident which occurred on 27/3/2021 at Ogambe area along Kisumu-Busia road when the Appellant's motor vehicle registration No. KBP 016 E was negligently driven, managed and/or controlled by the Appellant's driver such that he lost control and knocked down the Respondent who was a pillion passenger aboard a motor cycle along the said road whereby she sustained severe bodily injuries. The appeal herein arises from the judgment and decree of Hon. T. K. Nambisia (R.M) in Ukwala PMCC No. E016 of 2022 dated 27/9/2024 wherein she entered judgment for the Respondent against the Appellant inter alia; liability at 100%; general damages Ksh300,000; special damages of Ksh7,850/=; costs and interest.

2. Aggrieved by the aforesaid decision, the Appellant filed its memorandum of appeal dated 17/3/2025 wherein it raised the following grounds of appeal:
 - i) That the learned trial magistrate erred in law and fact in awarding general damages of Ksh300,000/= which award was excessive and not commensurate with the nature of the injuries sustained by the Respondent.
 - ii) That the learned trial magistrate erred in law in law and fact in failing to consider the Appellant's submissions on quantum by completely disregarding the submissions

and authorities of the Appellant and as a result arrived at an unjustified decision on quantum.

- iii) That the learned trial magistrate's exercise of discretion in assessment of quantum was injudicious.
- iv) That the learned trial magistrate erred in law and fact in failing to pay regard to authorities in the Appellant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar cases as the case she was deciding.

Reasons wherefore the Appellant prays that the appeal be allowed and the decree set aside and that the court do re-assess the evidence on record on quantum and award its own decision as well as costs to the Appellant.

3. Being the first appellate court, this court's 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 must 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).

4. **Lydia Otieno Matswa (PW1)** testified that she recalls on 27/3/2021 at around 9.00 AM when she was travelling from Bumala to Segga along the Kisumu Busia highway. That she was involved in an accident. That she recorded her statement dated 21/3/2021 at her advocate's office. That she adopted her statement dated 21/3/2021 as her evidence. On cross-examination, she stated inter alia; that she was a pillion passenger on motor cycle registration number KMDF 040Z; that she was not wearing a helmet; that she was a passenger; that the vehicle which knocked them was KBP 016 E; that the vehicle was coming from Busia heading towards Kisumu direction and that the motor cycle was in front of the bus; that she was able to see the bus coming through the side mirror; that the motor cycle rider was not overtaking when the accident happened; that she was taken to Segga hospital and referred to Siaya referral hospital; that she was treated and discharged; that the injuries could have been avoided if she had worn a helmet.

5. **Dr. Joseph Sokobe (PW2)** testified that he was presenting a medical report dated 25/2/2022 in favour of Lydia Atieno Matswa. That the injuries sustained are in his report. That he charged ksh6,000/= for the report which he produced as Exhibit 6. Further, he stated that he charged Ksh5,000/= as his virtual court attendance fee.

On cross examination, he stated that he had not produced the receipt for court attendance. That he examined the Plaintiff on 25/2/2022. That he relied on the P3 form and treatment notes from Sega Mission Hospital to prepare the report. That there is no mention of tooth injury in the treatment notes, but it was captured in the P3 form and that he also observed it when he examined the patient. On re-examination, he stated that he physically examined the plaintiff.

That marked the close of the Plaintiff's case.

6. The parties entered into a consent wherein the Plaintiff's second medical report prepared by Dr. Steve Ochieng be produced as Dex- 1 and that the Defendant closed its case at that juncture.
7. The trial court considered the evidence tendered and came up with the impugned judgment.
8. The appeal was canvassed by way of written submissions. Both parties complied.
9. Appellant's submissions are dated 17th October 2025.
10. That the Appellant raised one issue for determination namely whether the general damages award of Kshs. 300,000/= was excessive in the circumstances.

11. Counsel urged this Honourable Court to set aside the entire finding of the lower Court. A re-evaluation of the quantum herein would be prudent seeing that the Respondent suffered mainly soft tissue injuries and a fracture of the upper tooth.

12. It is trite law that assessment of quantum of damages in a claim for general damages is a discretionary exercise. However, the law has set dimensions for an exercise of discretion; must be exercised judicially, with wise circumspect and upon some legal principles. The said dimensions are vital such that when the trial court has violated a legal principle(s), the appellate court will interfere with the exercise of discretion by the trial court. The discretion in assessing the amount of general damages payable will be disturbed if the trial court;

- i. Took into account an irrelevant factor or,
- ii. Left out of account a relevant factor or, short of this
- iii. The amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.

13. It is also trite law that awards must be within consistent limits and court awards for damages must be made taking into account comparable injuries or similar injuries and awards. Counsel placed reliance in **Kigaraari vs Aya(1982-88) 1 KAR 768**, as quoted by **Kamau J** in **Godfrey**

Wamalwa Wamba & another v Kyalo Wambua [2018]

eKLR it was stated as follows:-

“Damages must be within the limits set out by decided cases and also inevitably passed on to members of the public, the vast majority of whom cannot within the limits the Kenyan economy can afford. Large awards are afforded the burden in the form of increased insurance and increased fees.”

14. The particulars of injuries as enumerated in paragraph 6 of the plaint are:-

- Bruises on the forehead
- Cut wound on the face
- Blunt injury to the face
- Laceration on the upper lip
- Fracture of the right upper incisor tooth
- Blunt injury to the left shoulder, right foot and right knee.

15. The Respondent testified as PW1 on 13/2/2024. Her statement was adopted as her evidence in chief whereby she confirmed that the injuries would have been avoided if indeed she had worn a helmet.

16. Doctor Sokobe (PW2) testified and produced the medical report as Exhibit 6 whereby he stated that the Respondent herein had suffered a fracture of the upper incisor. The medical report by the defendant produced as Exhibit 1

indicated that the Respondent only suffered cut wounds on the upper lip and fracture of the incisor.

17. The Court of Appeal observed in **Simon Taveta v Mercy Mutitu Njeru [2014] eKLR** that *“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”*

18. Counsel sought that the Honourable court places reliance in the following cases.

i) **ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021) [2023] KEHC 23549 (KLR) (5 October 2023)** where the appellate court upheld the award of Kshs 250,000/= in a case where the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth.

ii) **Baloch Faisal & another v Elloy Kawira Nthiiri [2019] KEHC 11239 (KLR)** where the appellate court reduced an award of Ksh.360,000/= with a

figure of Ksh.200,000 for fracture of two teeth and soft tissue injuries.

iii) **Isaac Muriungi Mbataru v Silas Kalumani [2017] eKLR** where an award of Ksh.200,000/= was made as general damages for soft tissue injuries on the right side of the face - there were swelling/lacerations and bruises, loss of 2 incisors (upper teeth) and Tenderness and swelling of lower back.

19. Counsel for the Appellant further submitted that the court should award Kshs. 200,000/= in the circumstance as the injuries in the above cases were severe in nature in comparison to the ones suffered by the Respondent herein.

20. Further, the counsel submitted that the learned trial magistrate erred in awarding the Respondent herein Kshs. 300,000/= for the injuries sustained. It was urged that the court proceeds to substitute the award of the trial court with an award of kshs. 200,000/=.

21. As regards the issue of costs, learned counsel submitted that costs follow the event and that the Appellant prays for costs of this Appeal based on **Section 27(1) of the Civil Procedure Act** which provides as follows:

“27. Costs

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all

suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such."

22. Respondent's submission are dated 24th October 2025.
23. Learned counsel for the Respondent submitted that judgment having been delivered in September 2024 and the appeal filed in March 2025, it was incumbent upon the Appellant to prove that leave was granted to lodge the appeal out of time. That whereas it is alleged that leave was allegedly granted on 14th March 2025, the order granting the leave has not been placed before the court to verify the allegation. That in the absence of such an order, the appeal is incompetent.

24. On the issue on whether the appeal has merit, counsel submitted that the court should be guided by four elementary legal principles of law in place namely:

- a) Award of damages is an exercise of judicial discretion.
- b) An Appellate court would only interfere with such discretion where it is shown that the trial court took into account irrelevant factors or left out a relevant factor or the award is too low or too high and therefore an erroneous estimate of the damage.
- c) Comparable injuries must be compensated by comparable awards.
- d) an appellate court should not interfere with an award made by the trial court simply because it would have awarded a different sum.

30. That in view of the foregoing, it was submitted that nothing has been placed before the court to justify a review or setting aside of the award by the trial court. Further, in her plaint the Respondent pleaded the following injuries:

- a) Bruises on the forehead.
- b) Cut wound on the face.
- c) Blunt injury to the face.
- d) Lacerations on the upper lip.
- e) Fracture of the right upper incisor tooth

- f) Blunt Injury to the left shoulder.
- g) Blunt injury and lacerations to the right foot.
- h) Lacerations and blunt injury to the right knee.

31. The Respondent's counsel produced treatment notes, a p3 form and a medical report by Dr. J. C. Sokobe to prove the injuries. That the accident occurred on 27th March 2021 while the P3 form was filled on 30th March 2021 when the injuries were still fresh. Further, it was submitted that the trial court guided itself properly on the injuries sustained. That the trial court then factored in inflationary trends from 2015 to 2024 and opined that Ksh 300,000/= was a fair and an informed award.

32. Flowing from the above, in the upshot it was submitted that the Respondent proved that she suffered multiple soft tissue injuries and fractured upper incisor tooth. That the issue then is whether the award of Ksh300,000/= by the trial court was excessive in the circumstances. It was submitted that before the trial court, the Appellant submitted that Ksh100,000/= would suffice to compensate the Respondent and that before this court the Appellant now submits that Ksh 200,000/= would be sufficient which is a 100% increment.

33. Further, counsel placed reliance on the case of **Nakuru HCCA No. 165 of 2010: Peter Njuguna Vs. Francis Njuguna Njoroge** in which the appeal was decided in 2015 where the appeal court had reduced an award of

Ksh350,000/= to Ksh230,000/= in favour of the Respondent who sustained multiple soft tissue injuries and a broken tooth.

34. Again, reliance was placed in the case of **Naivasha HCCA No. 6/2016 Washington Mukunya Karanja & Ano. Vs. Margaret Wambui Maina** where the Respondent had suffered soft tissue injuries and fracture of two incisor teeth. That she was awarded ksh300,000/=. That the High Court sustained the award in 2020.

Further, reliance was placed in the case of **Nairobi HCCA No. E231 of 2020: Ng'ang'a John & Ano. Vs. David Ogot Agola** where the Respondent was awarded Ksh600,000/= for soft tissue injuries and two cracked/loose upper molars and in which the court reduced the award to Ksh350,000/= in 2021.

35. The counsel for Respondent submitted that from the foregoing decisions, that the award of between Ksh250,000/= and Ksh350,000/= would be made for the injuries sustained by the Respondent in 2024 and that there has been no demonstration that the award of Ksh300,000/= by the trial court was inordinately high and that this court should thus sustain the award. That the appeal lacks merit and that it should be dismissed with costs.

38. I have considered the record of appeal together with submissions presented as well as authorities cited. It is not in dispute that the Appellant's appeal revolves around the question of quantum of damages awarded and that the issue

of liability is not contested by the Appellant. I find the issue for determination is whether the quantum of damages awarded by the trial court was inordinately high as to represent an erroneous estimate.

39. As the Appellant has opted not to challenge the issue of liability, then this court will proceed to consider the issue of quantum of damages awarded by the trial court. It was contended by the Appellant that the amount awarded was inordinately high and not commensurate with the injuries sustained by the Respondent. The Appellant is of the view that the injuries sustained by the Respondent were not that severe to attract a higher award and that the award of Ksh300,000/= should be reduced to the sum of Ksh200,000/=. On the other hand, the Respondent contends that the award was reasonable and should not be disturbed at all.

40. In the case of **Mkube v Nyamuro [1983] LLR at 403** Kneller JA & Hancox Ag JA held that:

“A court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”

Likewise, in **Butt v Khan [1982-88] KAR 1** it was held that:

“An appellate court shall 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 was either inordinately high or low.”

41. It is trite law this court on a 1st appeal is duty bound to re-assess and re-evaluate the evidence on record and arrive at its own conclusions. Further, this court ought to appreciate that assessment of damages is an exercise of judicial discretion and the court would only disturb the award if it is shown that the said discretion was not exercised judiciously and lastly, the court should bear in mind that similar injuries should attract similar awards.
42. It is noted from the pleadings that the Respondent sustained injuries inter alia; bruises on the forehead; cut wound on the face; blunt injury to the face; lacerations on the upper lip; fracture of the right upper incisor tooth; blunt Injury to the left shoulder; blunt injury and lacerations to the right foot; lacerations and blunt injury to the right knee. The Respondent produced treatment notes, a p3 form and a medical report by Dr. J. C. Sokobe to prove the injuries. The Respondent’s second medical report by Dr Steve Ochieng was produced by consent as Exhibit 1 and which confirmed that the Respondent suffered multiple soft tissue injuries as

well as a fractured tooth. It is noted that the accident occurred on 27th March 2021 while the P3 form was filled on 30th March 2021 when the injuries were still fresh. The parties made submissions before the trial court and that the trial court duly considered the matter and came up with the award of Kshs 300,000/ for pain and suffering.

43. It is not in dispute that the Respondent sustained multiple soft tissue injuries and fractured upper incisor tooth as pleaded and confirmed by the two medical reports. The issue in contention is whether the award of Ksh300,000/= by the trial court was reasonable in the circumstances. It is necessary to reproduce the cases cited by the learned counsels and for consideration herein. They are as follows:

i) **Nakuru HCCA No. 165 of 2010: Peter Njuguna Vs. Francis Njuguna Njoroge** where an appeal was decided in 2015 where the court had reduced an award of Ksh350,000/= to Ksh230,000/= in favour of the Respondent who sustained multiple soft tissue injuries and a broken tooth.

ii) **Naivasha HCCA No. 6/2016 Washington Mukunya Karanja & Ano. Vs. Margaret Wambui Maina** where the Respondent had suffered soft tissue injuries and fracture of two incisor teeth and who was awarded ksh300,000/= in which the High Court sustained the award in 2020.

iii) **Nairobi HCCA No. E231 of 2020: Ng'ang'a John & Ano. Vs. David Ogot Agola** where the

Respondent was awarded Ksh600,000/= for soft tissue injuries and two cracked/loose upper molars in which the court reduced the award to Ksh350,000/= in 2021.

- iv) **ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021) [2023] KEHC 23549 (KLR) (5 October 2023)** where the appellate court upheld an award of Kshs 250,000/= in a case where the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth.
- v) **Baloch Faisal & another v Elloy Kawira Nthiiri [2019] KEHC 11239 (KLR)** where the appellate court reduced an award of Ksh.360,000/= with a figure of Ksh.200,000 for fracture of two teeth and soft tissue injuries.
- vi) **Isaac Muriungi Mbataru v Silas Kalumani [2017] eKLR** where an award of Ksh.200,000/= was made as general damages for soft tissue injuries on the right side of the face - there were swelling/lacerations and bruises, loss of 2 incisors

(upper teeth) and tenderness and swelling of lower back.

44. Looking at the foregoing cases as juxtaposed to the Respondent's injuries and taking into account the fact that the decisions were made several years ago as well as the effects of inflation, i find that the award of damages ranging between Kshs 250, 000/ to Kshs 350, 000/ would be reasonable. iam satisfied that the award of Kshs 300, 000/ by the learned trial magistrate was reasonable in the circumstances and that the same was not inordinately high as to represent an erroneous estimate of damages. The same must be upheld.

45. In the result, it is my finding that the Appellant's appeal is devoid of merit. The same is dismissed with costs.

Dated and delivered at Siaya this 4th day of December 2025.

D.KEMEI

JUDGE

In the presence of :

M/s Tesoot.....for Appellant

Omondi.....for Respondent

Maurine.....Court Assistant

SIAYA HCCA NO. E022 OF 2025 - JUDGMENT