

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**CIVIL APPEAL NO. E032 OF 2023**

**OBADIAH CHEGE KARANJA** .....

**APPELLANT**

**VERSUS**

**GLORIA KEMUNTO (suing through the next friend, JANET BOSIBORI)** .....

**RESPONDENT**

*(Being an Appeal from the Judgment of Senior Principal Magistrate, Kiniale L. at the Senior Principal Magistrate's Court at Bomet, Civil Suit Number E124 of 2022)*

**JUDGEMENT**

1. In the trial court, the Respondent (then Plaintiff) as the mother of Gloria Kemunto sued the Appellant (then Defendant) for general and special damages that arose out of a road traffic accident that occurred on 4<sup>th</sup> July 2022.
2. The trial court conducted a hearing where the Respondent called two witnesses before closing her case. The Appellant closed his case without calling any witnesses.
3. In its Judgement dated 22<sup>nd</sup> May 2023, the trial court found the Appellant 100% liable for causing the accident awarded the Respondent general damages of Kshs 1,200,000/= and special damages of Kshs 174,751/=
4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 26<sup>th</sup> May 2023 appealing against the quantum which he termed as excessive.

5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of **Kiilu & Another vs. Republic (2005)1 KLR 174.**

6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

**The Plaintiff's/Respondent's case.**

7. Through her Complaint dated 20<sup>th</sup> July 2022, the Respondent stated that they were fare paying passengers aboard motor vehicle registration number KDH 017M and they were travelling along Bomet-Narok road when they were hit from behind by motor vehicle registration number KBQ 053J.

8. The Respondent stated that the driver of motor vehicle registration number KBQ 053J was negligent in causing the accident. The particulars of the negligence were listed in paragraph 4 of the Plaint.

9. That as a result of the accident, the Respondent suffered the following injuries: -

- i) Scalp contusion.
- ii) Facial bruises.
- iii) Whiplash neck injuries.
- iv) Severe traumatic brain injury.
- v) Bruising of both upper limbs.
- vi) Traumatic amputation of the right toe.

10. Through her written submissions dated 24<sup>th</sup> October 2025, the Respondent submitted that the trial court did not err when it awarded her Kshs 1,200,000/= as general damages.

She relied on **Abdi Werdi Abdulahi vs James Royo Mungatia & another (2019) eKLR** and **Friendship Containers Manufacturers Limited vs Sibwoga & another Appeal [2025] KEELRC 2794 (KLR)**. The Respondent further state that the Appellant did not demonstrate how the trial court acted in misapprehension of any legal principle of fact.

**The Defendant's/Appellant's case**

11. Through his Statement of Defence dated 5<sup>th</sup> September 2022, the Appellant denied that he was the registered owner of motor vehicle registration number KBQ 053J and further denied the Respondent was a fare paying passenger aboard motor vehicle registration number KDH 017M.

12. The Appellant denied the particulars of negligence levelled against him. That if any accident happened, it was caused solely by the negligence of the driver of motor vehicle registration number KDH 017M. He particularized the negligence in paragraph 7 of his Defence.

13. In his written submissions dated 31<sup>st</sup> October 2025, the Appellant submitted that the award of Kshs 1,200,000/= as general damages was high. That an award of Kshs 500,000/= would be a reasonable compensation. He relied on **Gerald Oyugi vs Evans Okeyo Mochere (2019) eKLR, Lyaka Mwombe vs Francis Namtsi & 2 others (2019) eKLR, Edwin Otieno Japaso vs Easy Coach Bus Company Limited (2016) eKLR and Pride Kings Security v Ekaalet (Civil Appeal E009 of 2022) [2023] KEHC 20284 (KLR) (17 July 2023) (Judgment)**. The Appellant further submitted that the Respondent had healed and resumed her classes.

14. I have gone through and carefully considered the Record of Appeal, the Supplementary Record of Appeal, the Appellant's written submissions dated 3<sup>rd</sup> October 2025 and Respondent's written submissions dated 24<sup>th</sup> October 2025. The singular issue for my determination was whether the award of general damages was excessive.

## **Quantum**

15. Janet Bosibori (PW2) testified that they (alongside the Respondent) were involved in a road traffic accident and the Respondent suffered injuries. PW2 further testified that the Respondent was taken to Tenwek Hospital where she was admitted for one week before being discharged. When PW2 was cross examined, she testified that the Respondent was fully healed and was back in school. PW2 produced a Discharge Summary, P3 Form and a Medical Report as **P. Exh 1, 2 and 3** respectively.

16. I have looked at and considered the exhibits above. I have noted that the findings in the aforementioned exhibits confirm that the Respondent suffered the injuries she pleaded in the Pleint i.e. scalp contusion, facial bruises, whiplash neck injuries, severe traumatic brain injury, bruising of both upper limbs and traumatic amputation of the right 4<sup>th</sup> toe.

17. As earlier stated, the trial court awarded Kshs 1,200,000/= as general damages, an amount which the Appellant contested and stated was excessive. On the other hand, the Respondent stated that the award was sufficient and commensurate to her injuries.

18. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. **See Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko [2006] KECA 130 (KLR).**

19. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. In

addition to the parties' authorities, I have found the following cases quite helpful in terms of comparison: -

- I. In **Moiz Motors Limited & another v Harun Ngethe Wanjiru [2021] KEHC 8702 (KLR)**, the Plaintiff sustained soft tissue injuries and moderate head injury and was hospitalized for three days. The trial court substituted an award of general damages of Kshs. 700,000/= with that of Kshs. 500,000/=.
- II. In **Mbeva v Kenya Malik Limited & another [2023] KEHC 23269 (KLR)**, the court reduced the award of Kshs 2,500,000/= to Kshs 500,000/= for calvarian and facial comminuted minimally depressed fractures, tension pneumocephalus, cerebral oedema, axillary and ethmoid hemo/CSF pneumosinuse, scalp and facial soft tissues oedema and emphysema, lacerations behind the left ear and above the right eye, recurrent headaches and loss of memory.

III. In **Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N [2018] KEHC 1915 (KLR)**, the court found that the child had sustained primarily a head injury and the doctor who testified only noted that there was a risk in the future but indicated that there was no permanent disability. The court proceeded to award general damages at Kshs 500,000/=.

20. I have considered the authorities above and the nature of the injury suffered by the Respondent and I find that the Kshs 1,200,000/= awarded as general damages by the trial court was excessive and not commensurate to the injuries sustained. I hereby vacate the award of Kshs 1,200,000/= as general damages and substitute it with an award of Kshs 600,000/=.

21. Regarding special damages, the Respondent pleaded Kshs 174,751/= being the cost for the Medical Report, treatment expenses and copy of motor vehicle records. I uphold the

trial court's award of Kshs 174,751/= being receipts for payment of treatment at Tenwek Hospital (**P. Exh 9**), cost for the Medical Report by Dr. Nyameino (**P. Exh 4**) and Motor Vehicle Search (**P. Exh 7**).

22. The final computation is as below: -

General Damages	Kshs 600,000/=
Add special damages	Kshs 174,751/=
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<b>Total</b>	<b>Kshs 774,751/=</b>

23. In the end, the Memorandum of Appeal dated 26<sup>th</sup> May 2023 is allowed. Each party shall bear their own costs in this Appeal.

**Judgement delivered, dated and signed at Bomet this 17<sup>th</sup> day of December, 2025.**

.....  
**HON. J.K.NG'ARNG'AR**

## **JUDGE**

**Judgement delivered in the presence of;**

**Siele and Susan (Court Assistants).**

**Kimathi for the Appellant**

**No appearance for the Respondent**

**ORIGINAL**