



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SC CC NO. E088 OF 2025.

JENITER MKAMBURI
MWAMBURI.....CLAIMANT

-VERSUS-

AGRAILS LTD.....1ST
RESPONDENT

JOHN MWENDA MUGENI.....2ND
RESPONDENT

JUDGEMENT.

INTRODUCTION.

- 1)** The claimant being a lawful pillion passenger aboard motorcycle that was being ridden lawfully along the Mwatate-Voi Highway was involved in a road traffic accident that she now holds the respondent liable for by way damages for pain and suffering.
- 2)** She claims that on or about the 6/9/2025 upon reaching Maruru area the respondent and/or her authorized agent/driver or servant negligently drove and/or managed motor vehicle registration number KDG 937N(suit motor vehicle) such that while over speeding it failed to keep a safe distance with the claimant, lost control and violently hit the claimant from the rear and as a consequence thereof she sustained the following injuries; closed fracture of the left distal radius, laceration of the left calf region and closed fracture of the left distal fibula.
- 3)** The matter proceeded by way of documents after parties reached a consent on liability in the ratio of 90:10 in favour of the claimant as

against the respondent. I have perused and considered the documents and pleadings as filed as well as the submissions filed.

ISSUE FOR DETERMINATION.

- a) Whether the Respondent is liable for the accident.**
- b) What is the quantum of damages awardable if any.**
- c) Who bears costs of the claim.**

ANALYSIS AND DETERMINATION.

- a) Whether the respondent is liable for the accident.**

4) As already stated a consent order on liability was adopted by this court in the ratio on 90:10 in favour of the claimant as against the respondent and that is the judgment of the court on liability.

- b) What is the quantum of damages awardable if any.**

5) It is the claimant's case that as a result of the accident he suffered the following injuries; closed fracture of the left distal radius, laceration of the left calf region and closed fracture of the left distal fibula.

6) A perusal of the medical documents and the P3 filed and the medical report dated 3/9/2025 confirm the injuries and opine that the nature of injuries were assessed as greivous harm which resulted to significant physical pain and psychological distress. He concluded that there was also partial permanent disability assessed at 10% and recommended a re evaluation after 6 months.

7) The doctor further advised that the claimant will incur future medical expenses estimated to cost around Kshs.188,000/=

8) It is trite law that no two cases can be completely similar but it is a settled principle that comparable injuries should attract comparable awards and courts simply exercise discretion in terms of awards to be given but with the guidance of earlier decided cases that handled almost similar injuries. See the case of **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR**. The claimant has on his part proposed Kshs.900,000/= as compensation whereas the respondent has proposed Kshs.200,000/=

9) I have perused the authorities cited by the respondent in support of his proposal for damages of Kshs.200,000/= and the injuries sustained therein are not comparable to the injuries sustained by the claimant herein to the extent that in the case of Patrisia Adhiambo case she did not suffer any disability unlike in this one where the claimant has sustained 10% permanent disability. Whereas the case of Kimatu Mbuvi was decided in the year 2006. 19 years later.

10) It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts, although comparable injuries should receive similar awards. This Court has to bear in mind the principles that guide assessment of damages as espoused in West (HI) and Sons Ltd v Shepherd [1964] AC 326 where Lord Morris said:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards When all this is said it still must be that amounts which are awarded are to a considerable extent conventional”

11) In the case of [RAZI AMIN KULATEN vs 1.CLAUS KRUGER 2.ROSEMARY NYAKINYUA \[2004\] KEHC 2239 \(KLR\)](#) the high court awarded Kshs.600,000/= for the following injuries and a further Kshs.250,000/= for future medical expenses as advised by the doctor ;

- (1) Fracture of tibia/fibula and patella on the right leg.
- (2) Potts fracture on left ankle.
- (3) Severe strain with rupture of cruciate ligaments (left knee)
- (4) Fracture of metatarsal bone (left foot)

- 12)** In the case of **Sammy Mugo Kinyanjui & Ano.-vs-Kairo Thuo (2017) eKLR**, the Respondent sustained a slight tenderness in the forehead, neck, chest, abdomen, right knee and both legs, fracture of the right tibia, fracture of the left tibia and fibula. The trial court award of Kshs 1,000,000/= was set aside and substituted with Kshs 600,000/=.
- 13)** In **Dorcas Wangithi Nderi v Samuel Kiburu Mwaura & another [2015] KEHC 5180 (KLR)**, wherein Ksh. 2,000,000/= was awarded to an appellant who sustained multiple soft tissue injuries, blunt injury to the head, fracture of the radius/ulna, compound fracture of the right tibia/fibula and compound fracture of the left tibia/fibula.
- 14)** **Mary Wanjah Gachomabah v Josintah Adhiambo Ogana [2021] eKLR**, wherein Ksh. 2,000,000/= was awarded to a victim who sustained bruises on the scalp, chest contusion, fracture of the right humerus, deep cut wound on the left arm, cut wound on the right lower limb, fracture of the right tibia and fibula;
- 15)** In **Otieno v South Sioux Farms Ltd [2023] KEHC 21083 (KLR)** Ksh. 3,000,000/= was awarded to a victim who sustained compound fracture of the right tibia and fibula, fracture of the left ulna, fracture of the left radius, chest contusion and blunt trauma to the back.
- 16)** The above listed cases speak of fractures to the tibia, fibula as well as radius and ulna in addition to other injuries. The said injuries are more severe than those sustained by the claimant herein
- 17)** Having looked at the decided cases, the nature of injuries sustained by the claimant and taking into consideration the effluxion of time, I award the claimant Kshs.600,000/= as general damages.
- 18)** On special damages, Kshs.3,550/= has been pleaded. That is for medical report, medical expenses and motor vehicle search. The same have been proved by way of receipts and are allowed.
- 19)** There is a further prayer for future medical expenses at Kshs.188,000/= as per Dr. Wisdom. This is what courts have stated with regards to this claim.
- 20)** In the case of **Michael Hubert Kloss & another v David Seroney & 5 others [2009] eKLR** in a judgment delivered on

9/10/2009, the court observed as follows:

"The final complaint raised by Mr. Wasonga was that awards were made for costs of future medical treatment, which were in the nature of special damages, but there was no proof.....Those awards were made on the basis that the medical reports in respect of those respondents specifically made estimates of the required amounts for future treatment. Logically no receipts could be produced for services which were yet to be rendered.

However, as stated in McGregor on Damages, 16 Edition at page 1654 in relation to medical expenses:

'Both expenses already incurred at the time of the trial and prospective expenses are recoverable and while the rules of procedure require that the expenses already incurred and paid be pleaded as special damage and the prospective expenses as general damage, the division which depends purely on the accident of the time the case comes on for hearing, implies no substantive differences.' We think the cost of future treatment, where pleaded and reasonably estimated, ought to be awarded and in this case, the doctors' reports were produced with the consent of the parties and without challenge on the reasonableness of their estimates for future medical treatment costs in respect of the three respondents. We reject the complaint made in that regard"

- 21)** These costs have been explained in details in the medical report and being from a specialist and being reasonable in the circumstances and most importantly with no objection as to the estimates, they have been proved to certain degree of certainty and they are allowed as prayed

c) Who bears costs of the claim?

- 22)**The claimant having been successful in the matter and that costs follow events she is awarded costs of the claim.

CONCLUSION AND DISPOSITION.

- 23)** The upshot of the foregoing I make the following final orders;

a) The claim contained in the statement of claim dated 28th October 2025 is allowed in the following terms.

Liability	90:10
General damages	Kshs.600,000/=
Special damages	Kshs. 3,550/=
Future medical expenses	Kshs.188,000/=
Sub total	Kshs.791,550/=
Less 10% contributory	Kshs.79,155/=
<u>Grand Total</u>	<u>Kshs.712,395/=</u>

b) The claimant is awarded costs and interests from the date of judgment until payment in full.

c) Let the file be closed forthwith.

24) Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT THIS...10th.....DAY OF ...December...2025

**F.M. MULAMA
ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Vivian Wambui.

Kiwinga for the Claimant.

Abaja for the respondent.