



REPUBLIC OF KENYA



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**Nderitu & another v PPN (A Minor Suing Through His Guardian and Next Friend LNN)
(Civil Appeal 128 of 2017) [2025] KEHC 18700 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL 128 OF 2017
LN MUTENDE, J
DECEMBER 17, 2025**

BETWEEN

JOHN MUCHIRI NDERITU 1ST APPELLANT

JAMES NJOROGE KARANJA 2ND APPELLANT

AND

**PPN (A MINOR SUING THROUGH HIS GUARDIAN AND NEXT FRIEND
LNN) RESPONDENT**

JUDGMENT

1. The Respondent sued the Appellants seeking general and special damages arising out a road traffic accident in which he was involved following the collision of the motor vehicle Reg. No. KBT 639B and KBA 353N. The matter was part of a series in which Civil Suit No. 276 of 2013 was the test suit and liability was entered at 100% against the 3rd and 4th Defendants being the registered owner and authorized driver of motor vehicle Reg. No. KBT 639B respectively.
2. The court considered evidence adduced on quantum and awarded the Respondent Kshs.800,000/- in general damages, Kshs.13,470/- in special damages, a total of Kshs.813,470/- plus costs and interest.
3. Aggrieved the Appellants preferred an appeal on grounds that;
 1. The learned trial Magistrate erred in law and fact in making an award of general damages that is excessive in the circumstances.
 2. That the learned trial Magistrate erred in law and fact in misapprehending and or failing to properly deal with the medical evidence adduced in court, and misapprehending the law on the award of damages thereby making an award of general damages that is incongruent with the injuries sustained and proved, but also with authority and principle.



3. That the trial Magistrate erred in law in totally ignoring the submissions of the Appellants on quantum and thereby making an award of general damages that is clearly not compensatory but enriching to the Respondent.
 4. That the judgment of the trial court is unreasonable and contrary to law principle and facts of the case presented before that trial court.
4. The appeal was disposed through written submissions. It is urged by the Appellant that Dr. Kiamba and Dr. Malik's opinion as to the injuries sustained by the Respondent were substantially different which should have been resolved and the learned Magistrate should have demonstrated how he ignored Dr. Malik's report and adopted Dr. Kiamba's report which was an error of principle and fact. That there was no independent medical report and none of the doctors was called to testify. In this regard, reliance was placed on the case of *Shadrack Mathias & Another v Agnes Muluki Wambua* [2021] eKLR where the High Court stated that;

“In my view parties and their counsel ought not to just throw medical reports or expert opinion reports for that matter which are divergent in material aspects without calling the makers thereof. This was the position of the Court of Appeal in *Auni Bakari & Another vs. Hadija Olesi* Civil Appeal No. 70 of 1985 where it held that it is desirable to call a doctor to explain the discrepancy in a medical report.

Where parties intend to rely on medical reports only they ought to confirm that the same are substantially the same in terms of injuries sustained. Parties and their legal advisers ought to take the advice of the Court of Appeal in *James Njoro Kibutiri vs. Eliud Njau Kibutiri* 1 KAR 60 [1983] KLR 62; [1976-1985] EA 220 that the ingenious lawyers are advised that short cuts are fine, as long as you are absolutely sure they won't land you in a ditch.”

5. That the court should have relied on the report of Dr. Malik which was most recent and he was not likely to be biased as he was not instructed by the Plaintiff as held in *Dharmagha Patel & Another v TA (Minor suing through the mother and next friend HH)* [2021] eKLR as follows;

“In the circumstances of this particular case the court shall rely on the finding of Dr. Ngetich by virtue of the fact that he was not specifically instructed by the plaintiff's parents to examine the plaintiff and is therefore unlikely to be biased.”

6. On quantum, it is submitted that the learned Magistrate awarded the quantum in total disregard of the principles of award of damages as echoed in the Judicial fabric. Reliance was placed on the case of *Millicent Atieno Ochuonyo v Katola Richard* [2015] eKLR. That principles that should have guided the court were stated in *Charles Oriwo Odeyo v Appollo Justus Andabwa & Another* [2017] eKLR thus;

“The assessment of damages in personal injury case by court is guided by the following principles: -

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- 2) The award should be commensurable with the injuries sustained.
- 3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.



- 4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
 - 5) The awards should not be inordinately low or high.”
7. That failure to be guided by the principles set out resulted into the trial court not awarding damages within the limits set out in decided cases as stated in *Jesky Enterprises Limited & Another v Nancy Wachinga Wanjiru & Another* [2019] eKLR where the court cited the case of *Kigaraari v Aya* [1982 – 88] 1KAR 768 where the court stated that;
- “Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford. Large awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees.”
8. The Respondent submits that injuries sustained were confirmed by Dr. Kiamba who classified the degree as grievous harm and awarded a permanent disability of 10%. That Dr. Malik re – examined the Respondent on 20th September, 2016. Whereas the accident occurred and examination was conducted on 23rd November, 2013. By then the soft tissue injuries sustained must have healed. That by then the Respondent’s fractured joint was fully recovered as stated by Dr. Malik. That having not healed properly the Respondent had not returned to the state he was before the accident thus the permanent disability.
9. That the Respondent relied on the case of *Anna Ayuma Harrison v Simon Githure Marongo* [2014] eKLR where the court assessed general damages for pain, suffering and loss of amenities at Kshs.500,000/- and the Respondent submitted for an award of Kshs.1,000,000/- an authority that he still relies on. That the trial court took into consideration injuries sustained by the Respondent, authorities relied on and proposed awards as well as principles of awarding damages in awarding the Respondent general damages of Kshs.800,000/- in the year 2017.
10. That the award of Kshs.800,000/- was not excessive as in *Easy Coach Limited v Emily Nyangasi* [2017] eKLR general damages were assessed at Kshs.700,000/- where the Plaintiff sustained tissue injuries without any fracture.
11. This being a first appellate court, its duty is to re-evaluate afresh evidence before the trial court and reach its own conclusions bearing in mind the fact of having not heard nor seen witnesses who testified. (See *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123).
12. An award of quantum of damages is primarily the duty of the trial court which exercises its discretion. To interfere with the award the appellate court must follow laid down principles. In *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M. Lubia & Olive Lubia* [1987] KAR 30 the Court held that;
- “The principle to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”



13. In *Catholic Diocese of Kisumu v Tete* [2004] eKLR the court held that;
- “It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles.”
14. I have considered the Record of Appeal and submissions in support and opposition of the appeal. The grievance seems to be on the award of general damages. Injuries sustained were particularized as;
- i. Cuts over the scalp
 - ii. Fractured left clavicle
 - iii. Soft tissue injuries to the shoulders, chest, back, right arm and right leg.
15. The Respondent was seen at J.M. Kariuki (Ol Kalou) County Referral Hospital on 23rd November, 2013 and admitted. Injuries recorded to have been sustained were; Dep cut wound on the skull Swelling and painful right shoulder Painful right shoulder Painful upper lower limb Swollen eyes Chest pains
- An X-ray done revealed a displaced fracture of the clavicle dislocation of the right shoulder on discharge on 21st April, 2014.
16. Upon being examined by Dr. W.K. Kiamba, on 9th March, 2016, it was opined that he had a permanent disfiguring scar (6cm x 1cm) on the right parietal region. He had loss of hair over the scar. There was another scar (4cm in length) across the sagittal region of the scalp. On the thorax was a deformity in the middle part of the left clavicle. The fracture of the left clavicle had malunited and there was a deformity in the middle one third. He suffered from pain in the left collar bone. The doctor classified the degree of injury as ‘grievous harm’ awarded a temporary incapacity of 3 months and permanent disability of 10%.
17. Dr. Malik on the other hand examined the Respondent on 20th September, 2016. Acknowledging injuries sustained he concluded that the Respondent suffered total incapacity of a temporary nature for a period of three weeks followed by partial incapacity of a temporary nature for a further period of three weeks and has suffered no permanent physical disability.
18. In submissions the Respondent relying on the case of *Anna Ayuma Harison v Simon Gature Mawingo* [2014] eKLR where the court assessed general damages for pain and suffering and loss of amenities at Kshs.500,000/- sought an award of Kshs.1,000,000/- as general damages.
19. On their part, the Appellants submitted that general damages of Kshs.50,000/- would be adequate compensation. Their argument was that injuries sustained were soft tissue injuries and that damages should represent a fair compensation but should not be excessive. Reliance was placed on the case of *African Highlands Produce Co. Ltd v Francis B. Mososi* [2005] eKLR where the Respondent sustained a deep cut wound on the right ankle and sustained bruises on the right leg and was awarded kshs.100,000/- in general damages by the lower court which was sustained with an award of Kshs.40,000/-.
20. Also cited was the case of *Shalimar Flowers Ltd v Noah Munuango Mahiganyi* (2018) eKLR where the Respondent was awarded Kshs.120,000/- by the lower court in 2008, for soft tissue injuries being



a deep cut on the wrist joint which healed leaving a scar. The High Court substituted the award with Kshs.50,000/-.

21. The authorities cited by the Appellants were for the years 2003 and 2008 respectively which were decided 10 and 5 years respectively before the Respondent was involved in the accident.
22. The Respondent suffered injuries that were more than soft tissue injuries. Dr. Malik questioned if indeed the Respondent was admitted to hospital from 23rd November, 2013 to 24th April, 2014 as he handed out patient cards from North Kinangop Catholic Hospital. In her testimony PW1 Lucy Njeri Njuguna stated that the Respondent was admitted for 4 – 5 months and was also taken to Kinangop Catholic Hospital for X-ray.
23. What cannot be challenged is the fact of the Respondent having sustained injuries on the occipital area of the head with other head injuries, dislocation of the shoulder, and fracture of the left clavicle. These were serious injuries. These are injuries that cannot be dismissed as insignificant. The Respondent had limitation of the malunited clavicle. There was some deformity looking at comparable awards, in Jane Wambui Kamau & 4 Others [1999] eKLR where the Plaintiff suffered a fracture of the right collar bone general damages were assessed at Kshs.300,000/-.
24. In Jaldessa Diba T/A Dikus Transporters & Another v Joseph Mbithi Isika Machakos HCCA No. 96 of 2011 the court awarded Kshs.350,000/- in general damages for dislocation of the left shoulder.
25. I am inclined to interfere with the award. Therefore, I set aside the award of Kshs.800,000/- which is substituted with an award of Kshs.600,000/-. The award for Special in the sum of Ksh.13,470 is affirmed. The total damages stand at Ksh. 613,470/- plus interest.
26. Costs of the case in the lower court shall be borne by the Applicant/Respondent but on appeal each party to bear their own costs.
27. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF DECEMBER, 2025.

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L.N. MUTENDE

JUDGE

