



REPUBLIC OF KENYA



**Oyaro v Msagha (Civil Appeal E036 of 2023)  
[2025] KEHC 18715 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18715 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E036 OF 2023  
AN ONGERI, J  
DECEMBER 19, 2025**

**BETWEEN**

**DARIUS MOSOTI OYARO ..... APPELLANT**

**AND**

**JOYCE SAMBO MSAGHA ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in  
Wundanyi SPMCC No. E049 of 2021 delivered on 28th July 2023)*

**JUDGMENT**

1. The Respondent Joyce Sambo Msagha Sued The Appellant, Darius Mosoti Oyaro, in Wundanyi SPMCC No. E049 of 2021 seeking general damages for pain and suffering, special damages of Kshs. 2,550/= for injuries the Respondent sustained when she was involved in a road traffic accident on 2<sup>nd</sup> October 2021 at Kipusi Area along Wundanyi – Mwatate road.
2. Liability was determined in a test suit at 100% and the trial court only assessed damages in this case.
3. The Respondent sustained the following injuries;-
  - i. Bruises and abrasion in the right arm.
  - ii. Blunt trauma to the chest.
  - iii. Complaints of chest pain and nausea.
4. The trial court assessed damages as follows:-
  - i. Liability 100%
  - ii. General damages Kshs. 200,000/=



- iii. Special damages Kshs. 2,550/=
  - Total Kshs. 202,550/=
5. The Appellant has appealed against the said judgment on the following grounds-
- i. That the learned trial Magistrate erred in law and in fact in his award arriving at unjust decision, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
  - ii. That the learned trial Magistrate erred in fact and in law reaching a decision that was thus unjust, against the weight of evidence and was misguided to awarding the respondent an amount of General Damages Kshs. 200,000/=, Special Damages Kshs. 2,550/= plus costs and interest of the suit an amount that is considered excessive in a number of precedents regarding such injuries.
  - iii. That the learned trial Magistrate erred in fact and in law in awarding a huge award for the injuries sustained by the claimant in this suit which were soft tissue injury to the right arm and chest and not enough to attract the huge award that was given by the learned Magistrate.
  - iv. That the learned trial Magistrate erred in law and in fact disregarding the defendant's submissions on the issue of calculation on quantum thus awarding an inordinately high amount.
6. The parties filed written submissions as follows; The Appellant in this appeal submitted that he challenges the quantum of general damages awarded by the trial court.
7. The Appellant, aggrieved by the judgment delivered on 28th July 2023 in Wundanyi CMCC E049 of 2021, contends that the award of Kshs. 200,000 for the Respondent's injuries was inordinately high.
8. The injuries sustained by the Respondent, who was a passenger in motor vehicle registration number KCH 078W, consisted of bruises and abrasions on the right arm, blunt trauma to the chest, and blunt trauma to the right arm, as documented in the Plaintiff and a P3 form which noted tenderness in the anterior chest region and upper right shoulder.
9. The Appellant submits that a sum of Kshs. 100,000 would be sufficient compensation in this case. In support of this position, the Appellant cites the precedent of *HB (Minor) v Jasper Nchonga Magari & another*, where an award of Kshs. 60,000 was made for blunt object injuries to the head, neck, thorax, abdomen, and limbs, and *Ndungu Dennis v Ann Wangari Ndirangu & another*, where Kshs. 100,000 was awarded for similar injuries.
10. Consequently, the Appellant prays that this Court sets aside the trial court's award and substitutes it with an award of Kshs. 100,000, together with an award of costs in favour of the Appellant.
11. The Respondent submitted that the appeal against the award of general damages should be dismissed.
12. The appeal arises from a road traffic accident for which the Appellant was held 100% liable, a finding not contested in this appeal.
13. The sole issue is whether the trial magistrate's award of Kshs. 200,000 for general damages for pain, suffering and loss of amenities was inordinately high.
14. It is a settled principle that assessment of damages is an exercise of judicial discretion, and an appellate court should only interfere where the trial court applied wrong principles, considered irrelevant factors, ignored relevant ones, or if the award is so excessively high or low as to be entirely erroneous.



15. The Respondent contends that the Appellant has failed to demonstrate any such error. The learned trial magistrate correctly applied the principle that comparable injuries should attract comparable awards, taking into account inflation and recent decisions.
16. The Respondent sustained bruises, abrasions, blunt trauma to the chest and right arm, with associated nausea and chest pain. In making the award, the trial magistrate considered the medical evidence, which was consistent between both parties' doctors, and the submissions presented.
17. The award of Kshs. 200,000 is consistent with recent and comparable authorities, including decisions from this very court involving the same Appellant and similar injuries, where identical awards have been upheld.
18. The Appellant's reliance on older authorities was less persuasive, and his attempt to introduce new authorities on appeal is improper as they were not before the trial court.
19. Consequently, the award was fair, just, and commensurate with the injuries sustained. The Appellant has not shown that the magistrate misdirected herself or that the award is manifestly excessive. The appeal is without merit and should be dismissed in its entirety with costs.
20. The sole issue for determination in this appeal is whether the learned trial magistrate exercised her discretion judicially in awarding Kshs. 200,000/= as general damages for the injuries sustained.
21. The Respondent sustained soft tissue injuries, namely bruises and abrasion in the right arm, blunt trauma to the chest, and complaints of chest pain and nausea.
22. The established principle guiding appellate intervention in such matters is stringent.
23. An appellate court will not disturb an award of damages merely because it would have awarded a different figure. Interference is only warranted if the trial judge, in assessing damages, took into account an irrelevant factor, ignored a relevant one, or if the award is so inordinately low or high that it must be a wholly erroneous estimate of the damage.
24. The Appellant contends that the award of Kshs. 200,000 is inordinately high and proposes a substitution with Kshs. 100,000, relying on authorities such as HB (Minor) v Jasper Nchonga Magari & another and Ndungu Dennis v Ann Wangari Ndirangu & another.
25. The Respondent, however, defends the award as consistent with the principle that comparable injuries should attract comparable awards, adjusted for inflation and contemporary standards.
26. Having considered the rival submissions and the authorities placed before me, I find that the trial magistrate's award was not a mistaken exercise of discretion.
27. The injuries, while not of the most severe nature, were more than trivial. The Respondent suffered blunt trauma to the chest, a significant area of the body, accompanied by persistent pain and nausea, in addition to the bruises and abrasions on the arm.
28. These are not mere superficial cuts but involve deeper soft tissue injury.
29. In assessing what constitutes a comparable award, guidance is sought from recent decisions for similar injuries.
30. While the Appellant's cited case of Ndungu Dennis awarded Kshs. 100,000, the court must consider the trend of more recent awards to ensure consistency and account for the diminishing value of money.



- 31. The award of Kshs. 200,000 by the trial magistrate sits comfortably within the bracket established by these authorities and cannot be said to be so inordinately high as to represent an entirely erroneous estimate.
- 32. The Appellant’s complaint that the trial magistrate disregarded his submissions is not borne out by the record.
- 33. The magistrate was obligated to consider all submissions but was not bound to adopt the figures proposed by the Defendant.
- 34. Her duty was to arrive at a fair and reasonable award based on the evidence and applicable law.
- 35. The Appellant has not demonstrated that the trial magistrate considered any irrelevant factor, ignored a material one, or applied a wrong principle of law.
- 36. The mere preference for a lower figure is not a sufficient ground for appellate interference.
- 37. Consequently, I find no merit in this appeal. The learned trial magistrate exercised her discretion judicially and upon a proper consideration of the evidence and relevant principles.
- 38. The award of Kshs. 200,000 as general damages was fair and commensurate with the injuries sustained by the Respondent.
- 39. The final orders of the court are as follows:
- 40. The Appeal is hereby dismissed. The Judgment of the learned trial magistrate in Wundanyi SPMCC No. E049 of 2021 delivered on 28th July 2023 is upheld in its entirety.
- 41. The Respondent shall have the costs of this appeal.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF DECEMBER 2025 VIRTUALLY VIA MT TEAMS AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

