

2REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO E104 OF 2021

BLACK STALLION LIMITED.....
APPELLANT

VERSUS

DANIEL KIPKEMBOI
KOECH.....RESPONDENT

*(Being an Appeal against the judgement and decree of Hon. L.
Kassan (CM) in Eldoret CMCC No. 1121 of 2016 delivered on 20th
August 2021)*

DANIEL KIPKEMBOI
KOECH.....PLAINTIFF

VERSUS

MATAIN MUTUMA.....1ST
DEFENDANT

BLACK STALLION LIMITED.....2ND
DEFENDANT

Coram: Before Justice R. Nyakundi
M/s Ndumu Kimani & Co Advocates
M/s Kigen & Co Advocates

JUDGMENT

Background

1. The brief background of this Appeal is that the Respondent who was Plaintiff at the trial Court filed a Plaint dated 11th October 2016 praying for judgement against the Defendant for: -
 - a. *General Damages*
 - b. *Special damages of Kshs. 349,175/=*
 - c. *Future Medical expenses.*
 - d. *Costs of the suit and interests on (a), (b) and (c) above.*

2. The facts of the case were that on/or about 22.08.2014 or thereabout, the Respondent herein was lawfully riding along Eldoret-Webuye road aboard Motor Vehicle Registration Number KBW 963G Nissan Station Wagon when the Appellant, its agent/servant and/or driver negligently drove and/or managed the said motor vehicle causing it to collide with Motor vehicle Registration Number KBS 0049/ZE Mercedes Benz being driven by the Appellant and as a result thereof, the Respondent sustained severe bodily injuries.
3. The particulars of negligence on the part of the Appellant, their drivers, servants and/or agents was among others: *driving vehicle registration number KBW 963G Nissan Station Wagon and KBS 004Q/ZE - 0515 Mercedes Benz herein at an excessive speed, driving without due care and attention to other road users and more particularly the Plaintiff therein, failing to keep any/or any proper look out or to have any sufficient regard to other road users and more particularly the Plaintiff, failing to take any/or any adequate measures to prevent knocking down the Plaintiff therein, failing to stop, slow down, swerve and/or in any other way to manage or control the said Motor vehicle Registration Number KBW 963G Nissan Station Wagon and/or KBS 004/Q-ZE-0515 Mercedes Benz so as to prevent the said accident, driving recklessly, carelessly and negligently, failing to take due regard to other road users and driving in zig zag manner, causing the said accident and/or constituting a dangerous situation by his way of driving hence the accident, failing to observe the provisions of the Traffic Act and the Highway Code and in so far as may be necessary, the Plaintiff will rely on the doctrine of res ipsa loquitor, the Highway Code and the provisions of the Traffic Act (Cap 403) Laws of Kenya to prove his case.*
4. The 1st Defendant entered appearance and filed his Statement of Defence dated 25th September 2015 where he denied being the owner of the motor vehicle registration no. KBW 963G which is alleged to have collided

with motor vehicle registration no. KBS 004Q/ZE at all times material to this suit and accordingly invited for strict proof. Moreover, the 1st Defendant denied that the Plaintiff was lawfully travelling aboard motor vehicle registration number KBW 963G on 22nd August 2014, the occurrence of any accident involving motor vehicle registration number KBW 963G and motor vehicle registration number KBS 004Q/ZE on the date and in the manner, style and circumstances alleged and that the alleged accident was caused by the defendant's negligence, his servants, agents and/or employees.

5. The 2nd Defendant entered appearance and filed its Statement of Defense dated 17th September 2020 where it denied the allegations that it was at material times the owner of motor vehicle KBS 004Q/0515 Mercedes Benz and that the said vehicle belonged to Ali Yusuf Abdi on the material date. The 2nd Defendant also denied all and singular the particulars of negligence in the plaint and put the plaintiff to strict proof thereof and stated that the said particulars were not supported by the evidence in the Plaintiff's witness statements as the same does not show how the accident occurred.
6. The matter proceeded for a full trial and in the judgement delivered on 20th August 2021 was entered against the Defendants in which they were *held jointly and severally liable at 100%*. The Learned Magistrate further stated that: -

"With these injuries, I award damages as follows;

- a. General damages; kshs. 1,500,000/= (One Million Five Hundred Thousand)*
- b. Special damages, kshs, 349, 175/=*
- c. Costs to the Plaintiff*
- d. The general damages shall attract interest from the date of this judgement while special from the date of this suit."*

7. The Appellant here in Black Stallion Limited being dissatisfied with the judgement of Hon. L. Kassan (CM) in Eldoret CMCC No. 1121 of 2016 preferred an appeal to this Honourable Court against the whole of the said judgement and decree vide a Memorandum of Appeal dated 24th August 2021 based on the following grounds: -
- a. The Learned Magistrate erred in law and fact in finding that the Appellant had not proved that it was not the owner of the Motor vehicle KBS 004Q on the material date and hence not liable for the occurrence of the accident.*
 - b. The Learned Magistrate erred in fact and in law in finding the Defendants jointly and severally liable instead of apportioning liability between them.*
 - c. The Learned Magistrate erred in fact and in law in awarding the Plaintiff a sum of Shillings One Million Five Hundred Thousand which was grossly excessive.*
8. The Appellant prayed for the following orders from its Memorandum of Appeal dated 24th August 2021;
- a. That the whole of the said judgment be set aside*
 - b. Costs of this appeal be paid by the Respondent*
9. The Appeal was canvassed by way of written Submissions.

Appellant's Submissions Summary

10. The Appellant herein filed its written submissions dated 28th July 2025 in which the Learned Counsel on record Mr. Kimani submitted 3 grounds of appeal as follows;
- a. The first ground of appeal challenges the finding of trial court that the Appellant was the owner of motor vehicle KBS 004Q/ZE 0515.*
 - b. The second ground of appeal challenges the finding on liability with two issues*
 - a) Whether the driver of motor vehicle KBS 004Q/ZE 0515 was to blame at all.*

b) Whether the court was right in finding both defendants to blame jointly and severally without apportioning liability.

c. The third ground of appeal concerns the grossly excessive award made by the trial Court.

11. The learned counsel for the Appellant submitted that since this is a first appeal the Court is obligated to analyse the evidence afresh and determine whether the trial court reached the correct findings. Counsel argued that the first ground of appeal challenges the trial court's conclusion that the Appellant was the owner of motor vehicle KBS 004Q/ZE 0515. The trial court relied on a police abstract indicating the Appellant as the owner and dismissed the NTSA copy of records which showed the current owner as Said Mohammed Jumaale and the previous owner as Ali Yusuf Abdi. The trial court faulted the copy of records for lacking a signature on the NTSA stamp and reasoned that it was unlikely that the police would provide incorrect ownership details. Counsel submitted that this reasoning was flawed because the officer who made the OB entry did not testify to explain the source of his information. The electronically obtained copy of records clearly indicated Ali Yusuf Abdi as the previous owner as at 22 August 2014 and the handwritten note accompanying it was duly stamped by NTSA. This evidence was neither challenged nor displaced during the hearing. There is no legal requirement for such a document to bear a signature and the receipt for payment was produced. Counsel therefore argued that the Appellant proved it was not the owner of motor vehicle KBS 004Q/ZE 0515.

12. On the second ground of appeal counsel submitted that the finding on liability was erroneous and raised two issues: whether the driver of motor vehicle KBS 004Q/ZE 0515 was to blame and whether the trial court erred in holding the defendants jointly and severally liable without apportioning liability. It was argued that there was no adequate evidence to attribute blame to the driver of KBS 004Q/ZE 0515. The plaint stated that the

plaintiff was travelling in KBW 963G which was negligently driven and collided with KBS 004Q/ZE 0515. Investigations by the police concluded that KBW 963G was to blame as shown in the police abstract at page 59. Counsel submitted that even the plaintiff acknowledged through submissions that the driver of KBW 963G was blamed by the investigating officer. The 1st defendant did not blame the 2nd defendant in its defence. Counsel argued that the police officer relied on the report made by the plaintiff the scene visits and investigations and that there was no basis to infer fault on the Appellant's driver.

13. Counsel further argued that the trial court erred by holding the defendants jointly and severally liable without apportioning liability despite both vehicles being involved and neither driver being an agent or servant of the other. Reliance was placed on several authorities including ***Mbugua Elizabeth and Another Vs Colleta Imbosa Mukozi Civil Appeal No. 360 of 2013*** where the court held that unrelated joint tortfeasors should not be held jointly and severally liable. Additionally authorities such as ***Daniel David Kasedi v Henry Somba Mailu Malindi Civil Appeal No. E131 of 2023***, ***Hussein Omar Farah Vs Lento Agencies Nairobi Civil Appeal No. 34 of 2005*** and ***Rwaken Investments Limited Vs Isaac Kiprop Chelunyei & Another Civil Appeal No. 600 of 2012*** were cited to affirm that where both drivers are equally to blame liability should be apportioned at 50:50. Counsel submitted that the trial court was therefore bound to apportion liability instead of holding both defendants jointly and severally liable.
14. On the third ground of appeal counsel submitted that the trial court's award of Kshs. 1,500,000 in general damages was grossly excessive considering the injuries sustained which included a cut wound on the tongue blunt injuries to the neck chest and abdomen a haemothorax and a supracondylar fracture of the humerus. Counsel argued that comparable authorities awarded significantly lower sums. In ***Philip Musyoka Mutua***

Vs Leonard Kyalo Mutisya MKS HCCA No. 149 of 2009 an award of Kshs. 300,000 was made for similar injuries. In ***Nguku Joseph and Another Vs Gelard Kihui Maina NKU HCCA No. 65 of 2018*** the award was Kshs. 500,000 and in ***Easy Coach Bus Limited Vs Mary Adhiambo Ohuru KSM HCCA No. 68 of 2015*** the award was Kshs. 300,000. Counsel therefore submitted that an award of Kshs. 300,000 would have been reasonable and just. In conclusion counsel submitted that the appeal has merit both on liability and quantum and urged the Court to allow the appeal as prayed.

Respondent's Submissions Summary

15. The Respondent filed its written submissions dated 10th August 2025 where the Learned Counsel Mr. Kigen submitted on two issues for determination as follows: -

- a. Whether the Appellant was the owner of motor vehicle KBS 004Q/ZE 0515*
- b. Whether the Appellant was jointly and severally liable for the accident*
- c. Whether the trial magistrate's award is excessive.*

16. The learned counsel for the Respondent submitted that the first issue for determination was whether the Appellant was the owner of motor vehicle KBS 004Q/ZE0515 at the time of the accident. Counsel argued that the Respondent pleaded ownership at paragraph 4 of the Plaint and produced a Police Abstract as Pexh 6 which listed Black Stallion Limited as the owner and detailed the insurance particulars and postal address of the owner. The Appellant raised no objection when the Police Abstract was produced and even relied on the same document as Dexh 3. Counsel emphasized that the Police Abstract was generated contemporaneously with the accident and contained details derived from the OB recorded on the material date. The Appellant, despite denying ownership, failed to

challenge the insurance particulars or provide evidence that contradicted the details recorded by the police.

17. Counsel relied on authorities affirming that ownership may be proved by documents other than a logbook. In ***Charles Nyambuto Mageto and Another Vs Peter Njuguna Njathi [2013] KEHC 3177*** the court held that ownership may be established through actual possession and beneficial ownership supported by oral or documentary evidence such as a Police Abstract. Reference was also made to ***Mutembei Vs Luba [2025] KEHC 1991 (KLR)*** where the court held that a copy of records should not be viewed in isolation but should be assessed alongside other evidence including the Police Abstract. The court in that case also reiterated that registration is only prima facie evidence of ownership under Section 8 of the Traffic Act and may be displaced by contrary evidence. Counsel further cited ***Jotham Mugalo Vs Telkom (K) Ltd Kisumu HCCC 166 of 2001*** as relied upon in ***Kabir Mohamed Farouk Vs Postal Corporation [2018] KEHC 4972 (KLR)*** where the court affirmed that a Police Abstract is sufficient evidence of ownership unless rebutted with contrary proof. Counsel submitted that the Appellant produced no credible evidence to rebut the Abstract and instead relied on a motor vehicle copy of records generated six years after the accident and bearing unverified handwritten notes whose author was not called to testify.

18. On the second issue counsel submitted that the Appellant's attempt to seek apportionment of liability was misplaced because they sought to shift blame to a co-defendant who was not a party to the appeal. Counsel argued that a party is bound by their pleadings and the Appellant's Memorandum of Appeal did not raise any ground relating to the negligence of the driver of KBW 963G. The Respondent consistently testified that the Appellant's motor vehicle KBS 004Q veered off its lawful

lane while overtaking and collided with the vehicle he was travelling in. Since the Respondent was a mere passenger and his evidence was not rebutted the trial court correctly found the Appellant 100 percent liable jointly and severally with its driver.

19. On quantum counsel submitted that appellate interference with damages is limited to cases where the award is inordinately high or low or where the trial court misapprehended the evidence as set out in **Joseph Njoroge Kariuki Vs Dennis Kiatum Malombe [2012] KEHC 3982 (KLR)** which reaffirmed the principles in **Butt Vs Khan (1977) KAR 1**. The Respondent sustained severe soft tissue and bony injuries including a non-united supracondylar fracture of the humerus haemothorax abdominal visceral injury and a 15 percent permanent disability as confirmed by the P3 form medical reports and radiology documents. Counsel compared the award to similar cases including **Joseph Musee Mua Vs Julius Mbogo Mugi & 3 others [2013] KEHC 803 (KLR)** where Kshs 1,300,000 was awarded for comparable injuries and **Fred Ogada Azere & Another Vs Ezekiel Kiarie Nganga [2019] KEHC 9513 (KLR)** where Kshs 1,350,000 was awarded for less serious injuries. Counsel argued that the authorities cited by the Appellant related to far less serious injuries and were therefore inappropriate comparators. Considering inflation and the seriousness of the Respondent's injuries counsel submitted that the award of Kshs 1,500,000 was reasonable and within the proper range.
20. In conclusion counsel urged the court to find that the Respondent proved ownership on a balance of probabilities that liability was properly placed upon the Appellant and that the award of damages was justified. Counsel therefore prayed that the appeal be dismissed in its entirety with costs.

ANALYSIS AND DETERMINATION

1. As a recap this appeal is based on the following grounds against the judgement duly delivered by Hon. L. Kassan in Eldoret CMCC No. 1121 of 2016.

(a) The learned Magistrate erred in law inf act in finding that the appellant had not proved that it was not the owner of motor vehicle KBS 0040, on the material and hence not liable for the occurrence of the accident

(b) The learned Magistrate erred in fact and in law in finding the defendants jointly and severally liable instead of apportioning liability between them.

(c) The learned Magistrate erred in fact in law in awarding the plaintiff a sum of shillings One Million Five Hundred Thousand which was grossly excessive.

2. The bone of contention is on both liability and assessment of damages. With regard to liability the Appellant is aggrieved that the learned trial magistrate failed to rule correctly that the subject motor vehicle was not registered in the name of the Appellant. On the second limb of award of damages, the Appellant has taken the view that it was excessive and punitive calling upon this Appeals court to review it to a lesser amount.

3. The jurisdiction of this court is now well settled as can be appreciated from the following extract “ *On appeal bore coming to a different conclusion on the typed evidence the appellate court should be satisfied that the advantages enjoyed by the trial court of seeing and hearing the witnesses, especially if it is based on a straight conflict of*

primary facts between witnesses where credibility is crucial for them an appeal court can hardly ever interfere, is not sufficient to explain or justify his conclusion (see what or Thomas v Thomas (1947) AC 484: Whitehouse v Jordan (1981) 1 WLR 246 likewise the appellate court is not bound to follow the finding of the trial court on facts if it appears that the trial court has clearly failed to estimate evidence on some points to take account of particular circumstances. (See Selle v Associated Motor Boat Co. (1968) EA 123

4. What is the mandate of the Appeal's Court? This question has been properly answered in the case of Jackson Amwoka v Abdulhalin Salyani civil appeal number 288 of 1998 (sha Lakha and Owuor, JJA on 28 January 1999)

(a)The first appellat court has the duty to evaluate the evidence before the first court and treat it to a fresh scrutiny

(b)The first appellate court interferes with the first court's appointment of liability where an error of principle by the first court is shown or where the trial judge has gone plainly wrong or an error of principle must be inferred

5. It is now time to address the issue of liability which is based on the fact that the subject motor vehicle registration No. KBS 004Q was not owned by the 2nd Defendant who is the Appellant before this court. On matters of negligence, the law is now well settled as to what the trial court has to look for in testing the evidence by the Plaintiff or claimant within the provisions of Section 107 (1), 108 & 109 of the Evidence Act. The burden and Standard of Proof is on a balance of probabilities. This Appeal's court has to remind itself of the following principles:

(a) *Negligence is not actionable per se but is only actionable where it has caused damage and in that regard the primary task of the court in a trial of a negligence suit is to consider whether the act or acts of negligence caused the damage or injury complained of; and where the damage was caused by the negligent acts of different persons, to assess the degree of their respective responsibility and blameworthiness, and apportion liability between or among them accordingly.*

(b) *A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object. See Davies v Mann [1842] 10 M and W 546; Andereya Sinzimusi v Gomba Bus Service, civil appeal number 8 of 1979 (UR); Tart v Chitty and Company [1931] All ER (Rep) 826 at 829; Karisa v Solanki [1969] EA 318.*

(c) *There is no act or omission that has static blameworthiness and therefore each be a result of comparing the negligent conduct of the tortfeasors, to determine the degree to which each one was in fault, both in regard to causation of the wrong and unreasonableness of conduct. See Moore v Maxwells [1968] 2 All ER 779.*

- 6.** It is the Plaintiff who is vested under the law to discharge the burden of proof so that Judgement can be secured in his or her favor. This is the position explained by the court by Mbutia Macharia vs Annah Mutua & Another (2017) eKLR where the court stated as follows:- “ *The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes an evidential burden. Therefore, while both the legal and*

evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of the trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence...

- 7.** In so far as this case is concerned in liability, there is evidence on record as to the ownership of the Motor vehicle and the analysis that followed by the learned trial magistrate, made the following findings of facts. Thus *“there are two documents produced as exhibits, police abstract, and copy records. The abstract says that the owner of the Lorry KBS 004Q was the second defendant. The copy of records indicates that previous owner as Mr Ali Yusuf. It is noteworthy that on the copy of the said records, there is hand written words saying “previous owner at 23/08/14 with stamp but no signature. This court is to is to determine which of the two documents shows a genuine owner at the time of the accident. The abstract was filled on 21st July 2015. The records showing had written owner was retrieved on 26.2.2021. It is unlikely that the details in the abstract must have come from the OB which is normally recorded on the date of the accident. For the OB details to be properly challenged. History of the ownership of a motor vehicle ought to have been produced and not a recent search with hand written notes that has not been signed against. In fact the author of the said hand written notes have not been indicated. This is totally different from the abstract which had the details of its author. On a balance of probability, I hold that the lorry KBS belong to the second defendant as at the time of the accident. The first defendant did not testimony or the second defendant challenge the evidence on record. The plaintiff blamed both the defendant. The abstract says the first defendant was to blame., Being an eye witness, the plaintiff is better*

placed to explain what actually happened. To this end, I hold the defendants jointly and severally liable at 100%”

8. Two diametrically opposed versions on the ownership of the accident motor vehicle were given before the trial court. The 1st Respondent contesting the ownership of the motor vehicle so that it could exonerated from any liability as to the cause of the accident. The Plaintiff of the other hand, place reliance on the police abstract to positively identify the impugned motor vehicle KBS 004Q as the one which occasioned the accident and as such that fact remained undisputed. The main issue to be determined before this court is on the question of liability as to whether the motor vehicle at the time of being involved in the road traffic accident was registered, or was in custody or control or the 1st Respondent/Appellant herein had a proprietary interest over the motor vehicle. In my view, I have reviewed the evidence in this regard as presented before the trial court and the final findings made by the learned trial magistrate and there is no evidence of misdirection or misapprehension of the evidence and the decision reached as to the ownership. It is well settled that in a claim for negligence, in order to the claimant to succeed he/she must provide evidence to satisfy the court on a balance of probabilities that the defendant owed him or her a duty of care at the material time when the accident occurred. That there was a breach of that duty and it resulted in damage in the form of material damage of personal injuries. That issue though re-visited by the 1st Defendant/Appellant to this appeal, there are no grounds for this court to interfere with the decision of the learned trial magistrate.

9. In the second limb of this appeal, the Appellant is dissatisfied with the assessment of damages of 1.5 million which he submits that there are

excessive and punitive beyond the evidence on the nature of damage and personal injuries suffered by the Respondent to this appeal.

10. The assessment of damages is discretionary and the re-course for an Appeal's court to interfere with the decision of the trial courts is ringfenced by the law. This is demonstrated by the jurisprudential principles: Samuel Philip Kidoti v Kenya Cargo Handling Services Ltd, civil appeal number 76 of 1992 (Apaloo, Cockar and Tunoi JJA on 28 July 1993)

(a) The principle on which an appellate court will interfere with the trial judges assessment of damages are when the trial judge has taken into account a factor he ought to have taken into account or failed to take into account something he ought to have taken into account or the award is so high or so low that it amounts to an erroneous estimate

(b) In matters of assessment of personal injuries, the general picture of the accident the whole circumstances, and the effect of the injuries on the particular person concerned must be looked at. Also some degree of uniformity must be sought in the award of damages and the best guide in this respect is to have regard to recent awards in comparable cases in the local courts

11. Similarly in the case **Joseph Kimani Mwenge v Salian F Okune Civil appeal number 150 of 1995** the court held that: “ *The principle on which the court of appeal would interfere with the trial court assessment of damages are where it is shown that the judge has taken into account an irrelevant factor or has failed to take into account a relevant factor or short of these, that the damages awarded are so inordinately low or high that an error of principles must be assumed and it is not enough that the appellate court might*

*have awarded lower figure. Further the Court in **Iddi Ayub Shaban & Another v City** Counsel of Nairobi and Another (1985) KLR concurred with the Court in the Joseph Kimani Mwega Case (Supra) when they remarked as follows on the same guidelines: - “An Appellant Court will not disturb an award of damages unless it is so inordinately high or low as to present an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that the misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.*

12. It is therefore necessary at this stage to co-relate the evidential material as adduced by the Respondent in which the learned trial magistrate considered and awarded quantum of 1.5 million. My reading of the judgement of the Lower Court, proceeded as follows: “I have read submissions by both advocates and noted all factors including precedents attached. Doctor Sokobe said the plaintiff suffered the following injures

- *Cut wound on the tongue*
- *Blunt injury to the neck, chest with hemothorax*
- *Visceral injury due to blunt abdominal trauma*
- *Supracondylar fracture of right humerus*
- *Chest tube insertion to drain pleural haematoma. The doctor observed that the plaintiff had ugly scars, stiff right elbow joint due to deformed bones, pleuritic pain where the chest tube was inserted and abdominal adhesions presenting the pain and partial obstruction and assessed permanent disability at 15% with these injuries I award damages as follows*

- *General damages: 1500000 (One million five hundred thousand)*

13. For me to answer issues raised by the Appellant on the quantum of damages being excessive, referenced to past authorities would be of significance

- ***In Mwaura Muiruri v Suera Flowers Limited & another [2014] eKLR***, the plaintiff suffered multiple lacerations on the face, soft tissue injuries on the chest, and comminuted fractures of the right humerus and tibia/fibula. The High Court awarded Kshs 1,750,000 for pain and suffering and loss of amenities.
- In ***Kamau & another v Otieno [2023] eKLR***, the High Court upheld an award of Kshs 500,000 for a plaintiff who sustained a fracture of the right humerus, a fracture of the right clavicle, and bruises on the left face, with a total permanent disability assessed at 30%.
- In ***Said Abdullahi & another v Alice Wanjira [2016] eKLR***, the High Court set aside a lower court's award and substituted it with an award of Kshs 300,000 for a fracture of the right humerus bone with 10% permanent incapacity.
- In ***Batti v Katana [2023] eKLR***, the court considered a case involving a deep cut wound on the back, along with multiple fractures (tibia/fibula, femur), where a previous award was reduced to Kshs 450,000 for general damages.
- Civicon Limited Richard Njomo Omwacha & 2 others 2019] eKLR where the court awarded Kshs.450,000 for a deep cut wound on the left ear lobe, a tender left lateral chest wall, swollen and tender left arm, bruises on the left hand, swollen and tender

left elbow, bruises on the left elbow, cut wound on the left foreleg, fracture of the left tibia and fibula and dislocation on the left hip joint.

- *Akamba Public Road Services v Abdikadir Adan Galgalo* [2016] eKLR where the award of Kshs.800,000 by the trial court was substituted with an award of Kshs.500,000 on appeal for injuries particularized as fracture to the right tibia leg bone malleolus, right fibular bone and blunt injury to the right ankle.
 - *Joseph Mwangi Thuita v Joyce Mwole* [2018] eKLR, where the plaintiff suffered fractured femur, compound fracture of the right tibia and fibula, shortening of the right leg and episodic pain in the right thigh and inability to walk without support. The court awarded Kshs. 700,000 general damages.
 - *Tirus Mburu Chege & Another v JKN & Another* [2018] eKLR, where the respondent suffered fracture of the tibia and fibula of both legs blunt injury on the forehead, broken upper right second front tooth, nose bleeding and consistent loss of consciousness. On appeal the award of Kshs. 800,000 was reduced to Kshs. 500,000.
- 14.** The assessment of damages for pain and suffering is guided by several core legal principles which aim to provide fair and adequate compensation for non-economic losses. These principles helped the courts and legal practitioners determined a monetary for a subjective experiences like physical pain, emotional distress and lose of enjoyment of life. For our purposes, it is necessary to explain further the underlying core legal principles which underpin the exercise of discretion on assessment of damages.
- **Multiplier Method:** *This common approach involves taking the total economic damages (medical bills, lost wages) and multiplying them by*

a factor (usually between 1.5 and 5), depending on the severity of the injury.

- **Per Diem Method:** This method assigns a daily monetary value to the pain and suffering, which is then multiplied by the number of days the victim is expected to suffer.
- **Guidelines and Tariffs:** Many jurisdictions provide "books" or guidelines for general damages, which list recommended compensation ranges for specific types of injuries to ensure consistency.

15. Broadly stated the idea is that the damages provide something positive to the victim which, as far as possible offers some counterweight against the losses he has suffered. Comparative analysis of damages of non-pecuniary loss clearly shows that compensation is regarded as an important goal of pain and suffering damages in all countries. In our legal system the intensity of the pain, type, severity, and duration of the injury together with the reduction in health supposedly play a major role in the calculation of pain and suffering damages.

16. In the instant appeal, the diagnosis and prognosis of what the Respondent suffered is clearly detailed in the medical report which was heavily relied upon by the learned trial magistrate in assessing the appropriate damages for pain and suffering being a subject matter of this appeal. Given the principles on the jurisdiction of this court, and placing reliance on similar decisions, as tabulated elsewhere in this judgement I hold the view that there was some kind of overreach in the assessment of general damages by the learned trial magistrate. There is every reason for this court to interfere by reviewing the award downwards to a quantum of 870,000 shillings for that limb which shall attract interest from the date of the judgement of the trial court until payment in full. The costs of this appeal shall be shared

equally as between the Appellant and the Respondent. With this finding the appeal partially succeeds in favor of the Appellant.

**DATED, SIGNED AND DELIVERED VIA CTS AND EMAIL ON 7TH DAY OF
JANUARY 2026**

.....

R. NYAKUNDI

JUDGE