



**KK Lodgit Limited & another v Katura (Civil Appeal E160 of 2021)
[2026] KEHC 70 (KLR) (14 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 70 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E160 OF 2021
RN NYAKUNDI, J
JANUARY 14, 2026**

BETWEEN

KK LODGIT LIMITED 1ST APPELLANT

CARGO LOGISTICS COMPANY LIMITED 2ND APPELLANT

AND

ISAAC WAFULA KATURA RESPONDENT

(Being an Appeal against the judgement and decree of Hon. Christine Menya (SRM) delivered on 12th November 2021 in Eldoret CMCC No. 469 of 2019)

JUDGMENT

Background

1. The brief background facts of this appeal is that the Respondent herein who was the Plaintiff at the trial Court filed a Plaint dated 10th June 2019 seeking for judgement against the Defendants jointly and severally for: -
 - (a) General damages for pain and suffering,
 - (b) special damages Kshs. 32,186/=,
 - (c) Costs of and incidental to this suit,
 - (d) Interest on the above at Court rates and
 - (e) Any other relief that the Honourable Court may deem fit and just to grant. The Plaintiff's Claim against the Defendants jointly and severally is that on or about the 3rd day of May 2019 while riding along the Eldoret-Kapsabet Road at Rivatex Junction, the Defendants' driver while driving motor vehicle registration No. KBK 245W Toyota Van so negligently drove,



managed and/or controlled that he knocked down the Plaintiff and as a result the Plaintiff sustained severe bodily injuries.

2. The Appellants who were the Respondents at the trial Court filed their Statement of Defence dated 2nd July 2019 and denied in its entirety that on the alleged date while the Plaintiff was riding along the alleged road and area the Defendants' driver while driving Motor Vehicle Registration Number KBK 245W Toyota Van so negligently drove, managed and/or controlled that he knocked down the Plaintiff and as a result the Plaintiff sustained severe bodily injuries as alleged and put the Plaintiff to strict proof of the allegations.
3. This matter proceeded for a full trial and judgement was rendered on 12th November 2021 with regards to liability and damages was entered in favour of the Plaintiff in the following terms: -
 - a. Liability.....80%
 - b. General Damages.....Kshs. 1,200,000/=
 - c. Less 20% Liability.....Kshs. 240,000/=
 - d. Total.....Kshs. 960,000/=
 - e. Add special damages.....Kshs. 25,336/=
 - f. Total.....Kshs. 985,336/=
4. The Appellants being aggrieved and dissatisfied with the judgement and decree of the trial Court appealed against the judgement being an award of damages in the said judgment to this Court vide a Memorandum of Appeal dated 9th December 2021 based on the following five (5) grounds as follows: -
 - a. That the Learned Trial Magistrate erred in law and fact in failing to appreciate the reasonable and sufficient evidence tendered in Court when assessing and awarding damages.
 - b. That the Learned Trial Magistrate erred in law and fact in failing to evaluate the evidence in its totality and in failing to take into consideration submissions and authorities submitted by the Appellants.
 - c. That the Learned Magistrate erred in law and in fact awarding the sum of Kshs. 1,200,000/= (Kenya Shillings One Million Two Hundred Thousand) to the Respondent, which award was manifestly excessive and inordinately high as to amount to a miscarriage of justice.
 - d. That the said award of Damages is out of keep with other Kenyan awards for comparable / similar claims.
 - e. That the Learned Trial Magistrate failed to exercise her discretion judiciously in awarding general damages and failed to consider the Appellants submissions and Authorities and/or apply the settled principles of law and thus there was no good or proper basis for the said Assessment of Damages.
5. Reasons wherefore the Appellants sought prayers for judgement against the Respondent and for orders that: -
 - a. The judgement and Decree of the Subordinate Court be set aside and substituted with a proper award by this Honourable Court.
 - b. The Honourable Court be pleased to make any or further orders as may be just and expedient in the circumstances.



- c. Costs of the Appel be awarded to the Appellants.
6. The Appeal was canvasses by way of Written Submissions.

Appellants Submissions Summary

7. The Appellants filed their written submissions dated 6th October 2025 where the learned Counsel for the Appellants, Mr. Opande submitted that the Appellants would canvass grounds 1, 2 and 3 of the appeal together as they relate to the award made by the trial Court, the evidence on quantum tendered before the trial Court and the submissions made by the Appellants and grounds 4 and 5 together as they concern the comparability of the award with awards made in similar cases and the trial Court's application of the law.
8. Counsel submitted that the award of Kshs. 1,200,000 as general damages for pain and suffering made by the learned trial Magistrate was excessive in the circumstances and ought to be set aside and substituted with a reasonable and modest award. He contended that a perusal of the trial Court's judgment, as contained in the Supplementary Record of Appeal, demonstrates that the Court failed to properly evaluate the evidence on record and the Appellants' submissions on quantum.
9. It was submitted that the assessment of damages has evolved over the years and by the year 2021, when the trial Court delivered its judgment Courts were guided by the principle of restitution in integrum which requires that damages for bodily injuries be compensatory in nature and that a Plaintiff should receive no more and no less than fair compensation for the actual loss suffered. Counsel relied on the decision in *West (H) & Sons Ltd Vs Shepherd (1964) A.C. 326*, where Lord Morris emphasized that awards must be reasonable, assessed with moderation and that comparable injuries should attract comparable awards. Further reliance was placed on *Lim Poh Choo V Camden & Islington Area Health Authority (1979) 1 ALL ER 332*, where Lord Denning M.R. stated that a plaintiff is only entitled to fair compensation, fair both to the plaintiff and the Defendant.
10. Counsel outlined the injuries pleaded by the Respondent in the Plaint dated 10th June 2018, namely: head injury with loss of consciousness for one hour, cut wounds and bruises on the right face, blunt injury to the chest, fracture of the right acetabulum with hip joint dislocation, and bruises and lacerations on the right leg. He submitted that these injuries were proved through documentary evidence including the Discharge Summary from Moi Teaching and Referral Hospital, a P3 Form, a Medical Report dated 6th May 2019 by Dr. Joseph C. Sokobe and a Radiology Request Form. He emphasized that no permanent disability was assessed or awarded to the Respondent and that the injuries were confirmed by the examining doctor to have healed.
11. On quantum, Counsel submitted that considering the nature of the injuries, which comprised a single fracture with no permanent disability, the sum of Kshs. 350,000 proposed by the Appellants at the trial Court was adequate, and that even allowing for inflation, an award of up to Kshs. 400,000 would have been sufficient compensation. In support of this position, Counsel relied on several authorities. In *Faith Mumbua Kiio Vs Patel Devika (2018) Eklr* an award of Kshs. 300,000 was upheld where the Claimant had suffered head injury with loss of consciousness, blunt pelvic trauma with pelvic ring fractures, fractures of the clavicle, blunt hip trauma and a 25% permanent disability with a likelihood of future osteoarthritis. In *Mwavita Jonathan Vs Silivia Onunga (2017) eKLR*, the appellate Court substituted an award of Kshs. 1,000,000 with Kshs. 400,000 despite the Respondent having suffered severe injuries and an assessed 85% permanent disability. In *Samuel Ndungu V Mk (Minor Suing Through Next Friend BNA) (2021) eKLR*, an award of Kshs. 650,000 was found sufficient where the Respondent had suffered bilateral acetabulum fractures and other injuries, with a likelihood of future osteoarthritis.



12. Counsel submitted that an analysis of the above case laws reveals that the injuries therein were more severe than those suffered by the Respondent in the present appeal and involved permanent disabilities yet the awards were substantially lower or comparable. He therefore contended that the award of Kshs. 1,200,000 in the present case was unjustifiably high and inconsistent with the principle of restitution in integrum. Counsel further argued that the trial Court erred in relying on *Geoffrey Maraka Kimchong Vs Frechiah Hugiru (2020) eKLR* which involved comminuted fractures of the acetabulum, injuries that are more severe than a simple acetabulum fracture and therefore attract higher awards. He submitted that the reliance on such authorities led the trial Court to arrive at an exorbitant award not supported by comparable injuries. He distinguished this case from *Fred Ogaza Azere & Anor Vs Ezekiel Kiarie Nganga (2019) eKLR* and *Kennedy Ooko Ouma Dachi V Joseph Maina Kamau & Anor (2018) eKLR*, where the injuries were more severe and required extensive medical intervention such as hip replacement.
13. With respect to grounds 4 and 5, Counsel submitted that although the assessment of general damages is a discretionary exercise, such discretion must be exercised judicially, with due regard to settled legal principles and comparable awards. He contended that the learned trial Magistrate failed to apply the rule of precedent, failed to consider authorities with comparable injuries, and consequently exercised her discretion improperly, resulting in an excessive award.
14. In conclusion, Counsel submitted that the learned trial Magistrate erred in evaluating the evidence, took into account irrelevant considerations and failed to apply the settled principles governing assessment of damages. The Appellants therefore urged this Honourable Court to set aside the judgment and decree of the trial Court on general damages and substitute it with a reasonable and modest award.

Respondent Submissions Summary

15. The Respondent filed its written submissions dated 24th October 2025 and listed two (2) issues for determination as follows: -
 - a. Whether the damages awarded were excessive to attract the intervention of this appellate Court?
 - b. Who should bear the costs of this Appeal?
16. On the first issue, Mr. Yego submitted that as this is an appeal against an award of damages, the general principle applicable is that the appellate Court should be slow to interfere with the discretion of the trial Court to award damages except where the trial Court acted on wrong principles of law, that is to say it took into account an irrelevant factor or failed to take into account a relevant factor, or due to the above reasons or other reason, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages as it was held in the case of *Butt Vs Khan [1982-88]*. Counsel also made reference to the case of *Stanley Maore Vs Geoffrey Mwenda (2004) eKLR*.
17. Counsel also submitted that the Respondent sustained the following injuries: head injury with loss of consciousness for 1 hour, cut wounds and bruises on the right face, blunt injury to the chest, fracture right acetabulum with hip joint dislocation and bruises and lacerations on the right leg and that considering the nature of the injuries sustained, they concur with the trial Magistrate Court that the sum of Kshs. 1,200,000/= awarded is fair and just. Counsel made reference to the following authorities: -
 - a. *Mwaura Muiruri Vs Suera Flowers Limited & Another [2014] eKLR*



- b. James Gathirwa Ngungi Vs Multiple Hauliers (EA) Limited & Another [2015] eKLR
 - c. Geoffrey Mwaniki Mwinzi Vs Ibero (K) Limited & Another [2014] eKLR.
18. On the second issue with regards on the costs of this Appeal, Counsel relied on the following authorities: Joseph Oduor Anode Vs Kenya Red Cross Society [2012] eKLR and Chamilabs Vs Lalji Bhimji and Shamji Jinabhai Patel, Civil Case No. 1062 of 1973.

Analysis and Determination

19. This is an appeal on quantum as liability is a non-justiciable issue for the very reasons they consented on liability assessed at 80:20%. The Appellants are aggrieved on the issue of quantum as premised in the Memorandum of Appeal. The jurisdiction of this Court is no longer in dispute as elaborated in the following case law:

John Maseno Ngala and another v Dan Nyanamba Omare and another, civil appeal number 320 of 2002 the Court stated that:

On a first appeal basically on assessment of damages only, the Court has to re-evaluate the evidence, assess it and make its own conclusions remembering that it has neither seen nor heard the witnesses and hence due allowance must be made for this. See *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 at 126; *Williamson Diamonds Ltd v Brown* [1970] EA 1.

The principles 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 that the Judge, in assessing the damages, took into account 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 wholly erroneous estimate of the damage. See *Kemfro Africa Limited t/a Meru Express Service, Gathongo Kanini v AM Lubia and Olive Lubia* [1987] KLR 27 [1982-88] 1 KAR 727 at 730

In assessment of damages, the general method of approach should be that comparable injuries should as far as possible, be compensated by comparable awards keeping in the correct level of awards in similar cases. See *Rahim Tayah and Another v Anna Mary Kinaru* [1987-88] 1 KAR 90.

20. The pivotal principle was also illuminated by the Court in *Butt v Khan* [1981] KLR 349 in which it was held:

“.... An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles ... and so arrived at a figure which was either inordinately high or low...”

21. In the case of *Charles Owino Odeyo v Apollo Justus Andabwa & Another* [2017] eKLR the Court of Appeal reiterated that the assessment of damages in personal injury cases is guided by the award should be commensurable with the injuries sustained...previous awards for similar injuries are a mere guide, but each case must be determined on its own fact...”
22. It is the law in Kenya that assessment of damages is an exercise of discretion of the trial Court and a session Judge on appeal should be very slow to reverse the Lower Court decision unless there exist



sufficient grounds that the Court below misdirected itself on application of the evidence and the law as it relates to assessment of damages. The assessment of damages for road accident claimants involves two main categories as hereinunder explained: Special Damages (Pecuniary Loss): These are quantifiable financial losses incurred from the date of the accident up to the trial or settlement date. This typically includes: Past medical expenses. Loss of past earnings/income. Costs of care and assistance received. Other out-of-pocket expenses resulting from the injury. General Damages (Non-Pecuniary Loss): These compensate for losses that are not easily quantifiable with mathematical precision. The primary components are: Pain and Suffering: Compensation for the actual physical and emotional pain experienced. Loss of Amenity: Compensation for the diminished ability to enjoy life's normal activities, hobbies, and social life due to the injury. Future Losses: This includes projected future medical expenses and potential loss of future earning capacity, which are often calculated using expert evidence and actuarial tables (like the Ogden Tables in the UK).

23. Why compensation? In the tort of negligence once a party has been found to be in breach of the duty of care, he/she would be held liable within the scope of proximate cause so that he/she can compensate the victim in monetary terms. The legal principles to be applied are very clear and specific as stated in the comparative case of *The Nominal Defendant v Gardikiotis* (1996) 186 CLR 49 at 54 where it was held:

“That when a Defendant has negligently injured a Plaintiff, the common law requires the Defendant to pay a money sum to the Plaintiff to compensate that person for any damage that is causally connected to the Defendant’s negligence and that ought to have been reasonably foreseen by the Defendant when the negligence occurred. The sum of money to be paid to the Plaintiff is that sum which will put the Plaintiff, so far as is possible, “in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation”.

24. It is appropriate in Kenya for Courts to give regard to comparable verdicts in determining general damages awards. This is what Lord Diplock said in *Wright v British Railways Board* [1983] 2 AC 773 at 777 that:

“...such a loss is not susceptible of measurement in money. Any figure which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even-handed instead of depending on idiosyncrasies of the assessor, whether jury or Judge, the figure must be “basically a conventional figure derived from experience and from awards in comparable cases”.

25. The Courts in Kenya dealing with assessment of damages in road accident claims where victims suffer myriad of personal injuries and loss of amenities articulated the following principles:

Money cannot renew a physical frame that has been battered and shattered. All that Judge 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 consent 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. See *Rodreck Ndirangu Wandarua v Peter Maina Kariuki*, Civil Appeal Number 190 of 1997;



West (H) and Son Ltd. v Shephard [1946] AC 326 at 345. See also Odunga's Digest on Civil Case Law and Procedure 3rd Edition Volume 5.

26. It is in dispute the accident occurred in which the Respondent suffered injuries as depicted in the medical report by Dr. Sokobe and Dr. Rono admitted in evidence as Exhibit 7(a) and that of Dr. Rono as Exhibit 1. The nature of the injuries was tabulated to be head injury with loss of consciousness for one (1) hour, cut wounds and bruises on the right face, blunt injury to the chest, fracture right acetabulum with hip joint dislocation, bruises and lacerations on the right leg.
27. In considering the assessment of damages the trial Court had this to say in the judgment dated 12th November 2021:

“The Plaintiff from the plaint stated that he suffered injuries on the head, waist and chest. I had a chance to look at Dr. Sokobe's report in which he said that the Plaintiff sustained a head injury with loss of consciousness for 1-hour, blunt injury to the chest, fracture of the right acetabulum with hip joint dislocation and bruises and lacerations on the right leg. He opined that the Plaintiff sustained both bonny and soft tissue injuries from which he had not recovered and that he would require open reduction and internal fixation of the acetabular fracture and that he was likely to develop early arthritis of the right hip joint. The Plaintiff suggests a sum of Ksh 1,500,000/= as adequate compensation while the defense opines that a sum of Ksh 350,000/= shall be adequate. In my opinion looking at the nature of the injuries I find that Ksh 1,200,000/= would suffice as adequate compensation”.

28. The key guiding principles from the jurisprudential perspective of the Superior Courts can be summarized as follows: Restitutio in integrum: The overarching principle is to restore the injured party, as nearly as possible with money, to the position they would have been in had the injury not been sustained. Fair and Reasonable Compensation: The amount awarded must be reasonable and just, commensurate with the injuries suffered. It is not meant to enrich the victim. Comparability of Awards: Courts consider previous awards made in comparable cases to ensure stability and consistency in judicial decisions. However, each case depends on its unique facts. Use of Guidelines/Precedents: Past decisions and formal guidelines, such as the Judicial College Guidelines, serve as guides to determine the value of different injury types and their severity. Accounting for Inflation: When considering past awards, the element of inflation and the current purchasing power of the currency must be taken into account. Special vs. General Damages: Special damages (quantifiable economic losses like medical bills and lost wages up to the trial date) must be specifically pleaded and proven with actual evidence, such as receipts. General damages (non-economic losses like pain, suffering, and loss of amenity) are not mathematically calculable and are assessed based on the severity and impact of the injury on the victim's life.
29. In this appeal I have reviewed the assessment of damages within the backdrop of the following past awards by the various Superior Courts:

Robert Gitau Kanyiri vs Charles R. Kahiga & 2 Others HCCC No. 22 of 2009 Nakuru

Fracture of the right ulna, fracture of the right radius fracture of the femur and humerus, head injuries, the Court awarded Kshs 1,000,000. General damages for pain and suffering ad loss of amenities and Kshs 240,000/= loss of earnings.

James Katua vs Simon Mutua Muasya (2008) eKLR



The Plaintiff sustained fractures including comminuted fracture of the left tibia and fibula a fracture of the acetabulum roof and of the left hip and other soft tissue injuries, the Court awarded Kshs 2,000,000/= General damages for pain and suffering and loss of amenities.

Mary Pamela Oyioma v Yes Holdings Limited [2011] eKLR

The Plaintiff sustained a comminuted fracture of the right femur, compound fracture of the right tibia, fracture of the left tibia; soft injuries to the right shoulder and multiple cut wounds over the whole body. The Court awarded him Kshs 900,000/= in general damages.

30. It is trite law when a claim for damages is included in an action, the Plaintiff or Claimant is required under the law to provide evidence in support of the claim and to give facts upon which the damages could be assessed. Simply put, before assessment of damages could be made, the Plaintiff or Claimant must first furnish evidence to warrant the award of damages. He must also provide facts that would form the basis of assessment of the damages he would be entitled to. His failure to do so would be fatal to his claim for damages. That is why in all actions where damages is one of the reliefs claimed, the Plaintiff or Claimant is always called upon to give evidence in support of the claim for damages after interlocutory judgment is entered in his favour upon the failure of the Defendant to either enter appearance or to defend the action.
31. Personal injury in the context of this appeal is typically founded on the physical harm, loss of amenities, psych traumatic experience and other non-material damages suffered by the Respondent. The valuation of the injuries complained of by the Respondent include the medical reports submitted in evidence by Dr. Sokobe and Dr. Rono together with the prognosis. The major complaint by the Appellant is that there was an overreach by the Learned Trial Magistrate when exercising judicial discretion to award general damages for pain and suffering.
32. It is clear of course, on general principles, that the Plaintiff must prove both
 - (a) the fact of damage, and
 - (b) the amount of his damages. The fact of damage is concerned with the scope of matters for which damages might be awarded once the general elements of the actionable tort of negligence have been established, and the standard of proof required of any alleged loss will vary according to the type of loss pleaded. The Learned Trial Magistrate in assessing damages for pain and suffering adopted a global award approach which stresses that trier of fact should consider that what is awarded is a single sum or quantum which is computed not merely by having regard to the conventional heads of damage but essentially by an exercise of an informed judgment placing reliance of past awards.
33. As the function of this Court is clear, an appellate Court will only interfere with reluctance in an award of damages by the Learned Trial Magistrate in the Court below if the assessment itself discloses an error or if the assessment is disproportionate to the Plaintiff's injuries as to demonstrate an error of fact and law. From my own perspective the major injury suffered by the Respondent as depicted by the medical report is head injury with loss of consciousness for one hour and a fracture right acetabulum with hip joint dislocation. In making comparison with past awards more so like the one cited by the Learned Trial Magistrate those injuries made reference to were of a serious nature as compared with the present Respondent. This Court therefore has every reason to interfere with the award of Ksh 1,500,000/= by reviewing it downwards to Ksh 800,000/=. This therefore means that the appeal on general damages partially succeeds with costs to the Appellant to be shared equally with the Respondent in so far as this appeal is concerned. The interest chargeable shall run from the final verdict of the trial Court until payment in full. Orders accordingly.



DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14TH DAY OF JANUARY
2026

.....

R. NYAKUNDI

JUDGE

