



**Ndekere alias Hellen Nyambura v Sun Yu Enterprises Limited (Civil Appeal E114 of 2024) [2026] KEHC 768 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 768 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E114 OF 2024  
BM MUSYOKI, J  
JANUARY 30, 2026**

**BETWEEN**

**KELLEN NYAMBURA NDEKERE ALIAS HELLEN NYAMBURA . APPELLANT**

**AND**

**SUN YU ENTERPRISES LIMITED ..... RESPONDENT**

*(Being an appeal from part of judgment and decree in the Chief Magistrate's Court at Thika (Hon. D. Milimu, SRM) dated 27th May 2024 in civil suit number E591 of 2021)*

**JUDGMENT**

1. In this appeal, the appellant who was the plaintiff in the trial court is challenging award of damages for pain and suffering and loss of amenities on grounds that the same was too low and inadequate. The appellant is asking this court to interfere with the award by enhancing the same from Kshs 450,000.00 to Kshs 1,000,000.00. The grounds of appeal as enumerated are;
  1. That learned Magistrate erred in law and in fact in awarding general damages of Kshs 450,000/= which is manifestly and inordinately low bearing in mind the injuries sustained by the appellant.
  2. That the learned Magistrate misdirected herself in law and in fact by failing to appreciate that the injuries the appellant sustained were severe as to attract a higher award.
  3. That learned Magistrate erred in law and in fact by failing to consider the appellant's authorities on awards made in relation to similar injuries.
  4. That learned Magistrate misdirected herself in law and in fact by failing to appreciate that similar injuries should, so far as possible, attract similar awards, and thereby arriving at an erroneous award.



2. The appeal was canvassed by way of written submissions with the appellant having filed her submissions dated 14<sup>th</sup> July 2025 and the respondent having filed its submissions dated 28<sup>th</sup> July 2025. I have gone through the submissions of both parties which have rightly concentrated on the issue of quantum of damages for pain and suffering and loss of amenities. Whereas the appellant maintains that the award of Kshs 450,000.00 was too low as compared to other decided cases involving similar injuries, the respondent in opposing the appeal submit that the trial court exercised its discretion properly and judiciously and the award was fair and commensurate with the nature of injuries sustained by the appellant.

3. It is trite that quantum is at the discretion of the trial court and an appellate court should only interfere with the award where it is shown that the same was either too high or too low such that it amounted to an erroneous disproportionate estimate once compared with awards in similar cases. Further, it is a principle of the law that an appellate court should only interfere with the discretion of a trial court where the appellant successfully demonstrates that the trial court failed to take into account a relevant factor or it took into account a factor that it should not have taken into account. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR), the Court of Appeal held as follows;

‘The Court of Appeal may only interfere with the exercise of a court’s judicial discretion if satisfied:

1. The judge misdirected himself on law; or
2. that he misapprehended the facts; or
3. that he took account of considerations of which he should not have taken account; or
4. that he failed to take account of consideration of which he should have taken account; or
5. that his decision, albeit a discretionary one, was plainly wrong.’

3. The Court of Appeal held in *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2)* [1985] KECA 137 (KLR), that;

‘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 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 damage. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.’

4. I have gone through the parties’ submissions and the record of appeal especially those relating to the extent and nature of injuries the appellant sustained. The appellant has not told this court that the trial Magistrate considered any factors which she ought not to have considered neither has she pointed out any factor that the court ought to have considered but failed to do so.

5. The plaint pleaded a single injury which was fracture of the left midshaft femur. There were two medical reports. One by Dr. Cypranus Okere dated 4-02-2021 shows that the appellant sustained the



pleaded injury and had recurrent pain, inability to perform heavy duty and difficulty in walking. He put the degree of permanent incapacity at 30 per cent. The other one by Dr. Wokabi dated 21-07-2021 confirmed the said injury and observed that the left leg felt weak but the fracture had united. His opinion was that the permanent disability was five per cent.

6. It is common ground that the appellant was after the accident admitted at Thika level five hospital for one day and transferred on her request to Murang'a level 5 hospital on 5-2-2020. Although the discharge summary dated 21-10-2020 from Murang'a hospital does not show the date the appellant was discharged, it is apparent that she was discharged on the said date since there is also a document titled 'inpatient exemption/waiver authority form' that shows the date of discharge as 21-10-2020. There is no evidence of post-treatment complications.
7. The appellant has asked this court to be guided by awards in Peter Karoka v Mbaluka Malonza & 2 others [2018] KEHC 1683 (KLR) where the victim was awarded Kshs 800,000.00 and Maqsooda Begum Sroya v Sunmatt Limited [2017] KECA 390 (KLR) where a sum of Kshs 1,000,000.00 was awarded. I have looked at the two cited authorities. In the former, the 1<sup>st</sup> respondent had sustained fracture of the left femur while in the latter the appellant had sustained a comminuted fracture of the left femur which resulted to shortening of the leg and a permanent incapacity of 20 per cent.
8. I do not find the case of Karoka guiding enough because the judgment does not give or disclose the extent or the impact of injuries on the respondent or any post-treatment complication. The Honourable Judge observed in the said judgment that he had noted that for such an injury, the courts have awarded sums between Kshs 200,000.00 and 750,000.00. To me, by mentioning figures with such a big gap, the Honourable Judge must have appreciated that there are factors to be considered beyond the face of injuries. For instance, the court must consider impact of the injury on the victim of the accident and the process and status of healing and possibility of complication.
9. The Maqsooda case clearly involved more serious injuries and had severer effect on the appellant than the instant suit. A comminuted fracture involves multiple breaking of the bone while the appellant herein suffered a simple fracture which is said to have reunited well.
10. The respondent has cited a total of six authorities which I have also considered and which I find fairly comparable to the appellant's case. Having compared these cases with the appellant's in this matter, I have formed an opinion that, the award of Kshs 450,000.00 for pain and suffering and loss of amenities was not too low as to deserve disturbance by this court. The trial court in my view, applied its discretion properly and as such this appeal lacks merits.
11. In conclusion, the appeal is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Ndung'u holding brief for Mr. Mutua for the appellant and Mr. Mwaniki for the respondent.

