



REPUBLIC OF KENYA



KENYA LAW
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Njoroge v YSB (Suing through Mother & Next Friend GW) (Civil Appeal E596 of 2023) [2026] KEHC 650 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEHC 650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E596 OF 2023
AC MRIMA, J
JANUARY 29, 2026**

BETWEEN

ESTHER NJOROGE APPELLANT

AND

YSB (SUING THROUGH MOTHER & NEXT FRIEND GW) RESPONDENT

(Being an appeal against the Judgment of Hon. J. Omollo (PM) in Nairobi Milimani Small Claims Civil Case No. E3183 of 2022 delivered on 5th May 2023)

JUDGMENT

Introduction:

1. This is an appeal on assessment of damages. The dispute arose from a road traffic accident that occurred on 29th August 2022 along Kang'undo Road that resulted in the bodily injuries of Yada Sifa Barasa, the Respondent herein. A suit, being Nairobi Milimani Small Claims Civil Case No. E3183 of 2022 [hereinafter referred to as 'the suit'] was eventually instituted. Esther Njoroge, the Appellant herein was sued as the owner of motor vehicle that caused the accident.
2. In the resultant judgment, the Appellant was found to be wholly liable. Damages were assessed at Kshs. 250,000/- for head injuries characterized by loss of consciousness and blunt soft tissue injuries to the scalp.
3. It was that decision which the Appellant appealed against, hence, this appeal.

The Appeal:

4. The Appellant was dissatisfied with the findings of the trial Court and lodged the Memorandum of Appeal dated 4th July 2023 wherein she asserted the following grounds of appeal: -



1. The Learned Magistrate erred in law and misdirected herself when she failed to consider the Respondent's submissions on both points of law and fact.
2. The Learned Magistrate's decision was unjust 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.
3. The Learned Magistrate erred in law and in fact in awarding quantum of damages without considering the submissions of the Respondent in the Honourable Trial Court Suit.
4. The Learned Magistrate erred in law and in fact in awarding liability without considering the submissions of the Respondent in the Honourable Trial Court Suit.
5. The Learned Magistrate having misapprehended and misunderstood the points of fact and points of law erred in law and in fact in relying on authorities which were irrelevant and thus arrived at an award that is so manifestly high as to be erroneous.
6. The Learned Magistrate erred in assessing an award hereunder which was inordinately high and a wholly erroneous estimate and damages suffered by the Claimant:
 - a. Liability: 100%
 - b. General Damages: Kshs.250,000
 - c. Special Damages - Kshs.3, 000

Plus costs and interest
7. The Learned Magistrate erred in awarding an excessive sum of the damage suffered in the face of the evidence adduced and submissions made by the Appellant's Counsel on quantum.
8. The Learned Magistrate erred in awarding costs of the suit and interest to the Claimant.

The Submissions:

9. In her written submissions dated 9th April 2024, the Appellant submitted that the general damages of Kshs. 250,000/- was excessive and instead she suggested the sum of Kshs.100,000/- would have been a sufficient and reasonable compensation for the injuries sustained. The Appellant challenged the nature of the injuries submitting that there was a discrepancy between the injuries listed in the statement of claim, which included head injuries, loss of consciousness, and blunt soft tissue injuries to the scalp and the medical evidence presented. She pointed out that the P3 form only listed mild swelling on soft temporal. On that basis, she argued that the lower court's award of Kshs.250,000/- was not appropriate for such injuries.
10. In urging this Court to reduce the quantum, the Appellant relied on the case of HB (Minor suing through mother & next friend DKM) -vs- Jasper Nchonga Magari & another [2021] eKLR, where the claimant sustained blunt object injuries to the head, neck, thorax, abdomen, and limbs and was awarded a significantly lower sum of Kshs. 60,000/-. The Appellant further referred to the decision in Ndungu Dennis -vs- Ann Wangari Ndirangu & another [2018] eKLR to justify the proposed figure of Kshs.100,000/-. In the case, the High Court set aside a lower Court's award of Kshs. 300,000/- for soft tissue injuries, including bruises and tenderness, stating that it was manifestly excessive. It substituted it with an award of Kshs. 100,000/- The Appellant concluded that, based on the foregoing authorities, the award of Kshs. 250,000/- should be set aside and replaced with Kshs. 100,000/-



The Respondent's case:

11. The Respondent opposed the appeal through written submissions dated 10th June 2025. It was her case that the trial Court's award of Kshs. 250,000/- in general damages was fair, reasonable, and commensurate with the severe and grievous injuries sustained by the minor.
12. The Respondent referred this Court to evidence presented by PW1, which included treatment notes, a P3 Form, and a medical report and the testimony of Dr. Washington Wokabi (PW2), who detailed that the Claimant suffered head injuries, loss of consciousness, and blunt soft tissue injuries to the scalp. It was her case that the minor continued to suffer from headaches and nose bleeding, which resulted in absenteeism from school.
13. In justifying the quantum awarded, the Respondent relied on the case of Lucy Ntibuka -vs- Bernard Mutwiri & others (2007) eKLR, where the Court awarded Kshs. 500,000/- as general damages for pain and suffering to a plaintiff who sustained head injuries, lacerations on the right eye, and cut wounds on the elbow. The Respondent also relied on the case of Easy Coach limited -vs- Emily Nyangasi (2017) eKLR, in which the appellate court refused to disturb a trial Court's award of Kshs. 700,000 for severe soft tissue injuries, including facial injuries, injury to the chest and back, and a cut wound on the right hand.
14. In the end, the Respondent urged this Court to dismiss the appeal with costs in view of the value of the shilling and the rate of inflation.

Analysis:

15. Having appreciated the grounds of appeal and the rival submissions, the sole issue for determination is whether the trial Court applied the correct legal principles in the assessment of general damages and rendered a fair and reasonable award.
16. As the instant appeal arose from a decision of the Small Claims Court, then under Section 38 of the *Small Claims Court Act*, an appeal lies to the High Court and is limited to matters of law.
17. As what pertains matters of law, the Court of Appeal in the case of Charles Kipkoech Leting -vs- Express (K) Ltd & another [2018] eKLR observed as follows: -

... Our mandate is as has been enunciated in a long line of cases decided by the Court. See Maina -vs- Mugiria [1983] KLR 78, Kenya Breweries Ltd v Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & another v Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters, they should not have considered or failed to consider matters they should have considered or, looking at the entire decision, it is perverse. See also the English case of Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.
18. In Bashir Haji Abdullahi -vs- Adan Mohammed Nooru & 3 others [2014] eKLR, the Court of Appeal while making reference to the English decision in Bracegirdle -vs- Oxley (2) [1947] 1 ALL E.R., discussed what matters of fact are. The learned Judges observed thus;



... One of the best expositions on the distinction between the two is to be found in the judgment of Denning J in the English case of *Bracegirdle Vs. Oxley (2)* [1947] 1 ALL E.R. 126 at p 130;

... The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road *Traffic Act*, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them.

19. While the assessment of damages is generally a matter of judicial discretion, an appellate Court may interfere, as a matter of law, if the trial Court proceeded on wrong principles or if the award is so inordinately high or low as to represent an entirely erroneous estimate of the damages. I now turn to the issue.
20. The applicable principle in appeals against quantum remains those comparable injuries should be compensated by comparable awards. The Court of Appeal, in the case of *Simon Taveta -vs- Mercy Mutitu Njeru* [2014] eKLR as follows: -

... "The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.
21. A look at comparable awards follows. In *Francis Ochieng & another -vs- Alice Kajimba* [2015] eKLR, the Appellate Court substituted the trial Court's award of general damages of Kshs. 500,000 with that of Kshs. 300,000 for the Respondent who had sustained multiple soft tissue injuries and head injuries. In *Philip Musyoka Mutua -vs- Mercy Ngina Syovo* [2018] eKLR the Court awarded of Kshs. 120,000/= general damages to the claimant who sustained blunt injury to the head, both shoulders, ribs, back, deep cut wounds both ankle joints and cut wound on the right knee.
22. In *Ephraim Wagura Muthui 2 others -vs- Toyota Kenya Limited & 2 others* [2019] eKLR, the Court enhanced the trial Court's award of Kshs. 55,000/= to Kshs. 100,000/= for a cut wound on the parietal area of the head, contusion on the neck, blunt trauma to the chest, cut wound on the left leg and blunt trauma to the back. In *Nyambati Nyaswabu Erick -vs- Toyota Kenya Limited & 2 others* [2019] eKLR, the Court set aside an award of Kshs. 55,000/= and substituted it with one of Kshs. 90,000/=. The claimant had sustained a deep cut on the scalp, blunt injury to the left side of the chest, contusion on the back and contusion on both legs. The trial Court's relied on *Elizabeth Wamboi Gichoni -vs- Benard Ouma Owuor* [2019] eKLR where an award of Kshs 175,000/- was made.
23. The above decisions demonstrate that Courts have been awarding injuries akin to those sustained by the Respondent in the region of Kshs. 90,000/= to Kshs. 300,000/= between 2015 and 2019. Since it is now over 6 years later, this Court finds that the award of Kshs. 250,000/= made by the trial Court was neither unreasonable nor inordinately high. As such, the appeal fails.

Disposition:



24. Accordingly, this Court finds no merit in the appeal and the following final orders hereby issue: -

- (a) The appeal is hereby dismissed.
- (b) The Appellant shall bear the costs of the appeal.

25. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss Murithi, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

