



REPUBLIC OF KENYA



**Prajapati v Wanjala (Civil Appeal E172 of 2024)
[2026] KEHC 1047 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E172 OF 2024
MS SHARIFF, J
JANUARY 28, 2026**

BETWEEN

RAMESHBHAI SOMABHAI PRAJAPATI APPELLANT

AND

SAMMY WANJALA RESPONDENT

*(Being an appeal from the Judgement and Decree of the Senior
Principal's Magistrate Court in Kimilili Civil Case No. E60A of 2020
delivered by Hon. W. K. Onkunya (PM) on 24th November 2024)*

JUDGMENT

A. Introduction

1. The Appellant seeks to overturn the decision in the Senior Principal's Magistrate's Court in Kimilili Civil Case No. E60 A of 2020 delivered by Hon. W. K. Onkunya (PM) on 24th November 2024 on solely quantum of damages under pain and suffering and loss of amenities. In the said case, the Appellant had sued the Respondent seeking recovery of general and special damages arising from a road accident that occurred on 30th September 2020, in which the Appellant sustained injuries.

B. The Duty of a First Appellate Court

2. A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate Court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. (See *Selle & another v Associated Motor Boat Co. Ltd. & others* {1968})



EA 123). As was held by the Court of Appeal for East Africa in *Peters v Sunday Post Limited* {1958} E.A. page 424: -

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.”

3. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate Court had discharged the duty expected of it. (See *Santosh Hazari vs. Purushottam Tiwari (Deceased)* by L. Rs {2001} 3 SCC 179).

C. The Pleadings

4. In the Complaint dated 29th December 2020, the Respondent averred that on or about 30th September 2020, he was riding a motorcycle registration number KMDF 231 Y Bajaja along Kimilili-Kamusinde road at mtoto area, when the Appellant’s agent driver and/or servant drove and controlled Motor Vehicle Registration number KCX XXX S Tata Pick up XXX Y in such a reckless, negligent and careless manner resulting into the Motor Vehicle the causing an accident, resulting in the Appellant sustaining serious personal injuries.
5. The Appellant in his Statement of Defence dated 8th February 2021, denied the occurrence of the accident, liability and alternatively attributed the accident to the Appellant’s negligence wholly or substantially.
6. On 9th October 2024, the parties recorded a consent on liability at the ratio of 30:70 in favour of the Respondent herein as against the Appellant herein and the only issue for determination was quantum of damages payable to the Respondent.

D. Evidence

7. PW1, Sammy Wanjal Wekesa, adopting his recorded statement dated 29th December 2020, and his filed documents as his evidence in chief testified that on 30th September 2020, he sustained injuries including a fracture of his legs, injuries to his head, back, bruises on the leg and hands. He told the Court that he paid a hospital bill worth Kshs. 53,000/= and availed the receipt for treatment as PEXH 7. He produced his medical documents in Court as PEXH 1, 2, and 4.
8. On cross-examination, he told the Court that PEXH 7 is an invoice and not the final receipt and that the accident occurred at 11.00 a.m. He told the Court that he was admitted at the hospital for 2 months, but has nothing to show that he still goes to the hospital.
9. On re-examination, he told the Court that he has not fully healed.



E. The Appeal

10. The Appellant seeks to overturn the judgment on general damages under the sub heading pain and suffering and loss of amenities.
11. The Appellant prayed that this Court do set aside the award on general damages of the subordinate Court and substitute the same with an appropriate award on general damages. Subsequently, that the costs of the appeal be awarded to the Appellant.
12. Vide Court directions, this Court directed the parties to canvass the appeal by way of written submissions. Both parties complied with the Court directives.

F. Analysis and Determination

13. It is settled law that an appellate Court will not interfere with an award of general damages by a trial Court unless:- (a) the trial Court acted under a mistake of law; or (b) where the trial Court acted in disregard of principles; or (c) where the trial Court took into account irrelevant matters or failed to take into account relevant matters; or (d) where the trial Court acted under a misapprehension of facts; or (e) where injustice would result if the appellate Court does not interfere; or (f) where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage. (See *Dumez (Nig) Ltd v Ogboli* {1972} 3 S.C. Page 196." Per BADA, J.C.A (P. 28, paras. C-G).
14. Additionally, in *Kivati v Coastal Bottlers Ltd*⁴² the Court of Appeal (Civil Appeal No. 69 of 1984) stated:-

“The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate.”
15. Award of damages is an exercise of discretion of the trial Court, but the same should be within limits set out in decided case law and must not be inordinately so low or so high as to reflect an erroneous figure. The award must also take into account the prevailing economic environment.
16. Based on the medical report dated 11th December 2020, by Dr. Mulianga Ekesa, it is clear that the Respondent herein sustained:
 - a. Head concussion injury.
 - b. Soft tissue injuries
 - c. Fracture left femur
 - d. Psychological trauma
17. At the point of his examination, the Respondent complained on painful left eye, pains at the fracture site, walked with a limp, he had multiple lacerations around the left elbow joint and had shortening of the left lower limb by 0.8 cm (left -95.2 cm and Right 96 cm).
18. As regards general damages, the lower Court awarded Kshs. 1,000,000/= and relied on the case of *Reamic Investment Limited vs Joaz Amenia Samuel* (2021) eKLR wherein the Respondent sustained an open left femure fracture, abrasion on the left knees, face, neck, right upper limb, left lower lip as well as a contusion on the anterior chest and an award of Kshs. 600,000/= was revised to Kshs. 350,000/=. The trial Court took into consideration the injuries suffered by the Respondent, which were more



serious as there was a shortening of the left lower limb by 0.8 cm (left -95.2 cm and Right 96 cm) and the current inflation and the age of the cited authority.

19. I proceed to establish related injuries. In the following cases:-
- a. Korneliys Kweya Ebichet v C & P Shoe Industries Limited [2008] eKLR where the Claimant was awarded Kshs. 1,000,000.00 having sustained blunt trauma on the forehead and a compound fracture of the left tibia and fibula bone and
 - b. Francis Ndungu Wambui and 2 Others v VK (a minor suit through next friend and mother MCWK) [2019] eKLR where the Claimant was awarded Kshs. 1,000,000.00. He had suffered soft tissue injuries to the upper limbs, compound fractures of the distal tibia and fibula shaft as well as loss of consciousness for 30 minutes after the accident.
 - c. Jitan Nagra v Abednego Nyandusi Oigo [2018] eKLR where the Court awarded the Plaintiff Kshs. 1,000,000.00 which was reduced on appeal to Kshs. 450,000.00 for laceration on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur.
 - d. In Tirus Mburu Chege and Another v JKN and Another [2018] eKLR, the Plaintiff sustained fractures on the tibia and fibula on both legs, blunt injuries on the forehead, broken upper right second front tooth, nose bleeding and consisted loss of consciousness. The Appellate Court reduced the award of Kshs. 800,000.00 to Kshs. 500,000.00.
 - e. In Continental Hauliers Ltd and 2 Others v Isack Kipkemei Bitok [2019] eKLR the Court reduced an award of Kshs. 600,000.00 to Kshs. 400,000.00 on account of a fracture of the left femur which led to Plaintiff walking with a limping gait and shortening of the leg and a cut wound on the left forearm.
 - f. In Mwamvita Jonathan v Silivia Onunga [2017] eKLR, the Court reduced an award of Kshs. 1,000,000.00 to Kshs. 400,000.00 for the Plaintiff who sustained soft tissue injuries and fracture at the hip joint which required corrective surgery involving insertion of surgical implants and screws. Permanent incapacity was assessed at 85%.
20. It is established that general damages are damages at large. The award ought to reflect the nature and gravity of the injuries and compensate the claimant fairly in the sense that it puts him to the position, in so far as money can, he would have been before the accident took place. The general approach should be that comparable injuries should as far as possible be compensated by comparable awards bearing in mind that no two cases are exactly alike (see Stanley Maore v Geoffrey Mwenda [2004] eKLR). While the Court must also take into account the value of the shilling and inflation trends, the Court should eschew astronomical awards which injure the body politic and strive to ensure that awards make sense and result in fair compensation (see Ugenya Bus Service v Gachoki NKU CA Civil Appeal No. 66 of 1981 [1982] eKLR and Jabane v Olenja [1986] KLR 661).
21. The reasoning of the trial magistrate was adequate, taking into account the nature of the injuries and the cases cited, the award of Kshs. 1,000,000.00/= was inordinately high considering the above decisions.
22. In Bashir Ahmed Butt v Uwais Ahmed Khan [1982-88] KAR 5 the Court of Appeal held that 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 or that the judge proceeded on wrong principles, or that he



misapprehended the evidence in some material respect, and so arrived at a figure which was inordinately high or low.

G. Conclusion

23. In view of my findings on general damages under pain and suffering and loss of amenities, the inevitable conclusion is that this appeal is unmerited and therefore it fails. I dismiss it and uphold the judgment of the learned Magistrate dated and delivered on 20th November 2024.
24. The respondent is awarded costs of this appeal.

Orders accordingly

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 28TH DAY OF JANUARY 2026.

MWANAISHA.S. SHARIFF

JUDGE

In the presence of:

Mr Shiloya the Appellant

N/A by Paul Juma for the Respondent

Peter Machoni – Court Assistant

