



**Shake Distributors Limited v Ongwayo (Civil Appeal E031 of 2025)
[2026] KEHC 588 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E031 OF 2025
AN ONGERI, J
JANUARY 29, 2026**

BETWEEN

SHAKE DISTRIBUTORS LIMITED APPELLANT

AND

JOSEPH SHAKO ONGWAYO RESPONDENT

JUDGMENT

1. The Respondent filed Taita Taveta SCCC No. E001 of 2024 vide amended statement of claim dated 9th September 2024 seeking general damages for pain and suffering and diminished earning capacity for injuries the Respondent sustained on 2nd March 2024 while walking along Voi Road when motor vehicle registration No. KBT 998F belonging to the Appellant ran over the Respondent's right foot.
2. The Appellant had sold the motor vehicle to Javan Mwangala Maganga And The Motor Vehicle Was In The Name Of Javan Mwangala Maganga.
3. The case proceeded exparte since there was no defence.
4. The trial court found the 2nd Respondent 100% liable and assessed damages as follows:-
 - i. General damages for pain and suffering Kshs. 350,000/=
 - ii. Special damages Kshs. 26,350/=Total Kshs. 376,350/=
5. The Appellant has appealed against the said judgment on the following grounds:-
 - i. That the learned Magistrate erred in fact and in law awarding general damages that are too high in the circumstances.



- ii. That the learned Magistrate erred in fact finding that Respondent was entitled to general damages of Kshs. 350,000/= which are too high in the circumstances.
 - iii. That the learned trial Magistrate erred in fact and in law awarding huge award for the injuries sustained by the claimant in this suit which were soft tissue injuries and not enough to attract the huge award that was given by the learned Magistrate.
 - iv. That the Honorable learned Magistrate erred in law and facts and misdirected himself by acting on wrong and unsound principles, case law and provisions of the law.
6. The parties filed written submissions as follows; The appellant submitted that he seeks the setting aside of the judgment of the Resident Magistrate in its entirety, and an order for the respondent to bear the costs of the appeal.
 7. The appeal is founded on the contention that the Learned Magistrate erred in both fact and law by awarding general damages of Kshs. 350,000, which is asserted to be inordinately high and disproportionate to the injuries sustained by the respondent.
 8. These injuries, a fracture of the 3rd and 4th metatarsals, a swollen and tender foot, and an abrasion, are characterized as soft tissue injuries insufficient to justify such a substantial award.
 9. The main issue in this appeal is the established duty of this appellate court to conduct a thorough re-evaluation of the evidence, bearing in mind that it did not observe the witnesses firsthand.
 10. The guiding principle, as affirmed in numerous authorities, is that an appellate court will not interfere with an award of damages unless the trial judge acted on a wrong principle of law, misapprehended the evidence, or arrived at a figure so excessively high or low as to constitute an entirely erroneous estimate.
 11. The appellant submits that this threshold is met in the present case.
 12. In support of this position, the appellant invokes precedents where comparable or more severe injuries attracted significantly lower awards.
 13. For instance, reference is made to cases where fractures of the metatarsal bone alongside other injuries resulted in awards of Kshs. 150,000 and Kshs. 90,000, respectively.
 14. It is argued that the Learned Magistrate misdirected himself by applying wrong or unsound legal principles and case law, thereby departing from the fundamental tenet that comparable injuries should attract comparable awards.
 15. Consequently, the appellant proposes that a fair and reasonable assessment of general damages in this instance would be the sum of Kshs. 150,000.
 16. Regarding costs, the appellant relies on the foundational rule that costs follow the event, as codified in Section 27 of the [Civil Procedure Act](#).
 17. It is submitted that there exists no good reason to depart from this rule, and the respondent should therefore be ordered to bear the costs of this appeal.
 18. In conclusion, the appellant humbly urges this court to find merit in these submissions, to intervene and correct the erroneous award of the lower court, and to grant the reliefs as sought in the Memorandum of Appeal
 19. The Respondent, Joseph Shako Ongwayo, opposed the Appellant's appeal.



20. The core argument is that the High Court lacks the jurisdiction to even hear this appeal, as it improperly challenges factual findings rather than points of law.
21. The statutory foundation for this position is Section 38(1) of the *Small Claims Court Act*, which expressly confines appeals to matters of law only.
22. The Respondent contends that the Appellant's grounds, which question the assessment of injuries, the evaluation of medical evidence, and the final quantum of damages, are purely factual and discretionary in nature.
23. Further, that established authorities, such as *Co-operative Bank of Kenya Ltd v George Wekesa* and *Global Vehicles Kenya Ltd v Lenana Road Motors*, affirm that the High Court cannot reassess evidence or interfere with an award of damages in such a restricted appeal.
24. On this jurisdictional threshold alone, the appeal is argued to be incompetent and deserving of dismissal.
25. Should the Court consider the merits, the Respondent asserts that no error of law has been demonstrated.
26. The trial magistrate applied correct legal principles, including the use of comparable injuries to guide the award, as endorsed in cases like *Odinga Jacktone Ouma v Moureen Odara*.
27. The award of Kshs. 350,000 for metatarsal fractures was reasoned and fell within the conventional range for similar injuries, unlike the Appellant's cited authorities which pertain to dissimilar soft tissue injuries.
28. Furthermore, the high burden for appellate interference with quantum, as set out in *Kemfro Africa Ltd v Lubia* and *Butt v Khan*, has not been met, as the award is neither inordinately high nor based on a wrong legal principle.
29. In conclusion, the Respondent prays for the appeal to be dismissed primarily for want of jurisdiction, or alternatively for lack of merit.
30. The judgment of the trial court should be upheld in its entirety, with costs of the appeal awarded to the Respondent.
31. The issues arising for determination in this appeal are two-fold.
 - i. Firstly, whether this court, sitting as a first appellate court from a Small Claims Court, possesses the jurisdiction to entertain the Appellant's challenge to the quantum of damages awarded.
 - ii. Secondly, if jurisdiction is found to exist, whether the trial court's award of Kshs. 350,000/ = as general damages for pain and suffering was inordinately high so as to warrant appellate intervention.
32. On the issue of jurisdiction, the Respondent's objection is anchored on Section 38(1) of the *Small Claims Court Act*, which provides that "A party aggrieved by the decree or an order of the Court may, within thirty days, appeal to the High Court on a matter of law."
33. This statutory provision creates a distinct and limited appellate pathway, confining the High Court's scrutiny strictly to points of law.



34. This principle has been consistently upheld by the courts. In *Co-operative Bank of Kenya Ltd v George Wekesa* [2020] eKLR, the court emphasized that an appeal from a Small Claims Court is not an open invitation for a re-hearing on facts, but a narrow corridor for correcting legal errors.
35. Similarly, in *Global Vehicles Kenya Ltd v Lenana Road Motors* [2022] eKLR, it was restated that the High Court cannot entertain an appeal that merely questions the exercise of discretion by the trial court, such as the assessment of damages based on evidence it saw and heard.
36. A perusal of the Appellant's memorandum of appeal reveals that the grounds advanced challenge the evaluation of the medical evidence, the characterization of the injuries, and the resultant quantum.
37. These are quintessentially factual and discretionary determinations made by the trial court.
38. The Appellant's dissatisfaction is with the weight the trial court accorded to the evidence and its comparative analysis with other cases, not with the legal principles it applied.
39. Consequently, I find that the appeal, being primarily anchored on challenges to factual findings and the exercise of judicial discretion in assessing damages, falls outside the purview of an appeal on a matter of law as prescribed by Section 38(1) of the *Small Claims Court Act*.
40. On this ground alone, the appeal is incompetent and must be struck out.
41. Even if this court were to overlook the jurisdictional hurdle and consider the merits of the appeal on quantum, the Appellant's case still fails to meet the high threshold required for appellate interference.
42. An appellate court will not disturb an award of damages merely because it would have awarded a different figure.
43. Interference is only justified if the trial court acted on a wrong principle of law, misapprehended the evidence, or awarded a sum that is so inordinately high or low as to be a wholly erroneous estimate of the damage suffered.
44. This principle was further crystallized for awards of general damages in *Butt v Khan* [1977] KLR 49.
45. In the present case, the trial magistrate considered the injuries sustained, fractures of the 3rd and 4th metatarsals, swelling, tenderness, and an abrasion, and after evaluating the medical report and cited authorities, arrived at the figure of Kshs. 350,000/=.
46. The Appellant has not demonstrated that the trial court applied a wrong principle of law.
47. Rather, its contention is that other cases with so-called comparable injuries attracted lower awards.
48. However, the uniqueness of each case must be acknowledged, and the search is not for identical awards but for consistency in principle.
49. The trial court exercised its discretion based on the evidence before it.
50. The award of Kshs. 350,000/= for metatarsal fractures cannot be said to be so inordinately high as to shock the conscience of the court or to represent a wholly erroneous estimate.
51. The Appellant's proposal of Kshs. 150,000/= is merely a differing opinion on a factual evaluation, which does not provide a basis for this court to substitute its own discretion for that of the trial court.
52. In the final analysis, and for the foregoing reasons, the Respondent's preliminary objection on jurisdiction is upheld.



- 53. The appeal before this court, challenging the factual assessment of damages, is not an appeal on a matter of law as contemplated under Section 38(1) of the *Small Claims Court Act*. It is therefore incompetent.
- 54. Accordingly, the appeal is hereby struck out with costs to the Respondent.
- 55. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH JANUARY 2026 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

