

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMABAY
CIVIL APPEAL NO. E091 OF 2023

ALFRED OSORO NYAKUNDI.....1ST

APPELLANT

DICKSON MOBISA NYAKIOGA.....2ND

APPELLANT

VERSUS

ROSEMARY AVATSA ISAYI.....
RESPONDENT

**(Being an appeal from the Judgment and Decree of Hon.Celesa Okore (PM)
in Oyugis SPMC Civil Case No. 116 of 2018 delivered on 14th September,
2023)**

JUDGMENT

Background of the Appeal

1. By a plaint dated 15th August 2018, the Respondent instituted a suit against the Appellants seeking general damages, special damages in the sum of Kshs. 8,940/-, together with costs of the suit and interest thereon.
2. The Respondent's case was that on or about 16th May 2018, he was a lawful passenger aboard motor vehicle registration number KCP 140S along the Sintasori-Miruka Road, and that upon reaching the Nyasore area, the Appellants, either by themselves and/or through their agents, negligently drove the said motor vehicle, thereby

causing an accident as a result of which the Respondent sustained serious injuries, loss, and damage.

3. In the plaint, the 1st Appellant was described as the driver of the said motor vehicle, while the 2nd Appellant was described as the insured and/or beneficial owner of the motor vehicle, which was registered in the name of Sammy Traders Limited.
4. In their statement of defense dated 8th October 2018, the Appellants denied possession and ownership of motor vehicle registration number KCP 140S, denied the occurrence of the alleged accident, and denied any negligence on their part. They further pleaded that, if the accident did occur, then the same was caused and/or substantially contributed to by the negligence of the Respondent.
5. In a judgment delivered on 14th September 2023, the learned trial magistrate found the Appellants jointly and severally liable at 100% for the accident. The court then to the Respondent general damages for pain and suffering in the sum of Kshs 400,000/- and special damages of Kshs 8,940/-, the respondent was additionally awarded the costs of the suit as well as interest on damages and costs at court rates from the date of judgment till payment in full.
6. Aggrieved by the said decision, the Appellants lodged the present appeal by way of a Memorandum of Appeal dated 2nd September 2023, seeking orders that the appeal be allowed, that the judgment of the learned magistrate be set aside, that the general damages

awarded to the Respondent be reassessed, and that the Appellants be awarded the costs of this appeal and those at the trial court.

7. The appeal essentially faults the trial court in its assessment and award of general damages but the grounds of appeal are unnecessarily expanded into some ten grounds. A reading of those ground discloses overly tautologous, repetitive and somehow confused and incomplete sentences the object of which is difficult to understand. The court views the memorandum of appeal to brazenly fly on the face of the clear dictates of order 42 Rule 1(2), Civil Procedure Rules.
8. The court has however read and reread the memorandum, with a view to establishing the extent of execution of its mandate on a first appeal, and it is in no doubt that the challenge on the judgment is limited to be that the award under the heading pains and suffering in the sum of Kshs 400,000/ is too high and excessive to depict an obvious error on the task of assessment of damages. This the court say well aware that ground 9 may be construed to attack the finding on liability, thus the respondent has addressed itself on that point, but the appellant is very unequivocal that the appeal is against assessment of damages only. This decision is thus on the question of whether the assessment was commensurate or wrong for being too high and excessive.

9. As directed by the court, both sides filed respective submissions dated 4th and 3rd November 2025 respectively. The court has had the chance to read the same and will give due consideration to the same without having to rehash same in this decision.
10. It is however necessary to state that in its submissions, the appellant insists that the award should not have exceeded Kshs 60,000 and proposes that the appeal be allowed and the award so reduced. In doing so the appellant has cited about six decisions in which the courts awarded sums not exceeding 80,000. The court has read the decisions and distinguishes same from the facts of this appeal in that in the cited cases the claimants suffered pure soft tissue injuries unlike here where there was a skeletal injury demanding chest therapy.
11. On the other hand, the respondent supports the award as modest and commensurate with the injuries pleaded and proved to have been suffered. The respondent cites the law on the mandate of a first appellate court and when it can interfere with the exercise of discretion in assessment of damages. It is then underscored that after the trial court considered the appellant's proposal of Kshs 60,000 against that by the respondent of Kshs 1,000,000 and the cited decisions on comparable injuries, it arrived at the award that ought not attract no disturbance on appeal.

Issues, Analysis, And Determination

12. It is not in dispute that the present appeal is confined solely to the issue of the quantum of damages. Accordingly, the sole issue for determination by this Court is whether the award of general damages in the sum of Kshs 400,000/- was excessive and warrants interference.
13. The principles upon which an appellate court may intervene in an award of damages are well settled and, in the submissions, agreed by both sides. One may only cite **Butt v Khan [1981] KLR 349**, where the Court of Appeal held that an appellate court will not disturb an award of damages unless it is shown that the trial court; (a) took into account an irrelevant factor, (b) failed to take into account a relevant factor, or (c) arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.
14. Similarly, in **Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia & Another [1982-88] 1 KAR 727**, the Court of Appeal reiterated that the assessment of damages is a matter of judicial discretion, and interference is only justified where the award is based on wrong principles or is manifestly excessive.
15. Further guidance was provided in **William J Butler v Maura Kathleen Butler [1984] KECA 34 (KLR)**, where the Court held that in awarding damages, a court should consider the overall circumstances of the case and the effect of the injuries on the

claimant, while striving to maintain some degree of uniformity in awards, taking into account recent and relevant comparable decisions from local courts.

16. In **Ugenya Bus Service v Gachuki (1981-1986) KLR 567**, the Court emphasized that, although general damages cannot be assessed with mathematical precision, courts must ensure that awards are fair, reasonable, and consistent with comparable decisions.

17. Here, in this appeal, the medical report by Dr. Morebu Peter Momanyi dated 31st July 2018 confirms that the Respondent suffered injuries described as, bruises on the frontal region; chest contusion with rib fractures; bruises on the right and left hands; and bruises on the right and left knees. The medical report further noted that the Respondent would require chest physiotherapy.

18. While the Appellants argued that the injuries were minor and proposed an award of Kshs 60,000/-, the authorities relied upon are distinguishable. In those cases, the injuries were limited to soft tissue injuries, whereas in the present case, in addition to multiple soft tissue injuries, the Respondent suffered a chest contusion with rib fractures, which is significantly more serious.

19. In awarding general damages of Kshs 400,000/-, the learned trial magistrate did not specify the decisions she took into comparison but only indicated that she had considered the

submissions of the parties. While courts are guided by the submissions of the parties, it is generally preferable for a court to identify the comparable authorities considered, particularly in cases where the parties rely on distinct precedents. Nonetheless, the guiding principle remains that damages must reflect comparable injuries, adjusted for inflation and other relevant factors.

20. The context in which compensation for the Respondent must be evaluated is therefore determined by the nature and extent of injuries and comparable awards made in previous cases.
21. The Respondent's injuries are closely comparable to those in **West Kenya Sugar Company Limited v David Luka Shirandula [2017] eKLR**, where the court awarded Kshs. 180,000/- for fractures of two ribs on the right side, blunt injuries to the right thigh and ankle, bruises to both elbows, and a blunt injury to the right knee.
22. The Court has equally considered the decision **Bolpak Trading Co Ltd & Another v Gilbert Onyango Odie [2022] KEHC 1291 (KLR)**, in which general damages of Kshs. 250,000/- were awarded for injuries including fractures of the 7th and 8th right ribs, chest contusion, bruises on the face, blunt trauma to the lower back, right knee, and left hand.
23. Having regard to the nature and extent of the Respondent's injuries, comparable awards, the need for consistency, and factoring in inflation, the Court has not persuaded that an award of Kshs

400,000/- is too high as to demonstrate an error in principle but to the contrary, constitutes fair and reasonable compensation for pain, suffering, and loss of amenities.

24. In the circumstances, the appeal lacks merit and is hereby dismissed with costs.

Dated, signed and delivered at Lodwar this 13th day of February 2026

Patrick J O Otieno
Judge

Original