

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMABAY
CIVIL APPEAL NO. E025 OF 2024

BARRACK OWINO OWAGA.....1ST

APPELLANT

STEPHEN BUNDE.....2ND

APPELLANT

VERSUS

SYPRINA ATIENO ORONY.....

RESPONDENT

**(Being an appeal from the Judgment and Decree of Hon.Jacinta Orwa (CM)
in Homabay Civil Suit No. E020 of 2020 delivered on 3rd April, 2024)**

JUDGMENT

Background Of the Appeal

1. By a plaint dated 18th November 2020, the Respondent instituted a suit against the Appellants, seeking general damages, special damages, together with costs of the suit and interest thereon.
2. The Respondent's case was that on or about 20th December 2019, she was a lawful passenger aboard motor vehicle registration number KCK 766T when, upon reaching Nyawita Area along the Rangwe-Oyugis Road, the Appellants, either by themselves or through their agents, negligently drove and controlled the said motor vehicle, and caused it to be involved in an accident. As a result, the Respondent suffered severe injuries, resulting in pain, suffering, and damage for which the respondent sought damages.

3. In their statement of defense dated 27th April 2021, the Appellants denied ownership of motor vehicle registration number KCK 766T, denied the occurrence of the alleged accident, and denied any negligence on their part. They further pleaded that, if the accident did occur, it was caused or substantially contributed to by the negligence of the Respondent, who allegedly failed to observe traffic rules and regulations while travelling.
4. In a judgment delivered on 3rd April 2024, the learned trial magistrate found the Appellants jointly and severally liable at 100% for the accident on the basis that the liability had been determined in MCCC No E018 of 2020.
5. The court then awarded to the Respondent damages for pain and suffering of Kshs 250,000/-, special damages of Kshs. 6,500/-, together with costs of the suit and interest at court rates from the date of judgment till payment in full.
6. The appellant was aggrieved by the said decision, the Appellants lodged the present appeal by way of a Memorandum of Appeal dated 19th April 2024, seeking orders that the judgment and decree of the learned magistrate on assessment of damages be set aside and the suit be dismissed as against the Appellants, and/or that the same be substituted with an appropriate finding on a reassessment of damages. The Appellants further pray that the appeal be allowed with costs to him.

7. The appeal is essentially challenging the assessment and award of damages but the grounds are split into a whopping six grounds and crafted to fault the court for failure; to consider and appreciate the applicable principles in assessment of damages and thereby arrived at an excessive and unjustified award in the sum of Kshs 250,000/ for minor soft tissue injuries, by relying on extraneous circumstances not supported by the evidence on record, and by overly relying on the respondent's submissions which were not relevant, and by failing to take into account the appellant submissions which were electronically filed and cited conventional awards in cases of similar nature.
8. The appeal was directed to be heard by way of written submissions but as at the time of preparing this decision I could only lay hands on the submissions by the appellant and none from the respondent.

Appellants' Submissions

9. The Appellants correctly emphasize that their appeal is solely on the issue of quantum then contend that the injuries sustained by the Respondent were soft tissue injuries that had fully healed, and therefore should not have attracted an award of more than Kshs. 70,000/-. In support , they refer the Court to **Nyamira HCCA No. 54 of 2023, Wilson Mboga Ondincho v Harrison Nyangau Mosigisi**, where an award of Kshs. 300,000/- for soft tissue injuries to the leg and a cut wound on the head was reduced to Kshs. 80,000/-.

10. They further cite **Kisii HCCA No. 88 of 2023, Boaz Obure & Bethuel Gichonga Muthami v Samwel Kiyuka Timothy Okwangi** where an award of Kshs. 250,000/- for soft tissue injuries to the chest and lower limbs was reduced to Kshs. 70,000/-.

Issues, Analysis and Determination

11. It is not in dispute that the present appeal must be confined solely to the issue of quantum of damages by isolating the issue for determination by the Court to be whether the award of general damages in the sum of Kshs. 250,000/- was excessive and warrants interference.
12. The principles guiding appellate interference with an award of damages are well settled since **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; considered an irrelevant factor, failed to consider a relevant factor, or arrived at a figure so inordinately high or low as to constitute an entirely erroneous estimate.
13. 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 while the assessment of damages lies within the discretion of the trial court, interference is justified only where the award is based on wrong principles or is manifestly excessive.

14. Further guidance was provided in **William J Butler v Maura Kathleen Butler [1984] KECA 34 (KLR)**, where the Court emphasized that, in awarding damages, the court must 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 by having regard to recent and relevant comparable local decisions.
15. In **Ugenya Bus Service v Gachuki (1981-1986) KLR 567**, the Court noted that, although general damages cannot be assessed with mathematical precision, awards must nonetheless be fair, reasonable, and consistent with comparable cases.
16. In addition, the appellate court must keep reminded that the duty to assess damages is a difficult task involving exercise of discretion and that it is not a free will to interfere with the assessment by the trier of facts.
17. The injuries pleaded and evidence let and summarised in the medical report by Dr. Morebu Peter Momanyi, dated 23rd January 2020 confirms that the Respondent suffered injuries in the nature of chest contusion; bruises on the scalp; bruises on the face; bruises on the right elbow; and bruises on the left elbow.
18. In awarding general damages of Kshs. 250,000/-, the learned trial magistrate relied on **Wekulo v Masinde & Another [2023] eKLR**, where the plaintiff had sustained soft tissue injuries and the court awarded Kshs. 200,000/- for pain and suffering.

19. The Court has also considered **Kiruma v Chege [2024] KEHC 5998 (KLR)** for comparative purposes, where the High Court upheld an award of Kshs. 250,000/- for bruises on the right hand, left knee, right side of the chest, and right ear.
20. In light of the foregoing decided cases which no doubt binding upon the trial court, this Court finds that the learned trial magistrate properly applied the relevant principles, considered pertinent comparative authorities, and arrived at an award that was neither excessive nor inordinately high, and therefore does not warrant interference by this Court.
21. Consequently, the Appellants have failed to establish that the trial court acted on wrong principles, relied on extraneous matters, or disregarded relevant submissions, as alleged in the grounds of appeal. For those reasons, the appeal is determined to lack merit and is hereby dismissed with costs to the respondent.

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

Patrick J O Otieno

Judge