



**Quick Shuttle Sacco v Joel & another (Civil Appeal E131 of 2023)  
[2026] KEHC 1573 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E131 OF 2023**

**AC BETT, J**

**FEBRUARY 12, 2026**

**BETWEEN**

**QUICK SHUTTLE SACCO ..... APPELLANT**

**AND**

**MIRIAM MASITSA JOEL ..... 1<sup>ST</sup> RESPONDENT**

**ALI CARS LTD ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal arising from the Judgment/decree of the Honourable C.N Njalale (PM) in Butali SPMCC No.138 of 2019 delivered on 10/08/2023)*

**JUDGMENT**

**Background**

1. The 1<sup>st</sup> Respondent filed a suit against the Appellant and the 2<sup>nd</sup> Respondent. She claimed general and special damages arising from personal injuries sustained in a motor vehicle accident which took place on 8<sup>th</sup> July 2019 along the Webuye-Kakamega road. She alleged that the accident occurred when the 2<sup>nd</sup> Respondent's motor vehicle registration number KCP 343Z Toyota Hiace, was driven in a negligent, careless and reckless manner, causing the driver to lose control thereof, whereupon the said vehicle veered off course and knocked down the 1<sup>st</sup> Respondent, who at the material time was a pillion passenger.
2. The Appellant and 2<sup>nd</sup> Respondent denied any liability and the matter proceeded to hearing, with both parties calling their witnesses in support of their cases.
3. In a judgement delivered on 10<sup>th</sup> August 2023, the trial court found the Appellant 100% liable for the accident and proceeded to award general damages of Kshs. 250,000/= and special damages of Kshs. 6,070/=



4. The Appellant, being dissatisfied with the award on quantum, filed an appeal on the following grounds;
  - a. That the Learned Trial Magistrate erred in law and in fact in the assessment of quantum by awarding Kshs. 250,000/= for general damages, an award which was excessive and an erroneous estimate of the damages awarded compared to the injuries sustained by the 1<sup>st</sup> Respondent.
  - b. That the learned magistrate erred in law and misdirected herself to the extent and value of the Respondent's injuries and thereby erred in law in her assessment of damages.
  - c. That the Learned Trial Magistrate erred in law and in fact in failing to pay regard to authorities in the appellant's submissions that were guiding in the amount of quantum that is appropriate and applicable in a similar case as the case she was deciding.
  - d. That the Learned Trial Magistrate's exercise of discretion in assessment of quantum was injudicious.
  - e. That the trial magistrate erred in fact and in law in failing to consider the Appellant's submissions on quantum by completely disregarding the submissions and authorities of the appellant and as a result arrived at an unjustified decision on quantum.
5. The Appellant prays that the appeal be allowed and the judgment and decree of the trial court be set aside.
6. The appeal was canvassed by way of written submissions which I have summarized as below;

#### **Appellant's Submissions**

7. In its submissions dated 10<sup>th</sup> June 2025, the Appellant contests the award of general damages of Kshs. 250,000/= which it claims was excessive and unjustified, as the injuries were minor soft tissue injuries with no long-term impairment. It relies on the medical report by Dr Sokobe, the treatment notes from Leben Medical Services, and the P3 form, which recorded the 1<sup>st</sup> Respondent's treatment.
8. It avers that for quantum of damages, though discretionary, it must be exercised judicially taking into account comparable injuries or similar injuries award. It cites the case of Godfrey Wamalwa Wamba & another vs. Kyalo Wambua [2018] eKLR.
9. It submits that an award of Kshs. 100,000/= would be reasonable in the circumstances, and quoted the case of Adembesa & another Vs. Gweno [2024] eKLR and Onsongo vs. Owino & another (Civil Appeal E102 of 2023).
10. It prays that this court reconsiders the primary medical report and set aside the trial court's award.

#### **1<sup>st</sup> Respondent's Submissions**

11. The Respondent filed her submissions dated 1<sup>st</sup> October 2025, where she asserts that the record of appeal is incompetent as it does not contain a decree. She cites the case of Bwana Mohammed Bwana vs. Silvano Buko Bonaya & 2 others [2015] eKLR and Kilonzo David t/a Silver Bullet Bus Company vs. Kyalo Kiliku & Another [2018] eKLR, stating that the omission of a decree or order to be appealed was not a procedural technicality.
12. She further submits that the appeal lacks merit and should be dismissed with costs to herself. She asserts that the assessment of the damages at Kshs. 250,000/= was commensurate to the injuries that she had



sustained and relies on the case of Jeremiah & Brothers Contractor & another vs. Francis Egusangu Kaguli [2020] eKLR, and Charles Oriwo Odeyo vs. Apollo Justus Andabwa & another [2017] eKLR.

13. The 1<sup>st</sup> Respondent stated that she suffered the following injuries;
  - a. Head injury with loss of consciousness for one hour.
  - b. Lacerations on the right eyebrow and right temporal scalp.
  - c. Blunt injury to the right shoulder.
  - d. Lacerations and bruises on the right hand posteriorly.
  - e. Lacerations on the right knee anteriorly.
14. In support of her case on the injuries she sustained, she quotes several cases, including Catherine Wanjiru Kingori & 3 others vs. Gibson Theuri Gichubi [2005] eKLR, where the plaintiff suffered soft tissue injuries and was awarded Kshs. 350,000/=, Vincent Cheruiyot Rono vs. Mombasa Maize Millers, Nakuru HCCC No. 109 of 2005, where the court awarded Kshs. 400,000/=.
15. She quotes other similar cases where the plaintiff suffered similar injuries and prayed that the court dismisses the appeal for lack of merit and uphold the decision of the trial court.

### **Analysis and determination**

16. I have carefully considered the record of appeal, the rival submissions by the parties, the evidence adduced before the trial court, and the authorities relied upon.
17. This court is guided by the principles enunciated in *Selle & Another vs. Associated Motor Boat Company Ltd & Others* [1968] EA 123, where the Court of Appeal for East Africa held that an appellate court must reconsider the evidence, evaluate it itself, and draw its own conclusions. However, it should make due allowance for the fact that the trial court had the advantage of hearing and seeing the witnesses.
18. From the pleadings, evidence, and submissions, the main issues for determination are:
  - a) Whether the appeal is competent in the absence of a certified copy of the decree from the trial court.
  - b) If the appeal is competent, whether the learned trial magistrate erred in the assessment of general damages.
19. On the first issue, the 1<sup>st</sup> Respondent has submitted that the appeal is incompetent for want of a certified copy of the decree appealed against, as required under Order 42 Rule 1 of the Civil Procedure Rules, 2010. The Respondent relied on the case of *Bwana Mohammed Bwana vs. Silvano Buko Bonaya & 2 Others* [2015] eKLR and *Kilonzo David t/a Silver Bullet Bus Company vs. Kyalo Kiliku & Another* [2018] eKLR, where the courts held that the omission of the decree or order appealed from renders the appeal fatally defective and not curable under Article 159(2)(d) of *the Constitution*, as it goes to the root of the appeal's validity.
20. I have perused the record of appeal filed by the Appellant. Indeed, it does not include a certified copy of the decree extracted from the judgment delivered on 10<sup>th</sup> August 2023 by the Hon. Njalale. Section 79G of the *Civil Procedure Act*, Cap 21, and Order 42 Rule 2 provides that where no decree has been drawn, the appellant shall file a memorandum of appeal accompanied by a copy of the judgment, and the decree shall be filed as soon as possible thereafter.



21. The question that therefore arises is whether the omission to file the decree is fatal to this appeal. Recent authorities have adopted a constitutional approach under Article 159 (2)(d) of *the Constitution* which is that justice shall be administered without undue technicalities hence the failure to file a decree is a procedural lapse not a jurisdictional defect, and does not, of itself, render an appeal incompetent, particularly where the judgment appealed from is on record and the issues for determination are clear.
22. In the case of *Nyota Tissue Products v Charles Wanga & 4 Others* [2020] eKLR, when addressing the issue of failure by an appellant to file a decree, the court stated thus:-

“The rule applicable to the appeals to the High Court makes provision under Order 42 rule 13 (f) of the Civil Procedure Rules for the filing of a copy of the “judgment, order or decree appealed from and does not make it mandatory to attach the judgment and the decree. The Record of Appeal herein attached the Judgment of the trial court according to the requirements of Order 42 rule 13 (4) (f) of the Civil Procedure Rules. In my respectful view, I would agree with the Court in *Silver Bullet Bus* case on the point, that it would be too draconian to strike out the appeal in these circumstances.”
23. Section 2, *Civil Procedure Act*, provides: “Provided that, for appeal, ‘decree’ includes judgment, and a judgment shall be appealable notwithstanding the fact that a formal decree... may not have been drawn up...” This provision considers judgment as sufficient where the decree is absent, but the substance is clear.
24. Similarly, in the case of *Dragon Fire Protection Limited vs African Highlands Produce Co Ltd* [2023] KEHC 1735 (KLR), the Court declined to strike out an appeal due to failure to attach a decree. The Court held that: -

“The Record of Appeal herein attached the judgment of the trial court according to the requirements of Order 42 Rule 13 (4) (f) of the Civil Procedure Rules, and in my respectful view, I would be too draconian to strike out the appeal in these circumstances.”
25. I have perused the court records and note that it contains the judgment, pleadings, proceedings, and evidence from the lower court. I find that the 1<sup>st</sup> respondent has not demonstrated any prejudice that they will suffer as the issues have been identified. In the current constitutional dispensation, rigid adherence to technicalities that defeat substantive justice is discouraged.
26. It is the finding of this court that the lack of a certified copy of a decree does not in any way vitiate the appeal. I am also alive to the fact that the Appellant has a right to be heard as enshrined under Article 50 of *the Constitution*. It is thus incorrect for the Respondent to assert that the Appellant’s appeal is defective as the defect is not fatal to the appeal. I therefore decline to strike out the appeal on the said ground.
27. On the second issue, whether the award of Kshs. 250,000/= in general damages was excessive; the Appellant contends that the injuries sustained by the 1<sup>st</sup> Respondent were minor soft tissue injuries with no long-term impairment, warranting an award not exceeding Kshs. 100,000/=. The Appellant relies on the medical report by Dr. Sokobe, treatment notes from *Leben Medical Services*, and the P3 form, citing authorities such as *Adembesa & Another vs. Gweno* [2024] eKLR and *Onsongo vs. Owino & Another* [2024] eKLR, where awards of Kshs. 100,000/= to Kshs. 150,000/= was made for comparable soft tissue injuries.
28. The 1<sup>st</sup> Respondent counters that the award is commensurate with the injuries suffered, which included a head injury with loss of consciousness for one hour, lacerations on the right eyebrow and



- right temporal scalp, blunt injury to the right shoulder, lacerations and bruises on the right hand posteriorly, and lacerations on the right knee anteriorly. The Respondent cites *Jeremiah & Brothers Contractor & Another vs. Francis Egusangu Kaguli* [2020] eKLR and *Charles Oriwo Odeyo vs. Apollo Justus Andabwa & Another* [2017] eKLR, among others, where higher awards were upheld for similar injuries. Further, the Respondent references *Catherine Wanjiru Kingori & 3 Others vs. Gibson Theuri Gichubi* [2005] eKLR (award of Kshs. 350,000/= for soft tissue injuries) and *Vincent Cheruiyot Rono vs. Mombasa Maize Millers* (Nakuru HCCC No. 109 of 2005) (award of Kshs. 400,000/=).
29. The principles governing appellate interference with an award of damages are well settled. In *Butt vs. Khan* [1981] KLR 349, 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, based on some wrong principle or a misapprehension of the evidence. Further, in *Kemfro Africa Ltd t/a Meru Express Services & Another vs. A.M. Lubia & Another* [1982-88] 1 KAR 727, the court emphasised that awards must be reasonable and comparable to those in similar cases, taking into account inflation and the passage of time.
  30. The evidence on record, including the medical report by Dr. Sokobe and the P3 form, confirms that the 1<sup>st</sup> Respondent sustained soft tissue injuries with no fractures or permanent incapacity. However, the head injury involved loss of consciousness for one hour, which elevates the severity beyond mere minor bruises.
  31. In *Omondi vs. Anzofu* [2024] KEHC 2675 (KLR), an award of Kshs. 200,000/= was upheld for soft tissue injuries to the head, knees, chest, and back, with no long-term effects.
  32. Similarly, in the *Baloch Faisal & Another v Elloy Kawira Nthiiri* [2019] eKLR, in which the respondent sustained soft tissue injuries to the head, knees, chest, back and injury to upper incisor teeth. The High Court allowed the appeal on quantum and substituted the award of Kshs. 360,000/= with an award of Kshs. 200,000/= as general damages.
  33. In *Philip Musyoka Mutua v Mercy Ngina Syovo* [2018] KEHC 644 (KLR), the court awarded Kshs. 120,000/= for blunt injuries to the head, shoulders, ribs, back, and deep cut wounds on the ankles and knees. For more comparable injuries involving head trauma and loss of consciousness, in *Siema vs. Shivanda* [2024] KEHC 16385 (KLR), an award of Kshs. 200,000/= was made, though some injuries were questioned.
  34. Considering the nature of the injuries, predominantly soft tissue but with a head injury causing brief loss of consciousness and allowing for inflationary trends since the cited decisions, I find that the trial court's award of Kshs. 250,000/= is not inordinately high. It falls within the range of awards for similar injuries and does not warrant interference. The learned trial magistrate properly exercised her discretion, having regard to the evidence and submissions.
  35. I find that the Appellant has not demonstrated why this court should interfere with that award. It has not been demonstrated that the trial court proceeded on the wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate. Taking into account previous decisions and the inflation rate, I find that the award was commensurate with the injuries sustained.
  36. The Appeal is dismissed, and the costs of the Appeal are awarded to the Respondent.
  37. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**



**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Turgut holding brief for Ms. Wesonga for the Appellant

Ms. Oriko holding brief for Mr. Okara for the Respondent

Court Assistant: Polycap

