

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E228 OF 2024

MOSES KIRUMBA KARATHI.....
APPELLANT

VERSUS

STEPHEN KINYANJUI KARANJA.....
RESPONDENT

*(Being an appeal from the judgment of Hon. M.W. Kamau
(Adjudicator) delivered in Thika Small Claims Court Case No.
E296 of 2024 on 1st August 2024)*

JUDGEMENT

1. This is an appeal against quantum awarded by the trial court following a claim filed by the appellant vide a statement of claim dated 21st March 2024. The appellant alleged that on 27th March 2022 at around 1550hrs, he was a fare paying passenger travelling in motor vehicle registration number KDB 496P along Thika-Mang'u Road, when suddenly due to the negligence and dangerous driving of the Respondent in actual control of motor vehicle registration number KBM 045Q crashed motor vehicle registration KDB 496P causing the appellant to sustain serious injuries. It was alleged that the Respondent not only drove at an excessive speed but also failed to control motor vehicle registration KBM 045Q and keep it on its lawful lane and way of travel to avoid the said accident.

2. The injuries suffered by the appellant included:
 - i. Multiple lacerations on the face
 - ii. Cut wound on the left temporal region of the scalp
 - iii. Fracture of the right distal radius bone
 - iv. Segmental fracture of the left tibia and fibula bones
 - v. Fracture of the right medial malleolus

- vi. Deep laceration of the right foot lateral aspect
3. Accordingly, the Appellant claimed special damages of Kshs. 16,880 being the motor vehicle search, medical report fees and medical expenses and general damages.
 4. The Respondent failed to enter appearance and an interlocutory judgment was entered against the Respondent and the matter proceeded for formal proof by way of documentation.
 5. The court found the Respondent 100% liable for the accident. Regarding quantum, the trial court relied on the medical report by Dr. Eunice Mugweru which outlined the injuries sustained by the appellant as:
 - i. Left peri-orbital region swelling and pain
 - ii. Left orbital region laceration
 - iii. Mild head injury
 - iv. Fracture of the left lateral orbital wall
 - v. Back pain
 6. Considering the nature of the injuries and inflation the court awarded general damages of Kshs. 300,000.00 for pain and suffering while relying on **GA (Minor suing thro' her father and next friend BZ) v Paul Muthiku [2020] eKLR** where the court had awarded Ksh. 500,000 for multiple fractures of frontal left orbital roof, right temporal bones, bleeding in the skull airspace, cut on the head and cut on the chin. The court noted that the award had multiple fractures unlike the instant case where there were no fractures.
 7. Aggrieved and dissatisfied with the judgment of the trial court, the appellant lodged the instant appeal on grounds that:
 - i. The learned trial magistrate erred in law in awarding an inordinately low awards of the sum of Kshs. 316,880.00 in general damages against very serious

and grievous injuries suffered by the appellant being fracture of the right distal radius, fracture of the right medial malleolus inter with attendant effects on other diverse aspects of the Appellant's life.

- ii. The learned trial adjudicator erred in law in failing to bring his award within the ambit of awards for such injuries and failing to be bound by High Court and Court of Appeal authorities on quantum for such injuries.
 - iii. The learned trial adjudicator erred in law in failing to analyse and consider the evidence tendered on the injuries suffered by the Appellant thereby arriving at an erroneous award on account of the general damages.
 - iv. The learned trial adjudicator erred in law in disregarding and failing to put into consideration and or have regard to the pleadings and submissions of the parties duly filed and on court record in arriving at his erroneous award.
8. Reasons wherefore the appellant prayed that the judgment of the trial court be set aside.
9. The court directed that the appeal be canvassed through written submissions.
10. The Appellant filed submissions while the Respondent did not file any submissions nor participate in the proceedings.
11. The appellant submitted that the trial magistrate erred in law in awarding an inordinately low award of Kshs. 300,000.00 in general damages despite the serious grievous injuries sustained by the appellant. Citing the case of **Kornelius Kweya Ebichet v C & P Shoe Industries Ltd (2008) eKLR** where the plaintiff sustained blunt trauma on the forehead and compound fractures on the left tibia and fibula bones and was

awarded kshs. 1,000,000.00 for pain and suffering by the High Court, the appellant submitted that the trial court ought to have made an award of kshs. 900,000.

12. The appellant therefore invited this honourable court to set aside the award of kshs. 300,000 and substitute it with an award of kshs. 900,000.

13. This is an appeal against quantum following an interlocutory judgment against the Respondent.

14. The principles under which an appellate court may disturb an award of damages made by a lower court are well established. The same were espoused by the **Court of Appeal in the case of Arrow Car Ltd vs. Elijah Shamalla Bimomo & 2 Others (2004) eKLR** where it was held that:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that, short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. ...”

15. The general principle on assessment of damages is a matter of court’s discretion so that if the trial court appropriately exercises its discretion, the Appeal Court should respect its decision regarding the assessment of damages. In the case of **Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru**

Mwenya) vs Kiarie Shore Stores Limited [2015] eKLR, the Court of appeal expressed itself as follows:

“As a general principle, assessment of damages lies in the discretion of the trial court and an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown 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 either inordinately high or low. The Court must be satisfied that either the Judge, in assessing the damages, took into account an irrelevant factor or left out of account a relevant one or that, short of this, the amount is so inordinately high that it must be a wholly erroneous estimate of the damages.”

16. The Appellant argued that the award of Kshs.300,000.0 as general damages was inordinately low. In determining this issue, it is important to consider the injuries suffered by the Appellant. It is trite law that comparable injuries should attract comparable award of damages. This was the position held by the Court of appeal in **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR** where it stated that “comparable injuries should attract comparable awards.”

17. Upon re-evaluating the evidence adduced before the trial court, the Appellant suffered *left peri-orbital region swelling and pain, left orbital region laceration, mild head injury, fracture of the left lateral orbital wall and back pain*. The injuries were confirmed by the medical report by Dr. Eunice Mugweru.

18. In my opinion, the court correctly applied the principle that comparable injuries should, to the extent possible, be compensated by comparable awards while keeping in mind the appropriate level of awards in similar cases. The injuries in the **Kornelius Kweya Ebichet V C & P Shoe Industries Ltd [2008] KEHC 306 (KLR)** cited by the Appellant were more serious compared to the injuries sustained by the appellant herein. The same are not comparable in any way.

19. On the other hand, the case of **GA (Minor suing thro' her father and next friend BZ) v Paul Muthiku [2020] eKLR** was more recent and with comparable injuries to those sustained by the Appellant.

20. I find no reason to disturb the finding of the trial court on quantum. The upshot of the matter is that the instant appeal is dismissed. Costs o the respondent

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH
DAY OF FEBRUARY, 2026.**

**HON. T. W. Ouya
JUDGE**

**For Appellant.....Mungai H/B Tumu
For Respondent.....No Appearance
COURT ASSISTANT.....Brian**