

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. E129 OF 2024**

**BETWEEN**

**JOSEPH  
KITHEKA.....APPELLANT**

**MUTUKU**

**AND**

**MUTUKU  
RESPONDENT**

**MUTHEMI.....1<sup>ST</sup>**

**GEOFFREY  
RESPONDENT**

**MUTUA**

**MUTHENGI.....2<sup>ND</sup>**

*(An appeal from the judgment and decree of the Chief Magistrate's Court at Kithimani (B. Khapoya, SRM.) delivered on 17<sup>th</sup> April 2024 in CMCC No. 76 of 2020)*

**JUDGMENT**

1. This appeal challenges the judgment and decree of the Trial Magistrate delivered on 17<sup>th</sup> April 2024. The trial court found that the respondents were 100% liable in negligence. The appellants were dissatisfied with the trial court's decision awarding it Kshs.55,000.00 in general damages and Kshs.6,000.00 in special damages, together with costs and interest.
2. The facts of the case are that, by a plaint dated on 27<sup>th</sup> July 2020, the appellant averred that on 5<sup>th</sup> August 2018, he was a lawful paying passenger aboard motor vehicle registration number KCQ 053M along the Matuu-Thika road. The vehicle was owned by the 1<sup>st</sup> respondent while the 2<sup>nd</sup> respondent was its conductor on that material day. Upon reaching Kwa

Makaa area, the 2<sup>nd</sup> respondent pushed the appellant out of the said vehicle, causing him to sustain bodily injuries.

3. The appellant further averred that he suffered very tender superficial bruise wounds over the left temporal scalp skin, very tender neck on all neck movements, tender back at the posterior body trunk, very tender multiple superficial bruise wounds over the left hand and over the left elbow joint, very tender bruise wounds over the dorsal aspects of the feet and severe tenderness and bruise wound over the left knee joint giving rise to the left knee joint movement limitation. He therefore prayed for general damages for pain suffering, and loss of amenities, as well as special damages, costs of the suit and interest thereon.
4. Aggrieved by those findings, the appellant lodged an amended memorandum of appeal dated 10<sup>th</sup> June 2024 raising three grounds disputing the learned magistrate's findings. In summary, the appellant was dissatisfied that the award on general damages was manifestly low against the weight of the evidence on record. For those reasons, the appellant prayed that the appeal be allowed by substituting the award on general damages with a higher one together with the costs of this appeal.
5. The appeal was canvassed through written submissions. The appellant relied on his written submissions dated 25<sup>th</sup> March 2025. He argued that based on the evidence adduced at trial, the injuries he sustained, and the several authorities cited, he was entitled to general damages in the sum of

Kshs.300,000.00. He prayed that his appeal be allowed with costs.

6. The respondents opposed the appeal through their written submissions dated 20<sup>th</sup> June 2025. They summarized the evidence at trial and on the issue of quantum, urge this court to be guided by the decisions: **Ndungu Dennis vs. Ann Wangari Ndirangu & another** [2018] eKLR and **Eva Karemi & 5 others vs. Koskei Kieng and another** [2020] eKLR where the awards ranged between Kshs.40,000.00 and Kshs.100,000. They prayed that this court upholds the sum of Kshs.55,000.00 as awarded by the trial court. The respondents further urged this court to dismiss the appeal in terms set out in their submissions with costs.

7. I have considered the memorandum of appeal, examined the record of appeal as well as written submissions and analyzed the law. This appeal concerns quantum only, as the findings on liability are not controverted. In deciding whether to interfere with the award of general damages, I find useful guidance in the decision of the Court of Appeal in the case of **Kemfro Africa Limited T/A Meru Express Services [1976] and another vs. Lulia and another (No.2)** [1985] eKLR, in which the Court stated as follows:

***“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 that 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. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.”***

8. Similarly, in ***Gitobu Imanyara and 2 others vs. Attorney General*** [2016] eKLR, the Court held as follows:

***“It is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum in order to justify reversing the trial Judge on the question of the amount of damages. It will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principles of law or that the amount awarded was so extremely high or so very low as to make it in the judgment of this Court an entirely erroneous estimate of the damage to which the plaintiff is entitled.”***

9. From the record, the appellant sustained the following injuries: very tender superficial bruise wounds over the left temporal scalp skin, very tender neck on all neck movements, tender back at the posterior body trunk, very tender multiple superficial bruise wounds over the left

hand and over the left elbow joint, very tender bruise wounds over the dorsal aspects of the feet and severe tenderness and bruise wound over the left knee joint giving rise to the left knee joint movement limitation.

10. In awarding the sum of Kshs.55,000.00 in general damages, the trial court held as follows:

***“I have carefully perused and considered the pleadings and submissions filed herein by both Counsel, the nature of the injuries sustained by the plaintiff and case authorities of comparable injuries supplied to court, evidence tendered on the record of court and the circumstances of this case, the rate of inflation and the fact that no amount of money can adequately compensate the plaintiff for injuries sustained, I proceeded to enter judgment in favor of the plaintiff against the defendant...”***

11. As rightly pointed out by the appellant, while the trial court laid a basis for its award, it failed to reference any comparable precedent to guide its decision. In particular it did not undertake a comparative analysis of the injuries the appellant had sustained with similar injuries in previous awards as held in the case of ***Swiss Contact LTD & Peter Munguti Kieti vs. Esther Mumbi Muthee*** [2019] eKLR. The appellant has urged this court to be guided by the case of ***Catherine Wanjiru King’ori & 3 others vs. Gibson Theuri Gichubi*** [2005] eKLR and ***Lucy Ntibuka vs. Bernard Mutwiri & others*** [2007] eKLR.

12. In **Catherine Wanjiru King'ori & 3 others vs. Gibson Theuri Gichubi** (*supra*), the first plaintiff suffered an injury on the left ankle, injuries on the legs and injuries on the chest. The second plaintiff suffered an injury on the back. The third plaintiff suffered multiple soft tissue injuries, injury on the left elbow joint, and injuries on both ankles while the fourth plaintiff suffered an injury on the neck and had headache. They were awarded Kshs.300,000.00, Kshs.100,000.00, Kshs.350,000.00 and Kshs.100,000.00 respectively. In **Lucy Ntibuka vs. Bernard Mutwiri & others** (*Supra*), the plaintiff suffered head injuries, lacerations on the lateral side of the right eye and lacerations and cut wound on the left arm (elbow). She was awarded Kshs.350,000.00 in general damages.

13. In my view, the above authorities are not comparable to the present dispute. This is because the injuries sustained were not directly comparable to those of the appellant. Secondly, those decisions were rendered many years back. For the same reasons, I also reject the respondents' proposed authorities. I therefore find that they are inapplicable.

14. This court thus finds as follows:  
In the case of **Cheruiyot vs. Orangi** [2025] KEHC 16849 (KLR), the appellant suffered bruises and deep cut wound on the face, bruises on both upper limbs and bruises on the lower limb. He was awarded Kshs.150,000.00.

15. In *Kipkebe Limited vs. Thomas Amoro Ngarisa* [2015] eKLR, the plaintiff sustained deep cut wound on the right leg with continuing effects and pain on the right leg and was awarded Kshs.70,000.00. Finally, in *Nyambati Nyaswabu Erick vs. Toyota Kenya Limited & 2 others* [2019] KEHC 9928 (KLR), the appellant sustained a deep cut on the scalp extending to the maxillary area, blunt injury to the left side of the chest, contusion on the back and contusion on both legs. He was awarded Kshs.90,000.00.
16. Taking the above decisions into account and considering the injuries sustained by the appellant, this court find that the award of general damages made by the trial court was inordinately low. This court will therefore interfere with the award and exercise its discretion to award **Kshs. 100,000.00** in general damages. On special damages, I note that the trial court erred in awarding Kshs.6,000.00 as only the sum of **Ksh.5,500.00** was pleaded and proved. This comprised Ksh.550.00 for the motor vehicle search fee and Kshs.5,000.00 for the medical report.
17. Accordingly, the findings on liability remain undisturbed. I award general damages of **Ksh.100,000.00** and special damages of **Ksh.5,500.00**. Since the appeal partially succeeds, each party shall bear its own costs.
- It is so ordered.

Dated, signed and delivered at Machakos this 19<sup>th</sup> day of February 2026.

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Appellant

.....Respondent

Selina Court Assistant

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