



REPUBLIC OF KENYA



KENYA LAW
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**Mwendwa v Lopiding Transporters Limited (Civil Appeal E072 of 2023)
[2026] KEHC 2084 (KLR) (24 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E072 OF 2023
SM GITHINJI, J
FEBRUARY 24, 2026**

BETWEEN

JOY MWENDWA APPELLANT

AND

LOPIDING TRANSPORTERS LIMITED RESPONDENT

*(Being an Appeal from the Judgment of Hon. L.N Juma (P.M) in
Meru CMCC No. E136 of 2021 delivered on 18th of April, 2023)*

JUDGMENT

1. This Appeal arises from the judgment of the learned Principal Magistrate Hon. L.N Juma delivered on 18.4.2023 in Meru Civil Suit No. 136 of 2021 wherein judgment was entered in the following terms;
 1. Liability 100%
 2. General Damages Ksh. 300,000
 3. Special Damages Ksh. 163,900
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 15th May, 2023;
 1. The learned Magistrate erred by not finding that the injuries sustained by the appellant were grave.
 2. The learned magistrate erred in law and in fact by not giving an award proportional to the injuries sustained despite having cited authorities having nearly similar injuries with high awards in the past.



3. The learned magistrate erred in law and in fact by not considering the weight of evidence by the appellant despite her claim having not been contested.
4. The learned magistrate erred in law and in fact by not finding that the appellant's hand had injuries that rendered her right hand incapable of doing any sensible work in future and awarding a very small compensation equivalent to soft tissue injuries awards.

Evidence at trial

3. PW1 Joy Mwendwa, the Appellant herein, adopted her witness statement as her evidence in chief and produced the documents filed therewith as exhibits 1 to 6. She stated that on 22/1/2020, she was involved in a road traffic accident on her way to work, as a result of which she sustained injuries on the right hand, right leg and face. She was admitted in hospital where a metallic plate was inserted in her hand, and she could no longer work as her hand was completely damaged.

Submissions

4. The Appellant, through the firm of M.G Kaume & Co. Advocates, filed submissions dated 15/8/2024, contending that the award was inordinately low for the grave injuries she sustained, and cited *Butler v Butler* (1984) KLR 225 and *Mumias Sugar Limited v Francis Wanalo* (2007) eKLR.
5. The Respondent did not file any submissions.

Analysis and Determination

6. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.
7. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA, the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."
8. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsel.
9. From the grounds of appeal, the singular issue for determination is whether the award of Ksh. 300,000 was inordinately low as to amount to an erroneous estimate of the pain suffered by the Appellant.
10. The principles to be considered by an appellate court in deciding whether to disturb the trial court's assessment of damages were set out by the Court of Appeal for East Africa in the locus classicus case of *Butt v Khan* [1978] eKLR thus; "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. 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."
11. The injuries sustained by the Appellant are particularized at paragraph 3 of the plaint as a fractured right hand shoulder, injuries to the right leg, cut wound injuries on the frontal face and head injuries concussion type. Evidently, those injuries were majorly soft tissue in nature save for the single fracture of the right hand shoulder.



12. At the time of examination by Dr. Timothy Riungu on 12/3/2021, the Appellant was ambulant and the injuries to the right clavicular area and forehead had since healed.
13. In *Damaris Ombati v Moses Mogoko Levis & another* [2019] KEHC 8793 (KLR), the court (D.S Majanja J) substituted an award of Ksh. 800,000 with Ksh. 300,000 where one of the claimants sustained a cut wound on the forehead and cheek, dislocation on the left shoulder joint, tenderness on the anterior chest wall and a fracture of the left tibia.
14. I find that the award of Ksh. 300,000 for pain and suffering was commensurate with the pain suffered by the Appellant.
15. The upshot from the foregoing analysis is that the appeal is in want of merit, and it is accordingly dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 24TH DAY OF FEBRUARY, 2026.

S.M. GITHINJI

JUDGE

In Absence of:-

Ms. Kaume for the Appellant

- Respondent

