



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL NO. E236 OF 2023

DAVID

MUIRURI

WAINAINA.....APPELLANT

VERSUS

JAMES

MWAURA

NJUGUNA.....

.....RESPONDENT

(Being an Appeal from the Decree of the Small Claims Court (Hon Edward Oboge -SRM) pursuant to Judgment delivered on 17th August 2023 in Nakuru SCCC No. E262 of 2023)

JUDGEMENT

Brief Background to the Appeal

1. By way of Statement of Claim dated 9th December, 2022, the Respondent sued the Appellant wherein he sought special and general damages, interest thereon and costs of the suit on account of injuries sustained in a road accident that occurred on 13th July, 2022. The Respondent claimed to have

been hit from behind by the Appellant's motor vehicle registration number KBA 149 D while lawfully cycling thereby causing him serious bodily injuries.

2. The Appellant filed a Response to the Statement of Claim on 11th May, 2023. He denied all the material particulars of the claim including the allegation of negligence, and instead attributed occurrence of the accident to the negligence of the Respondent, while pleading certain particulars of fraud and misrepresentation on the part of the Respondent.
3. The Trial Court found the Appellant 100% liable after full trial and awarded the Respondent Kshs. 400,000/= in general damages and Kshs. 21,750/= special damages. The Respondent was also granted interest and the costs of the suit.
4. Aggrieved, the Appellant preferred the instant Appeal *vide* Memorandum of Appeal dated 28th August, 2023 wherein he raised nine (9) Grounds of Appeal which appear to be centered on the aspect of assessment of the quantum of general damages and special damages only.

5. Reasons wherefore, the Appellant prays that the Appeal be allowed; Judgment on quantum of general damages be set aside and substituted with a fresh award and that the Appellant be awarded costs of the Appeal as well as any other order that the Court would deem fit to make.

Appellant's submission

6. The Appellant through his submissions dated 20th August, 2024 argues that the Respondent failed to prove his case on a balance of probabilities. On the evidence, it is argued that the Appellant's driver was not to blame for the accident as found in purportedly similar circumstances in **Mary Wambui Kabugu vs Kenya Bus Services Limited Civil Appeal No 195 of 1995** and **Florence Mutheu Musembi and Geoffrey Mutunga Kimiti vs Francis Kareng'e [2021] eKLR** cited and relied upon by Counsel.
7. On the matter of quantum of damages, the Appellant makes reference to the observations in **Denshire Muteti Wambua vs Kenay Power & Lighting Co. Ltd** as cited in **Michaele Okello vs Pricilla Atieno [202] eKLR** to submit

that award for damages must be made while taking into account comparable injuries or similar awards.

8. The Advocates for the Appellant further point out that the Respondent suffered a single fracture and soft tissue injuries. Counsel draw guidance from judicial determinations in **Elizabeth Wamboi Gichomi vs Bernard Ouma Owuor [2019] eKLR** where an award of Kshs 300,000/= was reduced to Kshs. 175,000/=; **Lamu Bus Services & Another vs Caren Adhiambo Okello [2018] eKLR** in which an award of Kshs. 200,000/= was reduced to Kshs. 130,000/= and **Nyambati Nyaswabu Eric v Toyota Kenya Limited & 2 Others [2019] eKLR** in which a sum Kshs. 55, 000/= general damages were substituted for Kshs. 90,000/=.
9. The Appellant proposes an award of Kshs. 150,000/= as reasonable.

Respondent's submissions

10. In the submissions dated 4th November, 2024, the Respondent's Legal Counsel submit that the award made by the Trial Court was reasonable and falls within the range of

awards in almost similar injuries based on the authorities that were relied upon, and that the award is fair considering the severity of the injuries sustained by the Respondent.

11. On special damages, it is submitted that the Respondent pleaded and proved the same with receipts and the award should be upheld.
12. Concerning costs, the Respondent submitted that the Appeal lacks merit and should be dismissed with costs.

Analysis and determination

13. It is clear from **Section 38** of the **Small Claims Court Act** that an Appeal to this Court from the Small Claims Court lies only on matters of law. The Court may only interfere with a factual finding, however, if it is shown that the decision was completely perverse or if crucial evidence was ignored.
14. As noted hereinabove, the Appellant has raised nine (9) Grounds of Appeal all arising from the decision on quantum of general and special damages only. The Appellant has also submitted on liability arguing that the Court should not

have found the Appellant liable for the reason that the Respondent did not prove his case on a balance of probabilities. He does not seem to challenge the trial court's finding on liability in the Memorandum of Appeal. This issue will not therefore be a subject of this Appeal.

15. The only issue for determination is whether the quantum of damages awarded by the Trial Court was so manifestly excessive or inordinately high in the circumstances as to invite interference by this Court. It is trite that an Appellate Court will only interfere with the decision of a Trial Court if it was based on wrong principles, or on no evidence or that there was been misapprehension of the evidence. This was the holding by the Court in **Butt vs Khan [1982-88] KAR 1** and in many other subsequent decisions of superior courts of record.
16. The Respondent's injuries as corroborated by the medical report by Dr. Kiambaa dated 19th September, 2022 include;
 - a) **Moderate head injury with fracture of the skull.**
 - b) **Severe soft tissue injuries of the right leg.**

- c) Deep cut wound on the left hand leading to soft tissue injuries of the left hand.**
- d) Lacerated wounds on the right leg.**
- e) Deep cut wound on the medial aspect of the ankle and lateral aspect of the right ankle.**
- f) Soft tissue injuries of the right knee joint with lacerations on the anterior aspect of the knee.**

17. The Respondent was admitted in hospital on 13th July, 2022 and discharged on 15th July, 2022 at Nakuru Level 5 Hospital. The doctor noted permanent scars and other injuries on the left 4th and 5th fingers at the time of examination a week after the accident. The injuries were classified as grievous harm with temporary disability of three (3) months and permanent disability of 15%.
18. The Appellant argued that the Respondent's injuries were not that serious to warrant the awarded amount. The Appellant did not, however, present any medical evidence to counter the medical report tendered by the Respondent. The evidence of the Respondent was as such uncontroverted.
19. In the final order the trial Court awarded the Respondent Kshs. 400,000/= as general damages.

20. The Trial Court in awarding damages relied on the case of **Edaward Kitasau Karambu & Another vs John Sifa Baya [2021] eKLR** where the Respondent suffered loss of consciousness for 30 minutes, confusion, right double vision (6th nerve paralysis), fracture of the skull (frontal bone), blunt object injury to the neck and chest as well as blunt object injury to the head (peri-orbital region). The On Appeal the award was reduced from Kshs. 900,000/= to Kshs. 700,000/=.
21. This Court draws guidance from case law in **Inyangala & another vs Otieno [2025] KEHC 13789 (KLR)** where the Respondent was awarded Kshs. 350,000/= for head injury with brief loss of consciousness, multiple facial lacerations, blunt injury to the chest(anterior), and a cut wound on the right iliac fossa (anterior abdomen).
22. Assessment of damages is a matter of judicial discretion, guided not by exactitude but by comparable cases. No two injuries are ever identical, and each case must be determined on its own facts and circumstances. As is trite, the guiding principle is that awards should not be too high

as to amount to unjust enrichment, nor too low as to trivialize a party's suffering. Rather, they must fall within a reasonable range consistent with awards in similar cases, while allowing for unique aspects of the claimant's injuries.

23. In this case, the award made by the Trial Court is neither inordinately high nor manifestly low, but rather a fair exercise of discretion within the range established by comparable cases in my view. I find the same to be within the acceptable limits of comparable jurisprudence and does not warrant interference.
24. The special damages have been pleaded and proven as require in law. Besides, the Appellant does not appear to have included relief in respect of special damages among orders craved in the Appeal.
25. The Appeal therefore lacks merit and is dismissed with costs to the Respondent.

J. M. NANG'EA - JUDGE

Judgment Dated, Signed and Delivered virtually this 2nd day of March, 2026.

In the presence of;

Appellant's Advocate, Absent

Respondent's Advocate, Ms Jeptanui for Ms Chelang'at

Court Assistant (Jeniffer)

J. M. NANG'EA - JUDGE

ORIGINAL