

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CIVIL APPEAL NO E079 OF 2024**

**MARY WAIRIMU MUCHIRI.....**  
**APPELLANT**

**VERSUS**

**KEVIN WACHIRA.....1<sup>ST</sup>**  
**RESPONDENT**

**PENPALS INVESTMENTS.....2<sup>ND</sup>**  
**RESPONDENT**

***(Being an appeal from the judgment of the Honourable J.O  
Manasses, Resident Magistrate, delivered on 23<sup>rd</sup> November  
2023 in Sirisia SPMCC NO E086 OF 2022)***

**JUDGMENT**

1. The 1<sup>st</sup> respondent filed a suit before the lower court against the appellant and the 2<sup>nd</sup> respondent after she sustained injuries in a road traffic accident. The 2<sup>nd</sup> respondent was the beneficial owner, while the plaintiff was the registered owner of the motor vehicle Reg. No. KDA 060Y. On 26/5/2022, the 1<sup>st</sup> respondent was a passenger in the vehicle when the driver negligently drove and lost control, causing the 1<sup>st</sup> respondent to sustain serious bodily injuries. He sustained the following injuries: fracture of the frontal skull and 5<sup>th</sup> metacarpal bone, head injury with loss of consciousness for one day, deep long cut wound in the mid forehead, bruises on the left forehead, blunt injury to the neck, chest and back, lacerations on the left arm and on the right thigh anterior distally.

2. The issue of liability was resolved by an agreement of 70:30 in favour of the 1st respondent. The trial magistrate then entered judgment in favour of the 1st respondent.

1. General damages	Kshs 2,500,000
2. Future medical expenses	Kshs 150,000
3. Special damages	<u>Kshs 6,550</u>
Total	Kshs 2,656,550
Less 30% Contribution	<u>Kshs 796,965</u>
Net	Kshs 1,859,585

3. The appeal only challenges the award by the trial magistrate, and the same is on the following grounds:

1. That the learned trial magistrate erred in law and in fact in awarding general damages that were excessive on the circumstances occasioning miscarriage of justice.
2. That the learned trial magistrate erred in law and in fact in awarding future medical expenses that were excessive in the circumstances, occasioning a miscarriage of justice.
3. That the learned trial magistrate erred in law and in fact in failing to consider the submissions filed by the parties, especially the appellant and hence caused a miscarriage of justice.
4. That the learned trial magistrate erred in law and in fact in using wrong principles in the assessment of the general damages.
5. That the learned trial magistrate erred in law and in fact by failing to look at the medical reports filed by the appellant and hence could not comprehend the injuries

*that had been suffered by the 1<sup>st</sup> respondent, which were majorly soft tissue injuries in nature.*

#### **ANALYSIS AND DETERMINATION**

4. The injuries sustained by the respondent were not contested. The appeal is solely based on the damages awarded by the trial court, and I bear in mind the principle that an appellate court will only interfere with the trial court's assessment of damages in certain clear-cut circumstances. In *Butt v Khan* Civil Appeal No. 40 of 1977 [1978] eKLR, Madan JA outlined the following principles in determining whether to interfere with an award of damages 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."*

5. The appellant, in her submissions, contends that the award of Kshs 2,500,000/- was excessive and that the injuries in the cases cited by the trial court were not comparable with those suffered by the respondent. The respondent claims that the net award of Kshs 1,859,585 was too low.

6. The trial court, in arriving at the award of Kshs 2,500,000/-, relied on the decision of **Yobesh Makori v Elmerick Mobisa Bota (2021) eKLR**, stating that the injuries sustained therein were comparable. However, the injuries sustained by the plaintiff therein were much more serious. The

plaintiff in the **Yobesh Makori case (supra)** suffered multiple fractures and soft tissue injuries: *head injury; deep laceration on the scalp; left clavicle fracture; bruises on the upper limbs; crushed left leg; dislocation of the right tarsal bone; and cut wound on the right leg.*

**7.** In *Onditi v Anytime Limited* [2024] KEHC 1614 (KLR), the court upheld the award of Kshs 200,000/= for injuries including active haemorrhage from the left ear, multiple bruises on the right elbow joint laterally, a deep cut on the right knee joint laterally, a deep cut on the right thigh, head injury, a deep cut on the right ankle joint, and a skull fracture. In *Omondi v Anzofu* [2024] KEHC 2675 (KLR), the court reduced the award of Kshs 1,000,000/= to Kshs 300,000/= for injuries such as trauma to the head, skull fracture, bruises (r) parietal scalp with profuse bleeding, trauma to the left upper arm, trauma over the shoulder joint evidenced by bruises, and blood loss. The injuries in the *Onditi* and *Omondi* cases are more similar to those sustained by the respondent. Consequently, the award of Kshs 2,500,000/- as general damages was excessive. I therefore substitute the award of Kshs 1,500,000/= with an award of Kshs 500,000/=.

**8.** Regarding future medical expenses, the appellant argued that an award of Kshs 90,000 was more appropriate than the Kshs 150,000 awarded under this head. The 1st respondent contends that the award for future medical expenses was based on Dr Sokobe's prognosis and opinion in his medical report. It was further submitted that the appellant had the opportunity to

refer the 1st respondent to her own doctor, but she neglected to do so.

**9.** Dr Sokobe, in his medical report, was of the opinion that the respondent requires further treatment, i.e., open reduction and internal fixation of the metacarpal fracture at an estimated cost of Kshs 150,000. The appellant did not produce any medical report showing that future medical expenses were not required. The trial magistrate did not err in awarding future damages assessed at Kshs 150,000/-.

**10.** For the reasons foregoing, the upshot of this court's judgment is that the Appellant's Appeal is successful and is allowed.

**a. The Judgment for the sum of Kshs 2,500,000/= general damages, for pain and suffering and loss of amenities is hereby set aside and substituted with a judgment in the sum of Kshs 500,000/= as general damages subject to liability awarded by the trial court.**

**b. The Judgment on special damages for Kshs 6,550/- and future medical expenses of Kshs 150,000/- is upheld.**

**c. The appellant is entitled to half of the costs of the appeal.**

**Dated, Signed and Delivered at BUNGOMA this 5<sup>th</sup> day  
of March 2026**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Appellant - Absent**

**Respondent - Absent**

**Wilkister -C/A**

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