

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL APPEAL NO E080 OF 2024

MARY WAIRIMU MUCHIRI.....
APPELLANT

VERSUS

JULIET CHEPTEEK BOIYO.....1ST
RESPONDENT

PENPALS INVESTMENTS.....2ND
RESPONDENT

*(Being an appeal from the judgment of the Honourable J.O
Manasses, Resident Magistrate, delivered on 23rd November
2023 in Sirisia SPMCC NO E10 OF 2022)*

JUDGMENT

1. The 1st respondent filed a suit in the lower court against the appellant and the 2nd respondent after she sustained injuries in a road traffic accident. The 2nd respondent was the beneficial owner, while the plaintiff was the registered owner of motor vehicle Reg. No. KDA 060Y. On 26/5/2022, the 1st respondent was a passenger in the vehicle when the driver negligently drove and lost control, causing the 1st respondent to sustain serious bodily injuries. She sustained blunt injuries to the neck, back, chest, right upper limb, and complained of severe backache.

2. The issue of liability was resolved by a consent of 70:30 in favour of the 1st respondent. The trial magistrate then entered judgement in favour of the 1st respondent.

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|----------------------------|--------------|
| 1. General damages | Kshs 800,000 |
| 2. Future medical expenses | Kshs 100,000 |

3. Special damages	<u>Kshs 6,550</u>
Total	Kshs 906,550
Less 30% Contribution	<u>Kshs 271,965</u>
Net	Kshs 634,585

3. The appeal solely contests the award made by the trial magistrate, and the basis of the challenge is as follows:

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 1st respondent, which were majorly soft tissue injuries in nature.

ANALYSIS AND DETERMINATION

4. The appeal being solely based on the damages awarded by the trial court, 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 laid out 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. Two medical reports were produced indicating that the 1st respondent sustained soft tissue injuries. However, the report by Dr. Sokobe notes that the 1st respondent experienced back injuries resulting in back pain. Conversely, the report by Dr. Gaya does not mention any back injury.

6. The appellant, in her submissions, contends that the 1st respondent did not sustain fractures according to the medical report by Dr. Gaya. She only reported pain on the left side of the chest and teeth, along with frequent headaches. The medical report did not specify the need for investigations or treatment for back pain. Consequently, the 1st respondent was not entitled to future medical expenses.

7. The 1st respondent contends that the award of future medical expenses was based on Dr Sokobe’s prognosis and opinion in his medical report. It was submitted that the appellant had an opportunity to refer the 1st respondent to their own doctor, but she failed to do so.

8. I note that the 1st respondent was referred to two doctors who produced medical reports. The report by Dr Gaya does not indicate that the respondent sustained a back injury. Conversely, Dr Sokobe was of the opinion that the respondent did sustain back injuries. However, the P3 form states that the respondent did sustain back injuries, aligning with Dr Sokobe's findings. Therefore, I find that there is sufficient evidence from the respondent proving she sustained back injuries.

9. Regarding general damages, the appellant argued that the trial court used the incorrect principles in calculating the damages. The injuries to the chest, arms, and legs had recovered well. The respondent, in her submissions, contended that they had claimed Kshs 800,000 as general damages but were awarded Kshs 633,885, which they considered too low.

10. It is undisputed that the respondent's injuries were soft tissue injuries. In *Oyaro v Morris* [2025] KEHC 5361 (KLR), the respondent suffered bruises and abrasions on the forehead, blunt trauma to the chest, abdomen, right knee/leg, and lower back, with wound care administered and complaints of abdominal pains, headache, and backache. The court awarded Kshs 130,000 as general damages. Therefore, the award of Kshs 800,000 as general damages was excessive. I now replace the Kshs 800,000 with an award of Kshs 140,000. The claim for future medical expenses was pleaded and proved.

11. 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 800,000/= general damages, for pain and suffering and loss of amenities is hereby set aside and substituted with a judgment in the sum of Kshs 140,000/= 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 100,000/- is upheld.
- c. The appellant is entitled to half of the costs of the appeal.

**Dated, Signed and Delivered at BUNGOMA this 5th day
of March 2026**

**R.E. OUGO
JUDGE**

In the presence of:

Appellant - Absent

Respondent - Absent

Brenda -C/A