

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E211 OF 2025

KEVIN OMONDI APPELLANT
- VERSUS -
NYAMASARIA SECONDARY SCHOOL RESPONDENT

(Being an appeal from the judgment and decree of **Hon. G.C. Serem**
RM/Adjudicator delivered on the 24/9/2024 in the **Ksm SCC Case No. E509 of**
2025, Kevin Omondi v Nyamasaria Secondary School)

J U D G M E N T

1. The appellant filed a claim against the respondent seeking compensation for personal injury following a road traffic accident that occurred on the **1/6/2025**. The respondent also sought special damages as well as costs of the claim.
2. The respondent entered appearance and filed a response denying the claim, and the occurrence of the accident.
3. In its judgment, the trial adjudicator found in favour of the appellant and entered judgment as follows: -

a) Liability – 80:20 in favour of the claimant by consent of the parties

b) General damages – Kshs. 650,000/-

Less 20% - Kshs. 130,000/-

Total – Kshs. 520,000/-

- c) Special Damages – Kshs. 89,500/-*
 - d) Claimant granted cost of the suit and interest from the date of judgement.*
 - e) The respondent is granted 30 days stay of execution.*
4. Being dissatisfied with the said judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated **28/9/2025** raising five (5) grounds of appeal as follows: -
- a) The learned trial adjudicator grossly misdirected herself in treating the evidence and submissions before her superficially and consequently coming to a wrong conclusion on the same.*
 - b) The learned trial adjudicator did not in the alternative consider or sufficiently consider the claim of the appellant as against the respondents herein thus arriving at a wrong decision.*
 - c) The learned adjudicator failed to consider the documents placed as evidence before her in terms of medical documents confirming the*

injuries as grievous in nature thus awarding a low award as general damages.

d) The learned trial adjudicator misdirected herself in ignoring the principles applicable laws under the appellants claim in awarding damages against the injuries of the claimant/appellant.

e) The learned trial adjudicator failed to apply judicially and to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.

5. The parties agreed to dispose the appeal by way of written submissions. The appellant submitted that the Adjudicator misdirected herself in considering that his injuries were soft in nature when they were grievous ones. That this Court ought to set aside the award on general damages and replace it with one of Kshs. 1,000,000/-. Reliance was placed on the case of **Stanley v Ndugu (Civil appeal no 81/23) KEHC 11942 (KLR) (6TH August 2025) judgment** in which an award of **Kshs. 1,400,000/-** was made.

6. On its part, the respondent submitted that the trial adjudicator correctly applied herself in interpreting the principles applicable in assessment of general damages. Reliance was placed on the case of **Magembe & 2 Others v Shisia (Civil Appeal E496 of 2023) [2025] KEHC 11720 (KLR) (Civ)**

(31 July 2025) (Judgment) where the Court substituted an award of **Kshs. 900,000/-** with **Kshs. 500,000/-**. In that case, the respondent had sustained compound open fractures of the left tibia and fibula with the fibula injury being fixated with metals.

7. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See **Selles & Anor vs. Associated Motor Boat Co Ltd & Others [1968] EA 123.**
8. Before the trial court, the parties consented on liability in the ratio of 80:20 in favour of the appellant. They then filed submissions on the general damages awardable for the injuries sustained.
9. I have considered the evidence tendered before the trial court and the submissions made before me. This being an appeal from the Small Claims Court, it is important to point out that ***Section 38 of the Small Claims Court Act*** provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus; -

“1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

2. An appeal from any decision or order referred to in subsection (1) shall be final.”

10. It is clear from the foregoing that jurisdiction of this Court from the Small Claims Court will only be on matters of law and not factual issues.
11. I have gone through the grounds of appeal again and I find that the only ground of appeal arising from those cited by the appellant is that the trial adjudicator proceeded on the wrong principles when accessing damages awardable to the respondent.
12. In the case of **Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs Augustine Munyao Kioko (2006) eKLR**, the Court of Appeal stated that: -

“It is generally accepted by Courts that the assessment of damages in personal injury cases is a daunting task as it involves many imponderables and competing interests for which a delicate balance must be found. Ultimately the awards will very much depend on the facts and circumstances of each case. As Lord Morris stated *H. West & Son Ltd vs. Shephard [1964]AC 326 at page 353- ‘The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion of judgment and of experience. In a sphere in which no one can predicate with complete assurance that*

the award made by another is wrong the best that can be done is to pay regard to the range of limits of current thought. In a case such the present it is natural and reasonable for any member of an Appellate tribunal to pose for himself the question as to what award he himself would have made. Having done so, and remembering that in this sphere there are inevitably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment.”

13. It is also trite that in awarding general damages, the court should award damages that are commensurate to the injuries that he or she sustained. In the case of Charles Oriwo Odeyo v Appollo Justus Andabwa & another [2017] eKLR, the Court of Appeal set out the principles to be considered in awarding damages as follows: -

“The assessment of damages in personal injury case by a court is guided by the following principles:

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.*

- 2) *The award should be commensurable with the injuries sustained.*
- 3) *Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.*
- 4) *Previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account.*
- 5) *The awards should not be inordinately low or high”*

14. From the record, the appellant sustained a fracture of the left leg and other soft tissue injuries. In **Kiama v Mutiso (Civil Appeal 40 of 2023) [2024] KEHC 5135**, the Court affirmed that appellate courts will not disturb damage awards unless they are inordinately high/low or based on wrong principles. The case involved an 8% disability award for a fractured tibia, reinforcing that comparable injuries require consistent compensation. The trial court had awarded the plaintiff general damages of **Kshs. 700,000/-**.
15. In the present case, the trial court made an award of **Kshs. 650,000/-**. That in my view was not so low as to amount to a wrongful assessment. In the circumstances, I find no reason to interfere with the trial court’s award on

general damages. The trial adjudicator applied the correct principles in assessing general damages.

16. The upshot is that the appeal is without merit and is hereby dismissed with costs.

It is so decreed.

DATED and **DELIVERED** at Kisumu this **6th** day of **March, 2026**.

A. MABEYA, FCI Arb

JUDGE