



REPUBLIC OF KENYA



**Guardian Coach Limited v Agani (Civil Appeal E039 of 2025)  
[2026] KEHC 2825 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2825 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E039 OF 2025  
TW CHERERE, J  
FEBRUARY 26, 2026**

**BETWEEN**

**GUARDIAN COACH LIMITED ..... APPELLANT**

**AND**

**PAUL OGOLLA AGANI ..... RESPONDENT**

*(Being an appeal from the Judgment in Keroka CMCC  
E128 of 2020 by Hon. E.K. Nyutu (CM) on 01st July 2025)*

**JUDGMENT**

**Background**

1. The Respondent (Paul Ogolla Agani) instituted Keroka CMCC E128 of 2020 against the Appellant (Guardian Coach Limited) vide a Plaint dated 17<sup>th</sup> February 2020 seeking general and special damages, costs and interests following a road traffic accident that occurred on the 31<sup>st</sup> January 2020 involving motor vehicle registration number KCU 391A ISUZU BUS, belonging to the Appellant, in which the Respondent was a fare-paying passenger.
2. The Appellant entered appearance on the 05<sup>th</sup> October 2020 and filed a Defence on 16<sup>th</sup> October 2020 denying the averments in the Plaint.
3. At the hearing, the Respondent produced a police abstract confirming that he was a fare-paying passenger aboard the suit motor vehicle and that he was not in control of the vehicle. A medical report by Dr. Peter Morebu confirmed that the Respondent sustained multiple soft tissue injuries including: chest contusion, blunt trauma to the neck, blunt trauma to the right knee, blunt trauma to the left knee, and blunt trauma to the right and left elbow. The Respondent did not tender any evidence.



4. At the conclusion of the trial, the trial court found the Appellant fully liable for causing the accident and awarded the Respondent general damages of KES. 300,000, special damages of KES. 8,480, costs of the suit and interest at court rates from the date of judgment.
5. Dissatisfied with the judgment of the trial court, the Appellant filed a Memorandum of Appeal dated 09<sup>th</sup> July 2025 condensed to the grounds that:
  1. The magistrate erred in finding that the Respondent had proved the alleged injuries despite material discrepancies in the evidentiary documents.
  2. The magistrate erred in holding the Appellant 100% liable despite the Respondent's alleged failure to prove liability.
  3. The award of KES. 300,000 as general damages was manifestly excessive and constituted an erroneous estimate in view of the injuries sustained.
6. It is noteworthy that through the Appellant's written submissions dated 07<sup>th</sup> January 2026, filed by KRK Advocates LLP, the Appellant expressly abandoned the ground of appeal relating to liability and confirmed that the appeal is confined to the issue of quantum of general damages.
7. Having considered record vis-à-vis the Appellant's written submissions dated 07<sup>th</sup> January 2026 filed by KRK Advocates LLP, and the Respondent's written submissions dated 15<sup>th</sup> January 2026 filed by Sonye J. Ondari & Co. Advocates, the following issues arise for determination:
  1. Whether the Respondent sustained the injuries as pleaded and as contained in the medical report by Dr. Peter Morebu.
  2. Whether the award of KES. 300,000 as general damages is inordinately high and not founded on any legal principle.
  3. Who bears the costs of this appeal and those of the lower court?
8. Before delving into the issues for determination, it is important to appreciate the duty of this court as a first appellate court. In *Abok James Odera T/A A.J. Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, it was held that on a first appeal, the court should reconsider the evidence, evaluate it itself and draw its own conclusions, though it should bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect.
9. Concerning the injuries, the Appellant contends that the injuries pleaded by the Respondent are not supported by the primary medical documents. The Respondent's medical report by Dr. Peter Morebu lists the following injuries: (i) chest contusion; (ii) blunt trauma to the neck; (iii) blunt trauma to the right knee; (iv) blunt trauma to the left knee; and (v) blunt trauma to the right and left elbow.
10. The Appellant, however, argues that the initial treatment notes from Keroka Sub County Hospital, where the Respondent was first attended to after the accident, indicate injury to the chest only. It is submitted on behalf of the Appellant that treatment notes are the primary documents and that a medical report prepared months after the occurrence of the accident is of little probative value unless supported by the initial treatment notes.
11. The Respondent, on the other hand, submits that the Appellant never filed its second medical report despite causing the Respondent to attend a second medical examination. The injuries are therefore not disputed by any credible evidence. It is further submitted that none of the exhibits produced in the trial court have been included in the record of appeal, which is indicative of indolence on the part of the Appellant, leaving this court without documents to rely on to disturb the trial court's findings.



- While I note the Respondent's argument, the failure by the Appellant to file a second medical report does not relieve the Respondent of his burden of proving, on a balance of probabilities, the injuries he sustained. The primary medical documentation must still be examined.
12. I have carefully considered the initial treatment notes from Keroka Sub County Hospital dated 31<sup>st</sup> January 2020. Those notes being the contemporaneous record made at the earliest point of medical contact, before any litigation considerations could arise record tenderness to the chest only. There is no mention therein of blunt trauma to the neck, the right knee, the left knee, or the right and left elbow.
  13. It is well recognized that initial treatment notes, being contemporaneous records made at the earliest point of medical attention, generally carry significant probative value in assessing the nature and extent of injuries sustained. While not conclusive, such notes often provide a reliable baseline against which subsequent medical reports may be evaluated, particularly where there is inconsistency between the documents. Guided by the decisions in *Boaz Obure and Bethuel Githonga Muthami v Samuel Kiyuka Timothy Okwanyo* [2024] KEHC 13333 (KLR) and *Ondicho v Mosigisi* (Civil Appeal E054 of 2023) [2025] KEHC 5140 (KLR), I accordingly reject the injuries listed in the P3 form and the medical report by Dr. Morebu that are not supported by the initial treatment notes. I find that the only injury proved on a balance of probabilities is tenderness to the chest.
  14. Having found that the only injury proved on a balance of probabilities is tenderness to the chest, I now turn to consider whether the award of KES. 300,000 as general damages is inordinately high in the circumstances.
  15. The law on when an appellate court may interfere with a trial court's assessment of damages is well settled. In *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M. Lubia and Olive Lubia* [1982-88] 1 KAR 727, Kneller JA stated at p. 730 that an appellate court is justified in disturbing a quantum award where it is satisfied that the trial judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
  16. In *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1982-88] 1 KAR 982, Kneller JA laid down the following guiding points for the correct approach to an award of damages: (i) each case depends on its own facts; (ii) awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes; (iii) comparable injuries should attract comparable awards; and (iv) inflation should be taken into account.
  17. In *Stanley Maore v Geoffrey Mwenda* [2004] eKLR, the Court of Appeal held that comparable injuries should, as far as possible, be compensated by comparable awards, keeping in mind the correct level of awards in similar cases.
  18. The trial court awarded KES. 300,000 as general damages based on the full range of injuries listed in Dr. Morebu's medical report and the P3 form. Having rejected all injuries not supported by the initial treatment notes, the foundation upon which the trial court assessed quantum no longer stands. The trial court therefore proceeded on a misapprehension of the evidence and took into account injuries that were not proved to the required standard. This court is accordingly justified in interfering with the award.
  19. I now turn to consider comparable decisions in respect of a proved chest contusion or chest tenderness as the sole injury.
  20. In the persuasive decision in *Boaz Obure and Bethuel Githonga Muthami v Samuel Kiyuka Timothy Okwanyo* [2024] KEHC 13333 (KLR), the Court reduced the award to KES. 70,000 for chest pain only. In another persuasive decision in *Ondicho v Mosigisi* (Civil Appeal E054 of 2023) [2025] KEHC



5140 (KLR), the court reduced the award to award to KES. 80,000 where where the only injuries proved were soft tissue only.

21. The Appellant proposed KES. 50,000 while the Respondent urged this court to uphold KES. 300,000. The Respondent's defence of KES. 300,000 is entirely untenable where the injury is confined, on the primary treatment record, to chest tenderness only.
22. I am, however, mindful that the accident occurred on 31<sup>st</sup> January 2020 over five years before the hearing of this appeal and having factored inflation and the depreciation of the Kenyan Shilling, I find KES. 60,000 would be a fair, just and reasonable award of general damages.
23. As was held in *Ndege and another v Nyarindo* [2024] KEHC 5782 (KLR) costs follow the event. Section 27 of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya provides that costs are in the discretion of the court and shall follow the event unless the court for good reason otherwise orders. Having allowed this appeal, I find it appropriate that the Appellant is entitled to the costs of the appeal, while the Respondent retains the costs of the trial court.
24. From the foregoing analysis, this court makes the following orders:
  1. The award of Kshs. 300,000 as general damages by the trial court is hereby set aside and substituted with an award of KES. 60,000 as general damages.
  2. The award of special damages of KES. 8,480 by the trial court is hereby upheld.
  3. Appellant is entitled to the costs of the appeal, while the Respondent retains the costs of the trial court.
  4. There shall be stay of execution for 7 days from today's date

**DELIVERED AT NYAMIRA THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Hilda

For Appellant - Ms. Ongwacho for KRK Advocates LLP

For Respondent - Mr. Mokaya for Sonye J.Ondari & Co. Advocates

