

JUDGMENT
HCCA E040 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCA E040 OF 2025

BETWEEN
GUARDIAN COACH LIMITED..... APPELLANT
AND
JACINTA ANYANGO OCHIENG..... RESPONDENT

**(Being an Appeal from the Judgment and Decree in Keroka
MCCC 131 of 2020 by Hon. E. K. Nyutu, (CM) on 01st July 2025)**

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Background

1. The Respondent, Jacinta Anyango Ochieng, commenced proceedings in Keroka MCCC E131 of 2020 seeking general and special damages arising from a road traffic accident that occurred on 31st January 2020 along the Keroka–Sotik Road.
2. In the claim, Respondent averred that she was a fare-paying passenger aboard motor vehicle registration number KCU 391A, an Isuzu bus owned by the Appellant, Guardian Coach Limited, when the said motor vehicle was negligently driven, resulting in an accident in which she sustained injuries.
3. The Appellant entered appearance and filed a Statement of Defence dated 16th October 2020, in which it denied liability, disputed the occurrence of the accident as pleaded, and put the Respondent to strict proof of negligence, injuries, and quantum.

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5. At the hearing, the Respondent testified and produced documentary evidence, including treatment notes, a Police Abstract dated 17th February 2020, and a Medical Report prepared by Dr. Peter Morebu dated 05th February 2020.
6. According to the medical report, the Respondent sustained blunt trauma to the neck, chest contusion, a deep cut wound on the right leg, lacerations on the right leg, and bruises on the right and left hands. The medical report assessed the injuries as soft tissue in nature and noted absence of fractures and absence of permanent incapacity.
7. In support of special damages, the Respondent produced receipts for the sum of KES. 9,550 comprising medical treatment expenses, medical examination fees, and the cost of obtaining medical records.
8. Upon the close of the hearing, the parties filed written submissions. The Respondent proposed an award of KES. 300,000 as general damages for pain and suffering. The Appellant urged the trial court to award KES. 70,000 on the basis that the Respondent sustained soft tissue injuries only, and comparable authorities supported a lower award.
9. In a judgment delivered on 01st July 2025, the trial court found the Appellant 100% liable and awarded the Respondent general damages of KES 300,000 and special damages of KES. 9,550, together with costs and interest.
10. Dissatisfied with the judgment, the Appellant lodged a Memorandum of Appeal dated 09th July 2025. Although the Memorandum of Appeal raised

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grounds touching on both liability and quantum, liability was not pursued on appeal.

11. The appeal was canvassed by way of written submissions. The Appellant filed its written submissions dated 07th January 2026, and proposed an award of KES. 50,000 contending that the award of KES. 300,000 was inordinately high for the soft tissue injuries sustained. It was submitted that the learned trial magistrate failed to take into account comparable awards made in similar cases and thereby fell into error.

12. The Respondent filed her written submissions dated 15th January 2026, opposing the appeal. She submitted that the award of damages was reasonable and commensurate with the injuries sustained, taking into account the nature of the injuries, prevailing inflationary trends, and the circumstances under which the accident occurred. Counsel urged the Court not to interfere with the trial court's discretion.

13. This being a first appeal, the Court is obligated to reconsider the entire body of evidence presented before the subordinate court and to draw its own conclusions therefrom. In carrying out this task, the Court remains mindful that it did not observe the demeanour of the witnesses. The governing principle was succinctly stated in **Selle v Associated Motor Boat Co. Ltd [1968] EA 123.**

Issues for Determination

14. From the record of appeal and submissions, the issues arising for determination are:

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- 1) Whether the award of general damages of KES. 300,000 was excessive and founded on wrong principles
- 2) Whether the award of special damages was proved.
- 3) Who should bear the costs of the appeal.

Analysis and Determination

1) **Whether the Award of General Damages Was Excessive**

15. The injuries sustained by the Respondent as set out in the medical report dated 05th February 2020 were soft tissue injuries only, with no fractures and no evidence of permanent incapacity.

16. The circumstances under which an appellate court may interfere with an award of damages are well delineated. In **Kemfro Africa Ltd t/a Meru Express Services & Another v A.M. Lubia & Another (1982–88) 1 KAR 727** and **Mohamed Mahmoud Jabane v Highstone Butty Tongoi Ole Moijoi (1982–88) 1 KAR 982**, the Court of Appeal affirmed that interference is only justified where the award is so excessive or so low as to amount to a wholly erroneous estimate, or where the trial court proceeded on a wrong principle or misapprehended the evidence.

17. The need for consistency in awards for similar injuries was restated in **Stanley Maore v Geoffrey Mwenda [2004] eKLR**. In applying that principle, the decision in **Mohamud v Mwinyi & Another [2024] KEHC**. There, the claimant suffered soft tissue injuries comparable to those proved in the present appeal, and the High Court held that an award of KES. 300,000 was excessive, substituting it with KES. 80,000. No significant material

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distinction arises between the injuries in that case and those sustained by the Respondent herein.

18. The injuries sustained by the Respondent in the present appeal, were confined to soft tissue injuries. On that basis, the decisions relied upon by the Respondent are distinguishable. In **Ndede & Another v Nyarindo [2024] KEHC 5782 (KLR)**, the claimant sustained more serious injuries, including head contusion accompanied by persistent symptoms. Likewise, **Baloch Faisal & Another v Elloy Kawira Nthiri [2019] eKLR** and **Kenyatta University v Karumba Nyuthe [2014] eKLR** concerned multiple injuries with prolonged pain, which justified the higher awards made in those cases.

19. Whereas the Respondent proposed an award of KES. 300,000, the trial court adopted that figure without demonstrating, through reference to comparable decisions, why such an award was warranted for injuries assessed as soft tissue only. This omission amounted to a failure to properly anchor the award on established judicial guidance.

18. In the circumstances, I am persuaded that the award of KES. 300,000 was inordinately high in the circumstances of this case and constituted an erroneous estimate of damages, thereby warranting appellate interference.

19. Taking into account comparable awards, prevailing inflationary trends, and the passage of time, I find that an award of KES. 200,000 constitutes fair and reasonable compensation for the injuries sustained.

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20. The Respondent pleaded and proved special damages by receipts produced at the trial, and the award of KES. 9,550 is accordingly upheld.

21. The appeal has succeeded on the issue of quantum. In the circumstances, each party shall bear its own costs of the appeal.

Disposition

22. From the foregoing analysis, the appeal on quantum succeeds and it is hereby ordered:

- 1) **The award of general damages of KES. 300,000 is set aside and substituted with an award of KES. 200,000.**
- 2) **The award of KES. 9,550 on special damages is upheld**
- 3) **The Appellant shall have the costs of the appeal.**

DELIVERED AT NYAMIRA THIS 12th 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