



REPUBLIC OF KENYA



**Guardian Coach Limited v Oguma (Civil Appeal E042 of 2025)
[2026] KEHC 2828 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2828 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E042 OF 2025
TW CHERERE, J
FEBRUARY 5, 2026**

BETWEEN

GUARDIAN COACH LIMITED APPELLANT

AND

VITALIS OPIYO OGUMA RESPONDENT

*(Being an Appeal from the Judgment and Decree in Keroka
MCCC 128 of 2020 by Hon. E. K. Nyutu, (CM) on 01st July 2025)*

JUDGMENT

Background

1. The Respondent, Vitalis Opiyo Oguma, commenced Keroka MCCC 128 of 2020 seeking general and special damages for injuries sustained in a road traffic accident that occurred on 31st January 2020 involving motor vehicle registration number KCU 391A, an Isuzu bus owned by the Appellant, Guardian Coach Limited.
2. The Appellant entered appearance and filed a Statement of Defence in which liability was denied and the Respondent was put to strict proof of his claim.
3. The matter proceeded to hearing. The Respondent testified in support of his case and relied on documentary evidence comprising treatment notes, a police abstract, receipts in proof of special damages, and a medical report prepared by Dr. Peter Morebu dated 5th February 2020.
4. Upon the close of the parties' respective cases, written submissions were filed with the Respondent proposing an award of KES. 300,000 as general damages, while the Appellant urged an award of KES. 70,000 on the ground that the injuries sustained were soft tissue in nature.



5. In a judgment delivered on 01st July 2025, the trial court found the Appellant wholly liable and awarded the Respondent general damages of KES. 300,000/= and special damages of KES. 7,450, together with costs and interest.
6. Dissatisfied with the judgment, the Appellant lodged a Memorandum of Appeal dated 15th July 2025 challenging both liability and quantum. At the hearing of the appeal, the Appellant expressly abandoned the challenge on liability and pursued the appeal solely on the issue of quantum.
7. The appeal was canvassed by way of written submissions. The Appellant filed written submissions dated 10th January 2026, while the Respondent filed written submissions dated 20th January 2026. The Appellant contended that the award of KES. 300,000 was manifestly excessive for soft tissue injuries and that the learned trial magistrate erred in principle by adopting the Respondent's proposed figure without adequate reference to comparable awards.
8. The Respondent opposed the appeal and submitted that the award was fair and reasonable in the circumstances.
9. 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

10. From the Memorandum of Appeal, the record of proceedings, and the submissions on appeal, the following issues arise for determination:
 1. Whether the award of general damages was excessive and based 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

11. The injuries sustained by the Respondent are not in dispute. According to the medical report prepared by Dr. Peter Morebu dated 05th February 2020, the Respondent sustained chest contusion, blunt trauma to the neck and shoulder, and bruises to both legs. The injuries were assessed as soft tissue injuries, and no permanent incapacity was noted.
12. The law on appellate interference with an award of damages is settled. As held in *Kemfro Africa Ltd t/a Meru Express Services & Another v A.M. Lubia & Another* (1982–88) 1 KAR 727 and reiterated in *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Ole Mijoi* (1982–88) 1 KAR 982, an appellate court will only interfere where the award is plainly excessive or inadequate, or where it is shown that the trial court acted on an incorrect principle or misunderstood the evidence.
13. The authority most relevant for purposes of comparison is *Mohamud v Mwinyi & Another* [2024] KEHC. In that case, the claimant sustained soft tissue injuries comprising blunt trauma to the chest, bruises to the limbs, and general body tenderness, with no fractures and no permanent incapacity. The High Court found that an award of KES. 300,000/= was excessive and reduced it to KES. 80,000.



14. The injuries sustained in the present appeal are materially similar to those in *Mohamud v Mwinyi & Another* (supra).
15. The authorities relied upon by the Respondent, including *Ndede & Another v Nyarindo* [2024] KEHC 5782 (KLR) are distinguishable. In that case, although the injuries were categorised as soft tissue injuries, they were more extensive and included head contusion and persistent pain symptoms. Similar distinguishing features arise in *Baloch Faisal & Another v Elloy Kawira Nthiri* [2019] eKLR and *Kenyatta University v Karumba Nyuthe* [2014] eKLR, where the nature and multiplicity of injuries justified higher awards.
16. I have also considered the submissions placed before the trial court, where the Respondent proposed an award of KES. 300,000/= and the Appellant proposed KES. 70,000/=. The learned trial magistrate adopted the Respondent's proposed figure without demonstrating, by reference to comparable awards, why such an award was justified for injuries of the nature proved.
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* (supra) is instructive. 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 material distinction arises between the injuries in that case and those sustained by the Respondent herein.
18. Having regard to inflation and the passage of time, I find that an award of KES. 180,000 constitutes fair and reasonable compensation for the injuries sustained.

Special Damages

19. The Respondent pleaded and proved KES. 7,450 in and the same is therefore upheld.

Costs

20. The appeal has succeeded on the issue of quantum and the successful party is entitled to the costs of the appeal.

Disposition

21. From the foregoing analysis,
 1. The award of general damages of KES. 300,000/= is set aside and substituted with an award of KES. 180,000.
 2. The award of special damages of KES. 7,450/= is upheld.
 3. Appellant is awarded costs of the appeal

DELIVERED AT NYAMIRA THIS 05TH DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearance -

Court Assistant - Hilda

For Appellant - Ms. Ongwacho for KRK Advocates LLP



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

