

**JUDGMENT**  
**HCCA E041 OF 2025**



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**(CHERERE-J)**  
**HCCA E041 OF 2025**

**BETWEEN**  
**GUARDIAN COACH LIMITED.....**  
**APPELLANT**  
**AND**  
**DENNIS OTIENO**  
**TABU..... RESPONDENT**

**(Being an Appeal from the Judgment and Decree in  
Keroka MCCC 130 of 2020 by Hon. E. K.  
Nyutu, (CM) on 01<sup>st</sup> July 2025)**

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**Background**

1. The Respondent, Dennis Otieno Tabu, instituted Keroka MCCC 130 of 2020, seeking general and special damages arising from a road traffic accident that occurred on 31<sup>st</sup> January 2020. The accident involved motor vehicle registration number KCU 391A, an Isuzu bus owned by the Appellant, Guardian Coach Limited, in which the Respondent was travelling as a fare-paying passenger at the material time. It was pleaded that the accident was occasioned by the negligence of the Appellant's driver.

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2. The Appellant entered appearance and filed a Statement of Defence denying liability and disputing the nature and extent of the injuries pleaded.
3. The matter proceeded to hearing. The Respondent testified and relied on documentary evidence comprising treatment notes, a Police Abstract dated 17<sup>th</sup> February 2020. A Medical Report prepared by Dr. Peter Morebu dated 05<sup>th</sup> February 2020 demonstrates that the Respondent sustained soft tissue injuries comprising of chest contusion, blunt trauma to the back, and blunt trauma to the right and left elbows. The Respondent also produced receipts in proof of special damages amounting to KES. 7,450.
4. At 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, while the Appellant proposed an award of KES 70,000 contending that the Respondent sustained soft tissue injuries only.
5. By a judgment delivered on 01<sup>st</sup> 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.

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6. Dissatisfied with the judgment of the trial court, the Appellant lodged the present appeal by a Memorandum of Appeal dated 09<sup>th</sup> July 2025, challenging both liability and quantum. At the hearing, the Appellant abandoned the challenge on liability, leaving only the issue of the quantum of general damages for determination.
7. The appeal was canvassed by way of written submissions. The Appellant filed its written submissions dated 07<sup>th</sup> January 2026, while the Respondent filed his written submissions dated 15<sup>th</sup> January 2026. The Appellant contended that the award of KES. 300,000 was manifestly excessive given that the Respondent sustained soft tissue injuries only. It was submitted that the learned trial magistrate erred by adopting the Respondent's proposed figure without sufficient reference to comparable awards.
8. The Respondent opposed the appeal, submitting that the award was reasonable in the circumstances.
9. On a first appeal, this Court is enjoined to conduct its own independent review of the evidence on record and to arrive at its own conclusions, while giving due regard to the fact that the trial court had the opportunity to hear and see the witnesses. This approach is firmly grounded in **Selle v Associated Motor Boat Co. Ltd [1968] EA 123.**)

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**Issues for Determination**

10. Having considered the trial court record and the parties' submissions, the issues arising for determination are:

- 1) Whether the award of general damages was excessive**
- 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 set out in the Medical Report dated 05<sup>th</sup> February 2020. They were confined to soft tissue injuries, with no fractures and no permanent incapacity.

12. The principles governing appellate interference with awards of damages are well settled. 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 98**, the Court of Appeal held that an appellate court may interfere where an award is so inordinately high or low as to represent an erroneous estimate.

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13. The principle that similar injuries ought to attract comparable awards, as articulated in **Stanley Maore v Geoffrey Mwenda [2004] eKLR** remains applicable. The decision in **Mohamud v Mwinyi & Another [2024] KEHC** is particularly relevant, as it concerned soft tissue injuries with no permanent incapacity. In that matter, an award of KES. 300,000 was found to be excessive and was reduced to KES. 80,000.
14. The injuries established in the present appeal are of a similar character and severity.
15. The authorities relied upon by the Respondent are distinguishable. In **Ndede & Another v Nyarindo [2024] KEHC 5782 (KLR)**, the claimant sustained more extensive injuries involving head contusion and persistent symptoms. Comparable distinguishing features arise in **Baloch Faisal & Another v Elloy Kawira Nthiri [2019] eKLR** and **Kenyatta University v Karumba Nyuthe [2014] eKLR**, where multiple injuries and prolonged pain justified higher awards.
16. I have also considered the submissions made before the trial court. The Respondent proposed an award of KES. 300,000, while the Appellant proposed KES. 70,000. The judgment of the trial court does not disclose a comparative evaluation of authorities dealing with analogous injuries. By

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adopting the Respondent's proposed figure without articulating how it aligned with prevailing awards for soft tissue injuries, the trial court failed to adequately justify the quantum assessed.

17. In light of the close factual similarity between the present case and **Mohamud v Mwinyi & Another** (supra), and guided by the principles set out in **Kemfro Africa Ltd t/a Meru Express Services & Another v A.M. Lubia & Another** (supra), and **Stanley Maore v Geoffrey Mwenda** (supra), I am satisfied that the award of KES. 300,000 was inordinately high and amounted to an erroneous estimate.
18. Having regard to inflation and the passage of time since **Mohamud v Mwinyi & Another** (supra) was decided, I find that an award of KES. 150,000 constitutes fair and reasonable compensation for the injuries sustained.

**Special Damages**

19. The Respondent specifically pleaded special damages and proved the same through receipts produced at the trial. The award of Kshs. 7,450 was therefore properly made and is upheld.

**Costs**

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28. The appeal has succeeded on the issue of quantum. In the circumstances, the Respondent shall bear its own costs of the appeal.

**Disposition**

29. From the foregoing analysis, I make the following orders:

**1) The award of general damages of KES. 300,000 is set aside and substituted with an award of KES. 150,000.**

**2) The award of special damages of KES. 7,450 is upheld**

**3) Respondent shall bear the costs of the appeal.**

**DELIVERED AT NYAMIRA THIS                      05<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**