



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kangori & another v Ndonye (Civil Appeal E083 of 2025)
[2026] KEHC 3112 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 3112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E083 OF 2025
FN MUCHEMI, J
FEBRUARY 27, 2026**

BETWEEN

KELVIN NJOROGE KANGORI 1ST APPELLANT

JOSPHAT NJOROGE MUGO 2ND APPELLANT

AND

BETARISPER KITHEI NDONYE RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. J. K. Tawai (RM/Adjudicator)
delivered on 14th March 2025 in Ruiru Small Claims Court SCCC No. E789 of 2024)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Ruiru Resident Magistrate/Adjudicator in SCCC No. E789 of 2024 which arose from a road traffic accident whereby the court found the respondents 100% liable and awarded him general damages for pain suffering and loss of amenities at Kshs. 350,000/- and special damages at Kshs. 55,050.
2. Dissatisfied with the court's decision, the appellants lodged this appeal citing 3 grounds of appeal summarized as follows:-
 - a. The learned adjudicator erred in law and in fact in awarding Kshs. 350,000/- in general damages which is inordinately high.
3. Parties disposed of the appeal by way of written submissions.



The Appellants' Submissions

4. The appellants argue that the award on general damages of Kshs. 350,000/- as awarded by the lower court is excessive and submit that the respondent ought to be awarded Kshs. 100,000/- considering her injuries. The appellants rely on the cases of Ephraim Wagura Muthui & 2 Others vs Toyota Kenya Limited & 2 Others [2019] eKLR where the appellate court awarded Kshs. 100,000/- to the plaintiff who sustained a cut wound on the parietal area of the head, contusion on the neck, blunt trauma to the chest, cut wound on the left leg and blunt trauma to the back. In Otieno & Another vs Odhiambo [2024] KEHC 7688 (KLR), the appellate court set aside an award of Kshs. 300,000/- as general damages and substituted it with Kshs. 100,000/- where the appellate court categorized the respondent's injuries as soft tissue injuries. Further in PF (Suing as next friend and father of SK (Minor) vs Victor O. Kamadi & Another (2018) eKLR the appellate court awarded Kshs. 100,000/- as general damages to the appellant who sustained a cut wound on the forehead, multiple abrasions to the face, blunt injury to the head leading to loss of consciousness, abrasions to the back, abrasion wounds to the dorsum of the right hand and cut wound to the right leg. In LNK (A Minor suing through CNK as next friend) & 2 Others vs Simon Gatuni Njuki [2022] eKLR the appellate court awarded Kshs. 80,000/- as general damages to the appellants who had suffered soft tissue injuries including a cut wound to the occipital, neck and right ankle and foot and soft tissue injuries to the forehead, left cheek, right shoulder joint, chest and lower limbs.

The Respondent's Submissions

5. The respondent relies on the cases of Siema vs Shivanda (Civil Case E119 of 2023) [2024] eKLR; Poa Link Services Co. Ltd & Another vs Sindani Boaz Bonzemo [2021] KEELRC 2012 (KLR); Onchoka vs Mwangi (Civil Appeal E556 of 2021) and Catherine Wanjiru Kingori & 3 Others vs Gibson Theuri Gichubi [2005] KEHC 1500 (KLR) and submits that the lower court rightfully awarded her Kshs. 350,000/- in general damages as she suffered multiple soft tissue injuries including blunt injuries to the lips with swelling, multiple bruises on the face, blunt injuries on the mouth with bleeding, blunt injuries to the nose with bleeding, blunt injuries to the anterior chest wall, blunt injuries to the back and lower abdomen with PV bleeding which caused her significant pain, bleeding and bodily harm. The respondent argues that there is no basis to disturb the trial court's discretion as the appellants have not established any error or miscarriage of justice. The trial record shows that the trial court considered both parties' submissions fully before making its award.
6. Relying on the case of Mochama vs Ogoti (Civil Appeal E083 of 2023) [2025] eKLR, the respondent submits that the award of Kshs. 55,050/- as special damages was specifically pleaded and sufficiently proved by way of receipts and medical evidence.

Issues for determination

7. The main issues for determination are:-
 - a. Whether the appeal is defective.
 - b. If not, whether the award of general damages was inordinately high.

The Law

8. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the [Small Claims Court Act](#), set out the duty of



the second appellate court in the case of Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

9. In distinguishing between matters of law and fact the Court of Appeal stated in Kenya Breweries Ltd vs Godfrey Odoyo [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

Whether the appeal is defective

10. Section 38 of the Act provides:-

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.

11. The Court of Appeal in *Mwangi vs Wambugu* [1984] KLR 453 commented of what amount to points of law as follows:-

A Court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding; and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

12. Similarly in *Peter Gichuki King'ara vs Independent Electoral and Boundaries Commission & 2 Others* [2014] eKLR the court held that:-

Bearing in mind the above principles, the most contentious issues in this appeal is whether the grounds of appeal are matters of law or facts. Having established that we have jurisdiction to determine only issues of law as per the provisions of Section 85A of the *Elections Act*, to us the whole question of whether the trial Judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence with of course the usual caveat, that we did not see the witness demeanor is an issue of law.



13. I have perused the grounds in the memorandum of appeal and noted that the grounds are based on law particularly that the award of general damages of Kshs. 350,000/- was inordinately high and excessive.
14. The Court of Appeal in *Catholic Diocese of Kisumu vs Sophia Achieng Tele* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would awarded different figure if it had tried the case at first instance. The appellant court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”
15. Similarly, in *Sheikh Mustaq Hassan vs Nathan Mwangi Kamau Transporters & 5 Others* [1986] KLR 457 that:-

“The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own.”
16. According to the statement of claim, the respondent suffered the following injuries:-
 - a. Blunt injuries to the lips with swelling.
 - b. Multiple bruises on the face.
 - c. Blunt injuries to the mouth with bleeding.
 - d. Blunt injuries to the nose with bleeding.
 - e. Blunt injuries to the anterior chest wall.
 - f. Blunt injuries to the back.
 - g. Blunt injuries to the lower abdomen with PV bleeding.
17. The learned adjudicator awarded a sum of Kshs. 350,000/- for general damages for pain and suffering. The appellants submit that the said award is manifestly excessive and is not justifiable in comparison to the injuries sustained by the respondent. The respondent submits that the award is justifiable and comparable to the injuries she sustained.
18. I have perused the record of appeal and noted that the injuries sustained by the respondent were confirmed by Dr. Titus Ndeti Nzina in his medical report dated 12th November 2024. The doctor assessed the respondent’s injuries and classified them as multiple soft tissue injuries of moderate severity.



19. Looking at the decisions relied on by the respondent and the appellant, both parties have cited decisions that show injuries which are comparable to those sustained by the respondent. Those cited by the appellants are however, more similar and closer to those sustained by the respondent.
20. The learned trial magistrate when arriving at the award of Kshs. 350,000/- took into account the severity of the injuries sustained by the respondent, awards from comparable cases as well as the element of inflation. The trial court was guided by the decision in Onchoka vs Mwangi [2023] KEHC 18505 (KLR) where the High Court upheld the decision of the lower court for an award of Kshs. 350,000/- for multiple soft tissue injuries.
21. Taking into consideration the severity of the respondent's injuries, it is my considered view that the award of Kshs. 350,000/- is on the higher side in the circumstances and considering the medical report whereby the injuries were classified as multiple soft tissue injuries of moderate severity. The doctor in his report stated that he anticipated gradual complete healing indicative of the fact that the injuries would not cause permanent impairments. It is my considered view that Kshs. 280,000/- would suffice as reasonable compensation for general damages for pain, suffering and loss of amenities.
22. It is therefore my considered opinion that the appeal has merit and is hereby allowed.
23. Each party to meet their own costs of the appeal.
24. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

