



3. Their Written Submissions were dated 6<sup>th</sup> June 2025 and filed on 8<sup>th</sup> July 2024 while those of the Respondent were dated 20<sup>th</sup> June 2025 and filed on 24<sup>th</sup> June 2025. The Judgment herein is based on the said Written Submissions which parties relied upon in their entirety.

### **LEGAL ANALYSIS**

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of **Selle & Another vs Associated Motor Boat Co Ltd & Others [1968] EA 123** where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the respective parties' Written Submissions, it appeared to this court that all the grounds of appeal were related and the issues that had been placed before it for determination were as follows:-

- a. **Whether or not the Learned Trial Magistrate erred in finding the Appellants to have been wholly liable for the accident;**

**b. Whether or not the quantum that was awarded was excessive in the circumstances warranting interference by this court.**

7. The court deemed it prudent to address the issues under the following distinct heads.

**I. LIABILITY**

8. Grounds of Appeal No (1), (2), (3) and (7) were dealt with under this head.
9. The Appellants submitted that this court was duty bound pursuant to Section 78 of the Civil Procedure Act, Cap 21 (Laws of Kenya) to re-assess and re-evaluate the evidence adduced before the trial court and arrive at its own independent conclusion bearing in mind it neither saw nor heard the witnesses testify in the first instance as was held in the case of **Kenya Ports Authority vs Kushton (K) Ltd (2009) 2 EA, 212.**
10. They asserted that they had signed an agreement with the Respondent settling the compensation herein and that on liability, she had confirmed that she was the one who opened the door of the moving vehicle when her leg got stuck in the door. They stated that the said evidence was corroborated by that of the 1<sup>st</sup> Appellant herein and No 104937 PC Damaris Mutungi (hereinafter referred to as “DW 2”).
11. On her part, the Respondent also urged this court to subject the whole of the evidence to a fresh and exhaustive scrutiny and make its conclusions, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand as was held in the case of **Selle & Another vs Associated Motor Boat Co Ltd & Others** (Supra).

12. She reproduced her evidence, that of No 59708 PC John Koech (hereinafter referred to as “PW 2”) and that of the 1<sup>st</sup> Appellant and noted that the Appellants did not controvert her evidence. She argued that the 1<sup>st</sup> Appellant who was the driver at the material time ought to have been extremely careful when driving a motor vehicle that did not have conductors. She submitted that the 1<sup>st</sup> Appellant failed to exercise patience by not giving her enough time to allow her to fully disembark before driving off.
13. She was emphatic that the Appellants were, therefore, negligent. She urged this court to find that she had proved her case on a balance of probability against the Appellants and dismiss their appeal with costs.
14. According to the Amended Plaint dated 21<sup>st</sup> September 2022 and filed on 22<sup>nd</sup> September 2022, on 21<sup>st</sup> May 2021, along Chavakali-Kapsabet road, the Respondent was a lawful passenger in Motor Vehicle Registration Number KCU 864 Z (hereinafter referred to as the “subject motor vehicle”) which was so negligently, carelessly and recklessly driven, controlled and/or managed that it caused an accident. The Appellants entered appearance and in their Statement of Defence, denied that the allegations in the Amended Plaint and attributed the cause of the accident to the Respondent’s negligence.
15. In her evidence, the Respondent testified that she fell from the subject Motor Vehicle when it started driving off and it ran over her leg. As a result, she sustained injuries to her left leg, back and hand and was taken to Jumuiya Hospital. On cross-examination, she indicated that there was no conductor in the said subject Motor Vehicle. She added that the

subject motor vehicle. PW 2 reiterated her evidence. He produced the Police Abstract as evidence in court.

16. DW 1's evidence corroborated that of the Respondent and PW 2. In his testimony, the 1<sup>st</sup> Appellant admitted that he was the driver of the said subject Motor Vehicle. He blamed the Respondent for the accident claiming that she alighted before he stopped and entered before he got into the stage as a result of which her leg was caught by the door which injured her leg.
17. This court looked at the case of **Khambi and Another vs Mahithi & Another [1968] EA 70** where it was held that an appellate court would not interfere with the apportionment of liability save where such apportionment was manifestly erroneous.
18. The Police Abstract that was produced showed that the accident involved subject Motor Vehicle which belonged to the 1<sup>st</sup> Appellant herein. The Respondent was a fare-paying passenger in the subject Motor Vehicle and was thus not in control of the said subject Motor Vehicle. As the subject Motor Vehicle was driven off before she could fully disembark, she was not expected to exercise caution more than she did when she was alighting so as to avoid the accident.
19. Notably, the Appellants did not call any eye witness to tender evidence that would have rebutted the Respondent's testimony. This court did not, therefore, find any reason to depart from the finding of the Trial Court that the Appellants were hundred (100%) per cent liable for the injuries that the Respondent sustained.

20. In the premises foregoing, Grounds of Appeal Nos (1), (2), (3) and (7) were not merited and the same be and are hereby dismissed.

## II. QUANTUM

21. Grounds of Appeal No (4), (5), (6) and (7) were dealt with under this head.

22. The Appellants urged the court to set aside the entire finding of the Trial Court. They argued that a re-evaluation of the quantum herein would be prudent seeing that the Respondent mainly suffered a degloving injury.

23. They contended that assessment of quantum of damages in a claim for general damages was a discretionary exercise which must be exercised judicially. They asserted that the discretion in assessing the amount of general damages payable would be disturbed if the trial court took into account an irrelevant factor or, left out of account a relevant factor or short of that, the amount was so inordinately low or so inordinately high that it must have been a wholly erroneous estimate of the damages.

24. They argued that court awards for damages had to be made taking into account comparable injuries or similar injuries and awards as was held in the case of **Denshire Muteti Wambua vs Kenya Power & Lighting Co Ltd [2013]eKLR** and that damages had to be within the limits set out by decided cases as was held in the case of **Godfrey Wamalwa Wamba & Another vs Kyalo Wambua [2018]eKLR**.

25. They urged the court to disturb the Trial Court's award of Kshs 500,000/= as general damages as the same was so high as to be an erroneous estimate. To buttress their point, they relied on the case of

**Jubilee Hauliers Limited & Another vs Mary Waithera**

**Wanja[2019]eKLR** where the court upheld an award of Kshs 200,000/= for degloving injuries to the elbow, multiple lacerations on the right arm and soft tissue injuries on the chest, cut on the tongue and bruises on the forehead.

26. They invoked Section 27(1) of the Civil Procedure Act and urged the court to allow the appeal with costs.

27. On her part, the Respondent placed reliance on the case of **Butt vs Khan (1982-1988) 1 KAR** where it was held that the court would only interfere with the Trial Court's findings if the same was based on no evidence or a misapprehension of evidence or the judge acted on wrong principles. She was categorical that the award of Kshs 500,000/= by the Trial Court was reasonable in the circumstances. In that regard, she relied on the case of **Philip Njihia Kamau vs Peter Muogoya & Another[2024]eKLR** where the High Court enhanced general damages awarded by the Trial Court from Kshs 100,000/= to Kshs 500,000/= for the injuries sustained by the Appellant among them degloving injury of the left foot.

28. It is well settled in law that an appellate court will not disturb an award of general damages unless the same was so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended the law, a principle that was dealt with in the case of **Margaret T. Nyaga vs Victoria Wambua Kioko [ 2004] eKLR.**

29. It must be understood that money can never really compensate a person who had sustained any injuries. No amount of money could remove the pain that a person went through no matter how small an injury appeared to be. It would in fact be difficult to say with certainty that a particular amount of money would be commensurate with the injuries that a person had sustained. It was merely an assessment of what a court would find to be reasonable in the circumstances to assuage a person who had suffered an injury.
30. However, this assessment was not without limits. A court had to ascertain to itself the sum of general damages that courts and especially appellate courts would ordinarily award in respect of a particular injury. A court therefore had to be guided by precedents.
31. Indeed, in the case of **Kigaraari vs Aya(1982-88) 1 KAR 768**, it was stated that damages had to be within the limits set out by decided cases and also within the limits the Kenyan economy could afford. This was because high awards would lead to higher insurance premiums which would in turn affect the members of the public.
32. This court also had due regard to the case of **Lim vs Camden HA [1980] AC 174** where it was held that even in assessing compensatory damages, the law sought to indemnify the victim for the loss suffered and not to punish the tortfeasor for the injury that he had caused.
33. Similar injuries ought to attract comparable awards. However, in the quest for consistency, courts also had to recognize that no case was exactly the same as the other. It must be noted that cases cannot contain exact injuries and they are merely for comparison purposes. Each case

therefore had to be decided according to its own peculiar circumstances but keeping in mind that any monies awarded had to be sustainable.

34. Towards this end, an appellate court ought not to interfere with the discretion of a trial court merely because it could have awarded a lower or higher sum than that which was awarded by the trial court. It could only interfere where the award of general damages was so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended as was held in the case of **Margaret T. Nyaga vs Victoria Wambua Kioko** (Supra).

35. In her Amended Complaint dated 21<sup>st</sup> September 2022 and filed on 22<sup>nd</sup> September 2022, the Respondent pleaded that as a result of the accident she suffered a blunt injury to the chest and back and severe degloving injury to the left foot.

36. Notably, Dr Danson Gichagi Gitonga (hereinafter referred to as “PW 3”) produced the Discharge Summary and Medical Report for the Respondent and the receipts thereof as exhibits in court. Evans Karega (hereinafter referred to as “PW 4”) produced her P3 Form as an exhibit in this case.

37. Dr Jenipher Kamotho (hereinafter referred to as “DW 3”) testified that the medical examination revealed that about one (1) year later, the Respondent had healed with normal gait and a scar of left foot but that she complained of pain on left leg. She added that although the Respondent still had an open wound one (1) year later, she would not require future treatment. She produced the Medical Report as evidence in court

38. The Medical Report of Dr. Joseph Sokobe dated 10<sup>th</sup> January 2023 showed that the Respondent suffered similar injuries as pleaded on the Amended Plaint. At the time of the medical examination, the Respondent had a big septic wound on the left leg and she was unable to use her left lower limb. The doctor indicated that she still needed further treatment. He termed her injuries as severe soft tissue injuries.

39. The Appellant's proposal of general damages in the sum of Kshs 200,000/= was inordinately low bearing in mind the injuries that the Respondent had sustained. Remaining faithful to the doctrine of *stare decisis* and taking the inflationary trends into consideration, it was the considered view of this court that general damages in the sum of Kshs 500,000/= that was awarded by the Trial Court was reasonable.

40. In arriving at the said conclusion, this court had due regard to the following cases:-

1. In **Annet Noti Jefwa Kayaa vs David Njau Kungu & Another [2019]eKLR**, the High Court upheld an award of Kshs 250,000/= for degloving injury of right leg and lower ankle, cut wound of the scalp, and cut wound of the left elbow;
2. In **Martin Mutuku & another vs SN (Suing through his mother and next friend DC) [2021]eKLR**, the court reduced an award of Kshs 600,000/= to Kshs 300,000/= for abrasions on the scalp, blunt injuries to the chest, blunt injuries to

the abdomen, and degloving injuries on the left foot.

3. In **H. Young Construction Company Ltd vs Richard Kyule Ndolo [2014]eKLR**, the court reduced general damages for degloving injury to the calf with loss of skin over the calf muscles and blunt injury to the left ankle joint from Kshs 350,000/= to Kshs 250,000/= general damage

41. As the issue of special damages was not in contention between parties, this court found it prudent not to belabor as there was no reason to disturb the same.

42. In the premises foregoing, Grounds of Appeal Nos (4), (5), (6) and (7) were not merited and the same be and are hereby dismissed.

#### **DISPOSITION**

43. For the foregoing reasons, the upshot of this court's decision was that the Appellants' Appeal that was dated 20<sup>th</sup> September 2023 and filed on 28<sup>th</sup> September 2023 was not merited and the same be and is hereby dismissed.

44. The Appellants will bear the Respondent's costs of this Appeal.

45. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **26<sup>th</sup>** day of **February** 2026

**J. KAMAU**  
**JUDGE**

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