

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CIVIL APPEAL NO. E020 OF 2025

ZACHARY NG'ANG'A

KARERU.....APPELLANT

VERSUS

TERESIA NJERI

KAMAU.....RESPONDENT

***(Being an appeal for the judgment delivered on 21st
January 2025 in Naivasha CMCC No. 589 of 2023 by Hon.
Alice Towett (SRM))***

JUDGMENT

1. This appeal arises from the trial court's award of Kshs. 1,650,000 in general damages to the Respondent herein for pain and suffering, together with damages for diminished earning capacity and future medical expenses.
2. The Appellant was aggrieved by the said award on general damages and filed this appeal challenging the quantum only. This is to say that liability is not in dispute.
3. The Appellant listed the following grounds of appeal in the Memorandum of Appeal: -
 - a) ***That the learned trial magistrate misapprehended the principles applicable in assessment of damages.***

- b) ***That the magistrate failed to evaluate the evidence properly and ignored submissions tendered by the appellant.***
- c) ***That the award of Kshs. 1,650,000 was inordinately high in the circumstances.***
- d) ***That the magistrate relied on speculative or irrelevant evidence, leading to a wholly erroneous estimate of damages.***
4. The appeal was canvassed by way of written submissions which I have considered.
5. The appellant submitted that the respondent sustained a fracture of facial bones, a segmental fracture of the left femur which had fully healed, and minor soft-tissue injuries. He added that according to the medical evidence, no permanent disability resulted from the said injuries thereby justifying the reduction of the amount awarded as general damages.
6. The Appellant proposed that an award of Kshs. 500,000 would be reasonable compensation while relying on the decisions in comparable awards such as ***Specialized Aluminium Renovators Ltd vs. Stephen Mutuku Musyoka [2021] eKLR, Elizaphen Mokaya Bogonko vs. Fredrick O. Ouna [2022] KEHC 2892 (KLR) and Moiz Motors Ltd vs. Harun Ngethe Wanjiru [2021] eKLR*** where the claimants who suffered similar injuries were each awarded general damages of Kshs. 500,000.

7. The Respondent, on the other hand supported the trial court's award, arguing that the injuries sustained sustained in the accident were grave, extensive, and permanently disfiguring. The Respondent added that the injuries noted by both Dr. Malik and Dr. Omuya included: -

- i. Displaced segmental fracture of the left femur**
- ii. Multiple facial fractures involving maxilla, zygoma, nasal bone and left orbital bone**
- iii. Loss of two incisor teeth**
- iv. Soft-tissue injuries to the knee**
- v. Deep cut wound on the left breast**
- vi. Soft-tissue injuries on the face and left hand**
- vii. 40% permanent disability (as per Dr. Omuya)**

8. The Respondent submitted that the Appellant's proposed figure of Kshs. 500,000 is based on incomparable authorities involving lesser injuries.

9. The respondent relied on the following comparable awards:
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- i) ***Jesca Kaari Mwangi vs. Fara Said Hassan*** [2009]KEHC 2446 (KLR) where the claimant was awarded Kshs. 1,500,000
- ii) ***Joseph Mwanza vs. Eldoret Express Civ. Case 160 of 2004 (UR)*** where Kshs. 1,200,000 was awarded in respect of a claimant who suffered multiple craniofacial fractures that resulted in 40% disability

- iii) **Zachary Kariithi vs. Jashon Otieno Ochola [2016] KEHC 2643 (KLR)** Kshs. 1,500,000 was awarded to the claimant.
- iv) **Azhar Ali vs. Sheikha Mohamed [2020]** where, for similar injuries, the claimant was awarded Kshs. 1,500,000 in general damages.

10. The Respondent argued that an award of Kshs. 1,650,000 is consistent with precedent when inflation is factored in. She therefore urged the court to dismiss the appeal with costs.

Issues for Determination

11. From the record and submissions, I find that the following issues arise for my determination: -

- a) **Whether the trial court's award of Kshs. 1,650,000 in general damages for pain and suffering was inordinately high or based on an error of principle.**
- b) **What orders should issue as to costs.**

Analysis and Determination

12. The law is settled that an appellate court will not disturb an award of damages unless it is demonstrated that the trial court acted on a wrong principle, misapprehended the evidence, or made an award that is so inordinately high or low as to represent an erroneous estimate.

13. This court is therefore required to examine the award of Kshs. 1,650,000 and establish if falls afoul the above stated principles.

6.2 The Injuries and Medical Evidence

14. As I have already stated elsewhere in this judgment, medical reports presented by both parties confirm that the Respondent sustained the following injuries in the accident in question: -

- i) **multiple facial fractures (maxilla, palate, zygoma, nasal bone, left orbital bone);**
- ii) **displaced segmental fracture of the left femur;**
- iii) **loss of two incisors;**
- iv) **multiple deep cut wounds and soft-tissue injuries;**
- v) **prolonged hospitalization and 4-month use of crutches;**
- vi) **significant facial scarring;**
- vii) **permanent disability assessed at 40% by Dr. Omuya.**

15. I note that while the Appellant disputed the disability rating, she did not provide a contradictory percentage or challenge the methodology. I find that the trial court was therefore entitled to rely on the uncontroverted disability assessment.

16. My view is that the Respondent's injuries were serious, extensive, and partly permanent as they include both orthopaedic and craniofacial trauma.

17. I have also considered the authorities cited by the appellant and I note that they predominantly involve single fractures

or soft-tissue injuries, and that the awards therein of Kshs. 500,000 correspond materially to less serious injuries.

- 18.** The respondent's authorities, in contrast, involve multiple fractures, facial injuries, permanent disability and disfigurement. I further note that the cited awards range from Kshs. 1,200,000 to Kshs. 1,500,000, with most of them being several years old, necessitating an upward reflection for inflation. I find that the trial court's award of Kshs. 1,650,000 therefore falls within the range/band of comparable awards.
19. Considering the multiplicity and severity of fractures, loss of teeth, permanent facial disfigurement, extended recovery period, disability assessment of 40% and the prevailing comparable awards, I am not persuaded that the award of Kshs. 1,650,000 was excessive or based on an error of principle. In **Butt vs. Khan (Civil Appeal 40 of 1977) [1978] KECA 24 (KLR)** it was held that: -

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

20. The appellant has not demonstrated that a relevant factor was ignored, that an irrelevant factor was considered, or

that the award was wholly erroneous. In sum, I find that the threshold for appellate interference with the trial court's award, as set out in the above cited case, has not been met.

Disposition

21. For the foregoing reasons, I make the following final orders:

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- a) The appeal on quantum is hereby dismissed in entirety.***
- b) The award of Kshs. 1,650,000 in general damages for pain and suffering made by the trial court is upheld.***
- c) Costs of the appeal shall be borne by the appellant.***

22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF FEBRUARY, 2026.

**HON. W. A. OKWANY
JUDGE
05/02/2026**

FOR APPELLANT Kairu

FOR RESPONDENT Safari

COURT ASSISTANT Karani