



REPUBLIC OF KENYA



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**Mbaria v Yatich (Civil Appeal E109 of 2022)
[2026] KEHC 2594 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E109 OF 2022
E OMINDE, J
FEBRUARY 26, 2026**

BETWEEN

JOSEPH XAVIER MBARIA APPELLANT

AND

FRANKLINE KIPROTICH YATICH RESPONDENT

(Being an Appeal from the Judgement and decree of Hon. D. Mikoyan in Eldoret CMCC No. 195 of 2020, delivered on the 20th day of July 2021)

JUDGMENT

1. Vide a Complaint dated 21st February 2020, the Plaintiff, now the Respondent sought for compensation for injuries sustained a road traffic accident that occurred on or about 18th November 2019. The Respondent pleaded that he was a lawful rider of a motor cycle registration number KMEX 159 at Imbinga area along the Soy-Likuyani tarmac road when the defendant or his agent/driver, negligently drove motor vehicle registration number KCG 476T Isuzu FRR Lorry causing it to hit the Respondent thereby causing him injuries loss and damage.
2. The Respondent pleaded that he suffered the following injuries;
 - i. Mild head injury with brief loss of consciousness
 - ii. Bruises & lacerations on the right forehead.
 - iii. Blunt injury to the chest.
 - iv. Fracture of the right radius (shaft).
 - v. Fracture of the right femur (comminuted).
 - vi. Fracture of the 2nd , 3rd & 4th metatarsals of the right foot.



- vii. Fracture of the right medial malleolus.
- viii. Fracture of the superior pubic ramus (right side).
3. The Appellant, then the defendants, filed a statement of defence denying the contents of the plaint and listing the particulars of negligence that he attributed to the Respondent.
4. The matter then proceeded to full hearing and the trial court in its judgement apportioned liability at 30%:70% in favour of the Respondent and against the Appellant and thereafter proceeded to award the Respondent damages as follows; General damages for pain and suffering Kshs. 3,200,000/- less 30% liability - Kshs. 2,240,000; Special damages at Kshs. 7,850 not subject to liability. Costs and interest at court rates
5. Being aggrieved with the decision of the trial court on the quantum of damages awarded to the Respondent, the Appellant instituted the present appeal vide a Memorandum of Appeal dated 27th July 2022 premised on the following grounds;
 1. That the learned trial magistrate erred in law and fact in awarding Kshs. 3,200,000/- as general damages which was manifestly excessive having regard to the injuries sustained by the respondent.
 2. That the learned trial magistrate erred in law and fact in adopting the wrong principles in making a determination on the assessment of damages payable to the respondent thereby arriving at an erroneous decision.
 3. That the learned trial magistrate erred in law and fact by failing to take into consideration and/or be guided by relevant authorities and/or precedents with comparable injuries like the ones sustained by the respondents thereby arriving at an excessive amount payable for the general damages.
 4. That the learned trial magistrate erred in law and fact in failing to take into account relevant issues and/or factors in making a determination as to the damages payable thereby arriving at an erroneous decision.
6. Given that the appeal is on quantum only, I shall not reproduce the testimonies of the witnesses. The appeal was prosecuted by way of written submissions and each of the Counsels filed their respective submissions on behalf of the parties.

Appellants' submissions

7. Counsel for the appellant submitted that it is a well-established principle that in suits brought in respect of bodily injuries the measure of damages is governed by the principle of restitution in integrum that is an award for bodily injuries is intended to be compensatory in nature such that the Plaintiff should receive monetary terms no more and no less than the injuries sustained. That additionally, an award for general damages must reflect the trend of previous, recent and comparable awards.
8. He urged that the role of an appeal court as regards an appeal on quantum was well espoused by the Court in *Barnabas v Ombati* (Civil Appeal E43 of 2021) and that therein, the 1st respondent sustained severe multiple fractures with 30% permanent disability and the court awarded Kshs. 2.5 million/= in general damages.
9. Counsel urged that the degree of permanent disability in the cited case clearly shows the severity of the injuries. The respondent herein was not awarded any degree of permanent disability and therefore, the



injuries in the cited case are clearly not comparable to the injuries in the case herein. He submitted that the trial magistrate not only adopted the wrong principles in making a determination on the damages awardable to the respondent but also failed to consider and be guided by the relevant authorities with comparable injuries making an award that was inordinately high considering the injuries sustained.

10. Counsel submitted that considering that no permanent disability was sustained by the respondent, an award of Kshs. 800,000 to Kshs. 1,000,000/= would suffice as opposed to Kshs 3,200,000 which the trial court awarded.
11. He placed reliance on the decision in *Onunga v Jonathan* (Civil Appeal 20 of 2019, [2024] eKLR where the Court of Appeal at Kisumu upheld an award of Kshs. 1,000,000/= for the following injuries; comminuted fracture of the right leg tibia shaft, transverse fracture of the right leg abula bone, left hip comminuted intertrochanteric fracture, fracture of the right femur, dislocation of the lumbar-sacral spine of the back, wounds on the right lower limb, pain on the waist, sprain at the cervical spine of the neck and the lumbar-sacral spine of the back, deep wound on the left lower leg, chest pain, pain on the upper arm and a dislocated right knee joint.
12. He urged the court to be guided by the aforesaid authority in setting aside the award of the trial court and re-assess it downwards to an award of between Kshs. 800,000/= to Kshs. 1,000,000/=.

Respondents Submissions

13. Learned counsel for the respondent opened his submissions by citing the case of *Jackson Kaio Kivuva v Penina Wanjim Muchene* [2019] eKLR on what the duty of the appellate court is. Counsel restated the injuries suffered by the Respondent and proceeded to cite decisions where the parties had suffered comparable injuries as follows;
14. That in the case of *Kennedy Oseur v Musa Locho & Another & Copy Point Limited* [2009] eKLR, Nairobi HCC No. 248 of 2001, Justice J. M. Khamoni awarded Kshs. 2,000,000/= for head injury leading to concussions, cut wound and bruises at the scalp, fracture of the left scapula, compound fracture dislocation of the left elbow, chest injuries with multiple fractures of the 5th, 6th and 7th ribs and fracture of the left femur upper 1/3 shaft.
15. He urged that in the case of *Sabina Nyakenya Mwangi v Patrick Kigoro & another* [2015] eKLR Justice F. Muchemi awarded Kshs. 3,000,000/= in general damages for multiple soft tissue injuries, fracture of the right upper arm, fracture of distal femur, right thigh bone and fracture of the pelvis.
16. In the case of *James Njau Kariuki v Mary Goreti Wakwibubi & Another* [2007] eKLR Justice K. Ibrahim awarded Kshs. 3,000,000/= in general damages for Fracture dislocation of the left hip involving fracture of the femur, Fracture of the femoral head. Laceration on the forehead of 7 cm, cx wound over the right nostril. Deep cut wound on the left knee, Soft tissue injuries on the left side of the chest.
17. Counsel urged that in view of the authorities cited, the award that was made by the trial Magistrate cannot be said to be inordinately high and the appeal herein must thus fail with costs to the Respondent.

Determination

18. In light of the above, the sole issue for determination is;



Whether the trial court's award for general damages was inordinately high in the circumstances

19. The duty of the Appellate court is as was laid out in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR wherein the court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

20. In *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, the court held that:

“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”

21. The principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of *Butt v Khan* [1981] KLR 470 where the court pronounced itself as follows;

“An appellate court will not disturb an award for damages unless it is 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”.

22. The Court of Appeal in *Charles Oriwo Odeyo vs. Apollo Justus Andabwa & Another* [2017] eKLR noted in this regard that;

The assessment of damages in personal injury case by court is guided by the following principles: -

An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

The award should be commensurable with the injuries sustained.

Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

The awards should not be inordinately low or high (See *Boniface Waiti & another Vs Michael Kariuki Kamau* (2007) eKLR.’

23. In *Denshire Muteti Wambua vs. Kenya Power & Lighting Co. Ltd* [2013] eKLR it was held that;

“the general method of approach for assessing damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases”.

24. The above said, I have considered the awards given by different courts in the following cases where the plaintiffs sustained injuries that are comparable to the ones sustained by the Respondent herein;



25. In the case of Dennis Nyamweno Openda vs Anwarali & Brothers Limited & Another [2015] eKLR the plaintiff suffered a fractured left clavicle, fractured right humerus, unstable multiple fractures of the pelvic bones (open book pelvic fracture), lacerated scalp wounds, right radial nerve injury leading to a right wrist drop and muscle wasting, blunt chest wall injury and urethral strictures complicating pelvic fracture and prolonged catheterization. The plaintiff was awarded general damages of KShs. 1,800,000/= in the year 2015.
26. In Samuel Githambo Makumi v South Siox Farms Ltd. Nakuru HCC No. 9 of 2008. There, the plaintiff was awarded Kshs. 1,500,000/= for injuries sustained as follows: multiple fractures of the right and left femur, fracture of inferior public ramus radius and right pelvis, fracture of the right scapular, and closed fracture medial malleolus of the leg.
27. In Florence Hare Mkaha v Pwani Tawakal Mini Coach & Another (2012) eKLR, where the plaintiff suffered failure of the iliac crest, superior ramus, left pubis, fracture left acetabulum, left knee-fractural condyle of femur. The medical reports indicated that the plaintiff was saddled by permanent incapacity or disability, but the level or percentage thereof is not indicated in any of the reports. The plaintiff there was awarded Kshs 2,400,000/=. Apart from the fracture of the acetabulum the rest of the injuries are inconsistent with the case at hand and the percentage of permanent incapacity is unknown.
28. I have considered the awards in the above cited authorities. I have also addressed my mind to the proposals given by both Counsel and the authorities cited in support thereof. The first thing that I wish to point out is that I find all the authorities cited to be relevant in terms that the injuries sustained are to a large extent comparable to the injuries sustained by the Respondent herein. This is in appreciation of the fact that no two injuries can ever be exact to the very last detail.
29. Secondly, I note that the awards given for these injuries range from between Kshs. 1,000,000/- to Kshs. 3,000,000/-. Again by dint of the fact that each individual's body constitution responds to pain differently, is able to absorb any impact differently and heals differently, it is my considered opinion that this is a fair range and an award for general damages for an amount that is anywhere within this range depending on the circumstance of each case cannot in my view be construed to be inordinately high.
30. For the above reasons, I am satisfied that the award of the trial court of Ks. 3,200,000/- which after being subjected to liability at 30% and bringing it down to Kshs. 2,240,000/- is not inordinately high. In this regard, I find that the appeal on quantum lacks merit and the same is accordingly dismissed with costs to the Respondent.

READ DATED AND SIGNED AT ELDORET ON 26TH FEBRUARY 2026

E. OMINDE

JUDGE

