

JUDGMENT
HCCA E003 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)

HCCA E003 OF 2025

BETWEEN
JOHN ONYANGORE
ONDIEKI.....APPELLANT
AND
ZABLON ONDIEKI
VICTOR.....RESPONDENT

(Being an appeal from the Judgment and Decree in
Nyamira MCCC E072 of 2023 by Hon. B.
Okong'o (RM) on 19th December 2024)

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1. The suit giving rise to this appeal was commenced by a Plaintiff dated 17th March 2023 by Zablun Ondieki Victor, now the Respondent. The Respondent sought general and special damages arising out of a road traffic accident that occurred on 07th November 2022 involving Appellant's motor vehicle registration number KCY 569J in which he was a passenger.
2. The Defendant, John Onyangore Ondieki, now the Appellant, entered appearance and filed a Statement of Defence dated 12th April 2023. He denied liability, the occurrence of the accident, negligence and the nature and extent of the alleged

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injuries. The Appellant also pleaded, in the alternative, contributory negligence.

3. The matter proceeded to hearing. The Plaintiff testified and produced medical documents in support of his claim. The defence did not call any witness. Upon consideration of the evidence and submissions, the learned trial magistrate delivered judgment on 19th December 2024 apportioning liability at 100% against the Appellant and awarding general damages of KES.250,000 and special damages of KES. 22,315 together with costs and interest.
4. Aggrieved by the award on quantum, the Appellant lodged a Memorandum of Appeal dated 17th January 2025, the Record of Appeal dated 13th November 2025 and the Supplementary Record of Appeal dated 03rd December 2025. The appeal challenges only the award of general damages. The Appellant contends that the award of KES.250,000 for general damages was excessive, that the learned magistrate failed to properly consider the Appellant's authorities, and that the discretion in assessment of damages was not exercised judiciously.
5. As this is a first appeal, the duty of this Court is settled. In **Peters v Sunday Post Ltd [1958] EA 424**, the Court stated that an appellate court has jurisdiction to review the evidence in order to determine whether the conclusions of the trial

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court should stand, but that jurisdiction is exercised with caution. Where the trial court has failed to appreciate the weight or bearing of the evidence, or has plainly gone wrong, the appellate court will not hesitate to interfere.

6. That duty was restated by the Court of Appeal in **Abok James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR**, where it was emphasized that a first appellate court must re-evaluate, reassess and re-analyse the evidence and draw its own independent conclusions while bearing in mind that it did not see or hear the witnesses.
7. Guided by those principles, I have reconsidered the entire record. The principles governing interference with an award of damages are equally settled. In **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M.M. Lubia & Another [1987] KLR 27**, the Court of Appeal held that an appellate court will interfere with an award of damages only if the trial court took into account an irrelevant factor, failed to take into account a relevant factor, or the award is so inordinately high or low that it must represent a wholly erroneous estimate of the damage.
8. In **Paul Kipsang Koech & Another v Titus Osule Osore [2013] eKLR**, the Court reaffirmed that assessment of

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quantum is a discretionary exercise, but the discretion must be exercised judicially and in accordance with established legal principles. An appellate court will not substitute its own figure merely because it would have awarded a different sum.

9. The injuries pleaded in the plaint were dislocation of the left hip joint, deep cut wounds, blunt trauma to the back, chest contusion, lacerations and multiple bruises. The medical evidence shows that the Respondent was treated on 07th November 2022 at Christamarianne Mission Hospital. The treatment notes and discharge summary emphasize soft tissue injuries with no reference to left hip dislocation.

10. The Appellant, in submissions dated 19th January 2026, urged that the injuries were purely soft tissue in nature and relied on authorities where modest awards were made. In **HB (Minor suing through mother and next friend DKM) v Jasper Nchonga Magari & Another (2021) eKLR**, the court upheld an award of KES. 60,000 for soft tissue injuries. In **FM (Minor suing through mother and next friend MWM) v JNM & Another (2020) eKLR**, an award of KES. 100,000 was made for comparable injuries. In **Ephraim Wagura Muthui & 2 Others v Toyota Kenya Limited & 2 Others (2019) eKLR**, the court awarded KES. 90,000 for soft tissue injuries. The Appellant argued that the award of

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KES. 250,000/= was far outside the range established by those authorities.

11. The Respondent, in submissions dated 17th January 2025, supported the award and relied on authorities in which the courts upheld comparatively higher awards on account of more serious injuries than those established in the present matter.
12. In **Poa Link Services Co. Ltd & Another v Sindani Boaz Bonzemo (2021) eKLR**, the respondent in that case had sustained a fracture injury in addition to soft tissue trauma. The medical evidence demonstrated significant bodily injury requiring prolonged treatment. The High Court upheld an award of KES. 350,000, observing that the fracture and attendant pain justified a higher level of compensation.
13. In **Vincent Cheruiyot Rono v Mombasa Maize Millers Limited (2006) eKLR**, the claimant had suffered a fracture injury together with other bodily trauma which resulted in substantial pain and a period of incapacity. The court awarded KES. 400,000/=, taking into account the seriousness of the fracture and the impact on the claimant's mobility and general well-being.
14. Similarly, in **Kenya Power & Lighting Co. Ltd v Mary Akinyi, Kisumu HCCA No. 72 of 2007**, the claimant had

sustained more than mere soft tissue injuries. The injuries included a fracture and significant bodily trauma requiring active medical intervention. The High Court upheld an award of KES. 350,000, noting that the presence of a fracture distinguished the case from those involving purely soft tissue injuries.

15. The Respondent further placed reliance on **Telkom Orange Kenya Limited v I S O (Minor suing through his next friend and mother J N) (2018) eKLR**. In that decision, the Court of Appeal was confronted with an appeal on quantum and restated the settled principle that an award of general damages is made at large. The Court observed that in assessing such damages, a trial court must exercise sound judicial discretion, guided by the nature and extent of the injuries proved, comparable awards in similar cases, and prevailing economic conditions. The Court emphasized that while comparable injuries should, as far as possible, attract comparable awards so as to promote consistency, no two cases are ever exactly alike, and the court must ultimately do the best it can in the circumstances of each case. The decision thus reinforces both the need for comparability and the caution that assessment of damages is not an arithmetical exercise but one grounded in judicial evaluation of the particular injuries proved.

16. It is therefore evident that the authorities relied upon by the Respondent involved either fracture injuries or more severe bodily harm than the multiple soft tissue injuries demonstrated in the present appeal, a distinction that is material when applying the principle that comparable injuries should attract comparable awards.
17. The principle of comparability was also underscored in **Stanley Maore v Geoffrey Mwenda (2004) eKLR**, where the Court of Appeal held that in assessment of damages, comparable injuries should as far as possible be compensated by comparable awards, keeping in mind the correct level of awards in similar cases. That principle ensures consistency and predictability in awards.
18. In addition, the Respondent relied on **Ugenya Bus Service v Gachoki and Jabane v Olenja (1986) KLR 661**, where the Court of Appeal recognized that courts must take into account the diminishing value of the Kenya Shilling and prevailing inflationary trends, but at the same time avoid awards that are extravagant or amount to unjust enrichment.
19. When the authorities cited by both parties are examined closely, it becomes apparent that the awards in **HB (Minor suing through mother and next friend DKM) v Jasper Nchonga Magari & Another** (supra) and **FM (Minor suing**

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through mother and next friend MWM) v JNM & Another (supra) and **Ephraim Wagura Muthui & 2 Others v Toyota Kenya Limited & 2 Others (2019)** (supra) involved injuries described purely as soft tissue injuries with no evidence of dislocation or structural damage and the awards ranged between KES. 60,000/= and KES. 100,000.

20. On the other hand, the decisions in **Poa Link Services Co. Ltd & Another v Sindani Boaz Bonzemo** (supra), **Vincent Cheruiyot Rono v Mombasa Maize Millers Limited** (supra), and **Kenya Power & Lighting Co. Ltd v Mary Akinyi** (supra), involved either more severe injuries or circumstances that justified higher awards, including fractures or more serious trauma.

21. The task of this Court is not merely to compare figures but to compare injuries. The medical evidence before the trial court points to multiple soft tissue injuries without radiological confirmation of a fracture or permanent structural damage. No permanent disability was assessed.

22. Applying the principles in **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M.M. Lubia & Another** (supra) and **Paul Kipsang Koech & Another v Titus Osule Osore [2013] eKLR** (supra), the question is whether the award of KES. 250,000 was so inordinately high

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as to represent a wholly erroneous estimate. Having regard to the authorities cited, and guided by the principle on comparability, I am persuaded that the award exceeded the range ordinarily applicable to soft tissue injuries without permanent disability.

23. At the same time, the multiplicity of injuries and the passage of time since the authorities cited by the Appellant must be considered to account for inflationary trends while avoiding excessive awards.

24. Balancing all these considerations and taking into account the nature of the injuries, the absence of permanent disability, the multiplicity of soft tissue injuries, and the comparability principle, I find that an award of KES. 150,000 is fair, reasonable and commensurate in the circumstances.

25. In the result, the appeal succeeds to the extent that the award of general damages of KES. 250,000 is set aside and substituted with an award of KES. 150,000. The award of special damages remains undisturbed.

26. The Respondent shall have costs of the suit in the subordinate court and each party shall bear its own costs of the appeal.

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27. There shall be stay of execution for 30 days from today's date

DELIVERED AT NYAMIRA THIS 26th DAY OF
February 2026

WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

For Appellant - Ms. Moraa for KRK Advocates LLP

For Respondent - Ms. Shiwatso for G.B.Shilwatso & Co.
Advocates