

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E046 OF 2025**

**DAMARIS MACHUMA SIFUNA
APPELLANT**

VERSUS

**JANE WAMBUI KURIA 1ST
RESPONDENT**

**IRINE MAINGI 2ND
RESPONDENT**

(Being an appeal from the judgment of Hon. W.O. Rading, Senior Resident Magistrate, delivered on 17th April 2025 in Naivasha MCCC No. E381 of 2023)

JUDGMENT

- 1.** This appeal arises from the trial court's decision in a running down claim in which liability had earlier been recorded, by consent, in the ratio of 80:20 in favour of the Appellant. The trial court thereafter awarded the Appellant Kshs. 700,000 in general damages (less 20% contribution = Kshs. 560,000) and Kshs. 9,650 in special damages
- 2.** Aggrieved by the award of general damages, the Appellant, who was the claimant before the trial court, lodged the present appeal on the single ground that the trial magistrate erred in failing to appreciate the gravity of her injuries, the assessed permanent incapacity, and consequently awarding minimal and incommensurate damages.

3. Both parties filed written submissions which I have carefully considered alongside the authorities cited.
4. Evidence before the trial court, as presented in the medical report of Dr. Omuyoma dated 18th July 2023 revealed that the Appellant sustained the following injuries: -

a) Compound fracture of the distal tibia and fibula

b) Dislocation of the left ankle joint

c) Blunt injury to the head with mild concussion

d) Soft tissue injuries to the right hand

e) Permanent disability of 40%

5. A second medical examination by **Dr. Wambugu** dated 27th November 2023 noted the following injuries: -

a) Compound fracture/dislocation of the left ankle

b) Cut wound on the chin

c) Blunt head injury

d) Permanent disability of 20%

6. In her written submissions in this appeal, the Appellant submitted that the trial Magistrate did not appreciate the gravity of the injuries she sustained in the accident, including a serious compound fracture and brain concussion. She emphasized that disability assessment of 40% by Dr. Omuyoma reflected significant long-term impairment and argued that the authorities cited by the

trial court were not comparable, as the claimants therein had less severe injuries and no permanent incapacity.

7. The Appellant insisted that the court should have been guided by comparable cases such as ***Francis Ndung'u Wambu & 2 Others vs. VK (2019) eKLR*** and ***Philip Oganda Omworo vs. Douglas Onkundi Nyabuto (2024) eKLR*** where awards ranged between Kshs. 1,000,000 – 1,800,000 for similar injuries.
8. The Appellant contended that her injuries were more serious than those in the above cases, especially given the permanent incapacity of 40%. She urged the court to enhance the award to Kshs. 1,800,000.
9. The Respondents, on the other hand, opposed the appeal and submitted that the Appellant already sought and initiated settlement of the lower court decree thereby making this appeal an afterthought and an abuse of court process. It was submitted that the trial magistrate properly analysed comparable authorities and the nature of the Claimant's injuries.
10. The Respondents observed that the Appellant suffered a singular compound fracture, unlike the authorities she cited which involved multiple fractures and more severe complications. It was the Respondents' case that the award of Kshs. 700,000 was reasonable, fair and guided by similar awards in comparable cases. They relied on the cases of: -
 - a) ***Penina Waithira Kaburu vs. LP [2019] KEHC 10833*** on the need for comparative analysis.

- b) *Harun Muyoma Boge vs. Daniel Otieno Agulo (2015) eKLR*** on discretion in assessment of damages; and
- c) *Sheikh Mushtaq Hassan vs. Nathan Mwangi Kamau Transporters [1986] KLR*** where the court addressed appellate interference principles.

Issue for Determination

- 11.** The sole issue for determination is whether the award of general damages of Kshs. 700,000 was inordinately low as to warrant interference by this Court.

Analysis and Determination

- 12.** The law is settled that an appellate court may only interfere with an award of damages if the trial court applied the wrong principles, misapprehended the evidence, or arrived at an award so inordinately high or low as to be an erroneous estimate.
(See ***Butt vs. Khan (1977) 1 KAR***).
- 13.** A perusal of the record reveals that the Appellant's injuries consisted of one compound fracture, soft tissue injuries, mild concussion, and disability between 20-40%. I note that the authorities cited by the Appellant involved multiple fractures, permanent disability assessments and longer hospitalization or more severe complications.
- 14.** The Respondents, by contrast, cited cases where claimants suffered similar single fractures, disability ranged between 15-25% and awards ranged from Kshs. 600,000 - 750,000.

- 15.** Given the above rival positions, I find that the trial court's reliance on awards around Kshs. 700,000 was within the correct margin.
- 16.** On permanent disability, Dr. Omuyoma assessed disability at 40%, while Dr. Wambugu placed it at 20%. I find that the trial court considered both reports and settled within a reasonable award bracket.
- 17.** On the claim that the Appellant already initiated the settlement of the decree, I find that the mere fact that the Appellant had already initiated settlement does not bar an appeal, but only supports the Respondents' position that special hardship or injustice is not demonstrated to justify interference with the award.
- 18.** Upon re-evaluating the evidence and the authorities cited, I find that the trial magistrate applied the correct legal principles and that the award of Kshs. 700,000 for general damages was not inordinately low. I further find that the injuries that the Appellant sustained were adequately compensated within the prevailing range for comparable cases and that no misdirection, misapprehension, or application of wrong principles was demonstrated.

Disposition

- 19.** Accordingly, I find that the appeal lacks merit and I therefore dismiss it in its entirety with orders that each party will bear her own costs of the appeal.

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

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

FOR APPELLANT Amboka
FOR RESPONDENT Mwaniki
COURT ASSISTANT Karani