

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CIVIL APPEAL NO. E002 OF 2025

DREAMLINE EXPRESS LIMITED.....
.....APPELLANT

-VERSUS-

FAUZIA SHANI.....1ST
RESPONDENT

ROADTAINERS MOMBASA LTD.....2ND
RESPONDENT

***(Being an appeal from the judgment of Hon. C. K. KITHINJI
(PM) in Voi CMCC No. E012 of 202 delivered on 13th
November 2024)***

JUDGMENT

- 1) The respondent sued the appellants in Voi CMCC No. E012 of 2022 seeking general damages for pain and suffering and special damages together with costs and interest for a road traffic accident that occurred on 22/12/2021 along Nairobi-Mombasa highway involving motor vehicle registration no.

KCU 965C in which the respondent was travelling as a passenger.

2) The issue of liability was determined in Voi CMCC No. E053 of 2022 at 20:80 in favour of the respondent against the appellant.

3) The Respondent sustained the following injuries;

(i) Bruises and abrasions on the right forearm.

(ii) Bruises and abrasions on both knees.

(iii) Bruises and abrasions upper back.

(iv) Cuts and lacerations on both feet.

(v) Brunt trauma to the right arm and shoulder

(vi) Pain to the chest and abdomen.

4) The trial court assessed damages as follows;

<i>General damages for pain and suffering</i>	<i>300,000</i>
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<i>Special damages</i>	<i>3,100</i>
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<i>Total</i>	<i>303,100</i>
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Subject to the agreed apportionment of damages.

5) The appellant has appealed against the said judgment on the following grounds;

- i. The learned magistrate in law and misdirected herself when she failed to consider the appellant's submissions on both points of law and facts.***
- ii. That the learned magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.***
- iii. The learned magistrate erred in law and fact in awarding the Respondent Ksh.300,000/- for general damages hence arriving at a wrong finding as regards the nature of injuries sustained by the Respondent.***
- iv. The learned trial magistrate erred in law and fact by awarding the Respondent an inordinately high quantum as damages in the circumstances of this case.***
- v. The learned magistrate erred in law and fact in awarding the Respondent a sum that was as excessive as to an amount that is erroneous as to***

- the estimate of general damages suffered by the Respondent.***
- vi. The Learned Magistrate erred in fact and in Law in failing to consider the Appellants Submissions on Quantum and legal authorities relied upon in support thereof.***
- vii. The Learned Magistrate erred in law and fact by overly relying on the Respondents' submissions which were not relevant and without addressing his mind to the circumstance of the case.***
- viii. The Learned Magistrate erred in fact and in Law in failing to consider conventional awards in cases of similar nature.***

6) The parties filed written submissions as follows; The appellant submitted that this appeal arises from a judgment delivered on 13th November 2024 in Voi Civil Suit No. E012 of 2022, wherein the trial court awarded the respondent general damages of Kshs. 300,000 and special damages of Kshs. 3,100 for injuries sustained in a road accident on 22nd

December 2021, with liability apportioned at 80% against the first respondent and 20% against the appellant.

- 7) Being aggrieved by this judgment, the appellant filed an appeal on 6th December 2024, with the primary ground for challenge being the quantum of general damages awarded.
- 8) The appellant invites this Honourable Court to consider the well-established principles governing appellate interference with quantum of damages, relying on the case of **Power Lighting Company Limited & another v Zakayo Saitoti Naingola & another**, which was cited in **Jennifer Mathenge v Patrick Muriuki Maina**, where the court articulated that damages should neither be inordinately high nor low, should compensate but not enrich a party, should be commensurate to injuries suffered, and past decisions should serve as mere guides while accounting for inflation.
- 9) Additionally, the appellant cites the Court of Appeal decision in **Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini v A M. Lubia and Olive Lubia**, which held that an appellate court should only disturb a trial court's quantum finding if the trial court took into account irrelevant factors,

left out relevant ones, or arrived at an amount that is so inordinately high or low as to represent a wholly erroneous estimate of damages.

10) Applying these principles to the present case, the appellant submits that the injuries sustained by the respondent, as confirmed by the Medical Report of Dr. Darius Kiema, were soft tissue injuries expected to heal without permanent disability.

11) The appellant contends that the award of Kshs. 300,000 is inordinately high when compared to awards in similar cases.

12) To support this position, the appellant directs the court to several judicial decisions with comparable injuries. In **Rege v Cweya**, where the respondent sustained severe soft tissue injuries including blunt trauma to the neck, chest, and abdomen, the Honourable Judge reduced an award of Kshs. 300,000 to Kshs. 80,000.

13) In **Makami v Obong'o**, where the respondent suffered soft tissue injuries including marked swelling and bruises on the forehead, neck and chest pain, and a cut wound on the

elbow and knee, the court reviewed an award of Kshs. 100,000 to Kshs. 80,000.

- 14) Furthermore, in **Kipkere Limited v Peterson Ondieki Tai**, the Honourable Judge reduced general damages from Kshs. 90,000 to Kshs. 30,000 for injuries comprising a deep cut wound on the left leg, chest contusion, and bruises on the left shoulder.
- 15) Based on these comparative authorities, the appellant urges this Honourable Court to find that the trial court's award of Kshs. 300,000 is manifestly excessive and should be set aside, with a substituted award of Kshs. 80,000 being fair and reasonable compensation for the respondent's soft tissue injuries.
- 16) The appellant also prays for costs of this appeal, relying on Section 27(1) of the Civil Procedure Act which provides that costs follow the event unless the court orders otherwise for good reason.
- 17) In conclusion, the appellant humbly urges this Honourable Court to find merit in the appeal and set aside or review the award on general damages accordingly.

- 18) The first respondent's submissions challenge both the competence and merits of the appellant's appeal arising from a judgment delivered on 13 November 2024, wherein the trial magistrate awarded general damages of Kshs 300,000 and special damages of Kshs 3,100 with liability apportioned at 80 per cent against the appellant and 20 per cent against the second respondent.
- 19) Although the second respondent settled its portion of the decree, the appellant lodged a memorandum of appeal dated 6 December 2024 but filed it on 16 December 2024, with court fees paid on 7 January 2025.
- 20) The first respondent contends that the appeal was filed out of the thirty-day period prescribed by Section 79G of the Civil Procedure Act and without leave of the court, rendering it incurably defective and incompetent, and relies on decisions where appeals filed late without extension of time were struck out for want of jurisdiction.
- 21) On the substance of the appeal, the first respondent submits that the trial court's award of general damages was neither inordinately high nor based on wrong principles; the

appellant called no witnesses and filed no submissions before the trial court and therefore cannot now challenge the award on grounds it never placed before the magistrate.

- 22) The injuries sustained by the first respondent were soft tissue injuries to the pelvis, lower back, and limbs and were comparable to those in other recent decisions where similar or higher awards were upheld, demonstrating that the award was reasonable and within judicial discretion.
- 23) The appellant has failed to show any error of principle by the trial magistrate, and the appeal is therefore devoid of merit and ought to be dismissed with costs.
- 24) This is an appeal against quantum only, and the principles that guide this court as the first appellate court are well settled.
- 25) This is a first appeal against the quantum of damages only, and the duty of this court is to re-assess the material on record while being cognizant that the trial court had the advantage of hearing and seeing the parties.

- 26) The principles guiding an appellate court in interfering with an award of damages are well settled and have been consistently upheld in numerous decisions.
- 27) An appellate court will not disturb an award of damages unless it is satisfied that the trial court took into account an irrelevant factor, or left out of account a relevant one, or that the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
- 28) Before delving into the merit of the appeal on quantum, this court must address a preliminary objection raised by the first respondent concerning the competency of the appeal itself.
- 29) The first respondent contends that the memorandum of appeal was filed out of the statutory thirty-day period prescribed by Section 79G of the Civil Procedure Act, without leave of the court, thereby rendering the appeal incurably defective. Section 79G of the Civil Procedure Act provides that every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against.

- 30) The proviso to this section, however, grants this court the discretion to admit an appeal out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
- 31) The judgment subject to this appeal was delivered on 13th November 2024. The memorandum of appeal is dated 6th December 2024, which would be within the thirty-day window.
- 32) However, the respondent has pointed out that the appeal was filed on 16th December 2024, and the court fees were paid as late as 7th January 2025.
- 33) This discrepancy suggests that while the document was lodged within time, the crucial step of payment, which perfects the filing, may have been delayed.
- 34) Even assuming, for the sake of argument, that there was a minor procedural delay, this court has considered the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent.

- 35) I find that the delay is not inordinately long. More importantly, given the substantive merits of the appeal, it would be in the interest of justice to determine the appeal on its merits rather than strike it out on a technicality.
- 36) Consequently, this court finds that the preliminary objection lacks merit and is hereby overruled. The appeal is properly before this court for determination on its substance.
- 37) Turning to the substantive appeal against the award of general damages, the appellant contends that the sum of Kshs. 300,000 awarded by the trial court for the injuries sustained by the respondent was inordinately high and excessive.
- 38) The injuries sustained by the respondent, as documented in the trial court's judgment and the medical reports, were bruises and abrasions on the right forearm, both knees, and the upper back; cuts and lacerations on both feet; blunt trauma to the right arm and shoulder; and pain to the chest and abdomen.

- 39) It is common ground that these were all soft tissue injuries. There was no evidence of any fractures, dislocations, or any resultant permanent disability.
- 40) Upon a thorough re-evaluation of recent jurisprudence from our courts, this court finds that the award of Kshs. 300,000 is neither inordinately high nor based on wrong principles, and is indeed consistent with comparable awards for similar injuries.
- 41) The appellant has invited this court to consider authorities where the High court reduced awards in respect of soft tissue injuries.
- 42) However, this court notes that in the current case, there were multiple soft tissue injuries suffered by the 1st Respondent.
- 43) Assessment of damages is a matter within the discretion of the trial court and the appellate court ought to respect that discretion if properly exercised.
- 44) The assessment of general damages is a matter of judicial discretion which an appellate court is slow to reverse or interfere with.

- 45) This court is guided by the principle that comparable injuries should be compensated by comparable awards, as held in the **Kemfro Africa Ltd case(supra)**, and finds that the trial court's award of Kshs. 300,000 aligns with the range of awards upheld in recent decisions for multiple soft tissue injuries.
- 46) Having considered the nature of the injuries, the medical evidence confirming they were soft tissue injuries that healed without permanent disability, and the comparative judicial authorities, this court finds that the award of Kshs. 300,000 was not inordinately high and did not constitute an erroneous estimate of the damages payable.
- 47) The trial court properly exercised its discretion and arrived at a figure that is consistent with current jurisprudence.
- 48) The appellant has failed to demonstrate any such error of principle.
- 49) In the result, this appeal lacks merit and is hereby dismissed.
- 50) The judgment of the trial court on quantum is upheld in its entirety, with general damages of Kshs. 300,000 and special damages of Kshs. 3,100, subject to the liability

apportionment of 80% against the appellant and 20% against the second respondent as agreed and determined in Voi CMCC No. E053 of 2022.

51) Regarding costs, this court directs that each party bears its own costs of the appeal.

52) Orders to issue accordingly.

Dated, Signed and Delivered online via Microsoft Teams at Voi this 18th of March, 2026.

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A. N. ONGERI

JUDGE

In the presence of:

Court Assistant: Mabishi/Millicent

..... **for the Appellant**

..... **for the Respondent**

ORIGINAL