



**Kiptoon v Mattan Contractors Ltd & another (Civil Appeal
E001 of 2025) [2026] KEHC 4208 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CIVIL APPEAL E001 OF 2025
RB NGETICH, J
MARCH 12, 2026**

BETWEEN

CAROLINE JEMUTAI KIPTOON APPELLANT

AND

MATTAN CONTRACTORS LTD 1ST RESPONDENT

ELIJA K. CHEBUNGEI 2ND RESPONDENT

(This appeal is from judgment/Decree of Hon. Richard K. Koech senior Principal magistrate in Eldama Ravine SPM'S Court civil suit No. E101 of 2022 delivered on 13th February 2025)

JUDGMENT

1. This matter arises from suit filed by the appellants in lower court seeking General and special damages for the injuries she sustained on 18th December 2018 while travelling in the 1st Respondents' motor vehicle registration number KAQ053W/ZC 2006 which was being driven by the 2nd Respondents. Parties herein filed consent on liability dated 14th August 2024 apportioning liability at 80:20 %; the appellant to shoulder 20% liability and the Respondents 80% liability.
2. Upon close of hearing, the trial magistrate assesses general damages at kshs 160,000 and special damages kshs 6,000 making a total of Kshs 166,000.
3. Being aggrieved and dissatisfied by the above decision, the appellants/defendants filed this appeal on the following grounds:
4. That the trial Magistrate erred in awarding Kshs 160,000 as general damages was inordinately low and not commensurate with the injuries sustained. Further that trial magistrate erred in subjecting the award to apportionment on liability.



5. The appellant urged this court to set aside the trial court's judgment on quantum and award damages commensurate with the injuries.
6. The appeal proceeded by way of written submissions.

Appellant's Submissions

7. The appellant confirmed that parties agreed on liability I the ratio of 80:20 in favour of the appellant against the Respondents and reiterated the ground of appeal and cited the case of Jeremiah & Brothers Contractor & Another v Francis Egusangu Kaguli [2020] eKLR where the court held that the appellate court can interfere on assessment of damages by trial court if the award is inordinately low. Further in the case of Simon Taveta v Mercy Mutitu [2014] eKLR the court of appeal held that the evaluation of damages must be determined by the nature and extent of injuries and comparable awards made in the past. Further that in the case of Charles Oriwo Odeyo v Appollo Justus Andabwa & Anther[2017]eKLR the court held that award of damages is within the discretion of the trial court and the Appellate court can only interfere one, if the court acted on wrong principles that the award is so excessive or so low that no reasonable tribunal would have awarded and two if the trial court considered matters it ought not to have considered or left ought matters it ought to have considered.
8. Counsel submitted that the appellant sustained the following injuries
 - a. Chest injury with hemothorax(small)
 - b. Cut wound on the anterior abdominal wall
 - c. Blunt injury to the back
9. Counsel submitted that the appellant cited two authorities in the trial court being Catherine wanjiru Kingori & 3 others v Gibson Theuri Gichubi [2005] eKLR and Vincent Cheruiyoot v Mombasa Maize Millers, Nakuru HCC No.109 of 2005 where the plaintiffs were awarded kshs 350,000 and kshs 400,000 respectively for soft tissue injuries and the Appellant herein proposed kshs 350,000.The appellant further cited the case of Wahinya v Lucheveli(civil Appeal No.E045 of 2021)KEHC13762 (KLR0 (12 October 2022 where the plaintiff sustained blunt injury to lateral chest wall, a blunt injury to the right upper limb, blunt injury to the right thigh and blunt injury to the left leg and the trial court awarded kshs 200,000 as general damages; and on appeal Justice Nyakundi upheld Kshs 200,000.the appellant cited 2 other authorities where the plaintiffs were awarded kshs 300,000 and kshs 350,000 for blunt injuries and submitted that kshs 160,000 awarded in this case is inordinately low.

Respondent's submissions

10. The Respondents submit that this appeal is fatally incompetent, misconceived, bad in law and amount to abuse of court process, the appellant having fully accepted, received and enjoyed the fruits of judgment and taxed costs in the primary suit; that upon delivery of judgment kshs 107,100 and costs assessed were paid vide cheques number 0195446303110206075002 which the appellant received and encashed without protest, reservation or qualification; that the decree is fully satisfied.
11. On whether the award of kshs 160,000 is inordinately low, the Respondents submit that the appellate court can only interfere with award of damages if the trial court acted on wrong principles or considered factors it ought not to consider and failed to consider relevant factors. The respondents submitted that the injuries were minor soft tissue injuries and award of kshs 160,000 cannot be termed as inordinately low and if this court as inclined to reassess damages, an award of kshs 120,000 would be adequate for the injuries herein.



12. Further that the trial magistrate considered medical report by Dr. Joseph C. Sokobe and mere dissatisfaction with final award does not mean evidence was ignored.
13. On subjecting special damages to apportionment, the respondent sum that just like general damages, special damages are subjected to apportionment.
14. The Respondent further cite the case of *Ziphora Wambui Wambaira & 17 others v Gachuru Kiogora & 2 others* [2004] KECA 74 (KLR) where the court held that damages should be fair both to claimant and defendant. The Respondent further cited authorities where the courts awarded lower damages for comparable or more severe injuries and concluded that the award of kshs 160,000 was reasonable.

Analysis and Determination

15. This being a first appeal, this court is enjoined to re-evaluate the evidence on record and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses testify. This principle was set out in *Selle & Another v Associated Motor Boat Co. Ltd* [1968] EA 123.
16. From the record, liability was expressly settled by consent dated 14th August 2024 at the ratio of 80:20 in favour of the Appellant. That consent was adopted by the trial court and was never set aside. Liability was not therefore contested before the trial court and cannot be reopened on appeal. The only issue for determination is therefore quantum of damages.
16. The principles guiding an appellate court on interference with an award of damages are well settled. 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, took into account irrelevant factors, failed to take into account relevant factors, or that the award is so inordinately high or low as to represent an entirely erroneous estimate of the damages. These principles were restated in *Kemfro Africa Ltd t/a Meru Express Services v Lubia & Another* [1982–88] 1 KAR 727 and have consistently been applied thereafter.
17. The medical evidence before the trial court shows that the Appellant sustained the following injuries:
 - a. Chest injury with a small hemothorax;
 - b. Cut wound on the anterior abdominal wall; and
 - c. Blunt injury to the back.
20. These were essentially soft tissue injuries, with no evidence of permanent incapacity or long-term complications. The record further shows that the trial magistrate considered the medical report on record, the nature of the injuries sustained, and the authorities cited by the parties. The court then exercised its discretion and awarded Kshs 160,000 as general damages.
20. While the Appellant cited authorities where higher awards were made, it is settled that comparable awards are only guides and not binding. Each case must turn on its own peculiar facts, the nature and severity of injuries, and the prevailing economic circumstances. Importantly, disparity alone is not a ground for appellate interference unless the award falls outside the acceptable range.
20. On the other hand, the Respondents cited authorities where courts awarded comparable or even lower sums for similar soft tissue injuries. Taking the totality of the evidence and the applicable principles into account, I am not persuaded that the award of Kshs 160,000 was inordinately low or that the trial court misdirected itself in any material respect.



20. On apportionment of liability, where liability is apportioned, both general and special damages are subject to apportionment, unless expressly excluded by the consent. The complaint that the trial court erred by subjecting the award to apportionment on liability in my view is not merited as consent did not exclude it in this case.
20. From the foregoing, I see no basis upon which to interfere with the exercise of discretion by the trial magistrate as the award on quantum was reasonable, judicious, and in accordance with established principles.
20. This appeal was consolidated with HCA NO.2,3,4 & 5 all of 2025 for purposes of hearing. The injuries sustained by the appellants arose from the same accident. Liability was settled between the parties in the ratio of 20:80 in favor of the plaintiffs against the defendant. The only challenge in the appeals is quantum where the appellants argue that the awards granted by the trial court are inordinately low. I have perused injuries suffered by appellants in each file and compared with injuries suffered in the cited authorities and like in this appeal I am not persuaded to interfere with assessment by the trial court.
21. Final orders:-
- a. This appeal is hereby dismissed in its entirety.
 - b. The judgment of the trial court on quantum is upheld.
 - c. Costs of the appeal are awarded to the Respondents.
 - d. My orders in this file to apply in HCA NO.2, 3, 4 & 5 all of 2025. I adopt my reasoning in this file to the 4 files above.

DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF MARCH 2026.

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R NGETICH

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT ELDORET THIS 12TH DAY OF MARCH 2026.

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J.R. WANANDA

JUDGE

In the presence of- :

Court Assistant – Brian Kamocho

Okara for Appellant

No appearance for Respondent

