

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**CIVIL APPEAL NO. E009 OF 2025**

**DAVID GITONGA**

**THURANIRA .....APPELLANT**

**VERSUS**

**ELIJAH MWENDA**

**LARAMA .....RESPONDENT**

*(Being an Appeal from the Judgment of Hon. M.A  
Odhiambo (SRM) delivered on 17<sup>th</sup> January 2025 in ISIOLO  
CMCC NO. E051 OF 2024).*

**JUDGMENT**

1. The Respondent herein filed suit seeking for damages for injuries and incidental loss suffered as a result of a road accident which on 15<sup>th</sup> February 2023, along Isiolo- Muriri road, involving motor vehicle registration number **KCD 559K Isuzu Lorry**, He stated that he was a pedestrian on the said road.
2. The issue of liability was settled by way of consent of the parties in the ratio of 75 % against the Appellant and 25% against the Respondent. On damages, documents and submissions were placed before court for the determination. In a judgment delivered on 17<sup>th</sup> January 2025, the court awarded the Respondent **Kshs 1,200,000** as general damages.

**Memorandum of Appeal**

3. The Appellant was dissatisfied with the award and moved this Court through a Memorandum of Appeal dated 7<sup>th</sup> May 2025, in which he has set out grounds as follows;

- a) *That the learned Trial Magistrate erred in law and fact by awarding the Respondent Kshs.1,200,000/= under General Damages which is highly inordinate and excessive.*
  - b) *That the learned Trial Magistrate erred in law and fact in making an award of Kshs.1,200,000/= under General Damages which amount is against the weight of the evidence adduced herein*
  - c) *That the learned Trial Magistrate erred in law and fact in failing to consider the submissions made by the Appellant and the legal authorities filed therewith.*
  - d) *That the award of the Learned Trial Magistrate on general damages was against the law.*
4. The Appeal proceeded by way of written submissions.

### **Appellant's Submissions**

5. It is the Appellant's submission that the respondent's injuries had considerably healed and resulted in no permanent incapacitation, and that the trial court ought to have awarded Kshs.600,000/= as sufficient award for the injuries suffered by the Respondent.
6. While submitting that comparative injuries should attract comparative awards, the Appellant has cited the case of **Mapesa vs Egesa [204] KEHC 6246(KLR)** and **Maintenance Ltd & Ano vs vs WACA ( 2015) e KLR** where both courts awarded ksh. 800,000 for much more severe injuries. The Appellant has cited three other decisions which I have read and will be considered in the determination.

7. The Appellant also faults the trial court for awarding ksh. 150,000 on account of future medical expenses yet that item was not proved.

### **Respondent's submissions**

8. The Respondent submits that contrary to the Appellant's submissions, the respondent not only suffered soft tissue but also fractures of the 5<sup>th</sup> metatarsal and mandibular fracture. It is also submitted that the fact that the respondent was hospitalized for several days was not contested. The respondent has relied on the case of **Baj vs Roadstar Ltd and 2 others ( 2018) e KLR** where an award of ksh. 2,000,000 was made in respect of what he calls fairly similar injuries.

9. On the cost of future medical expenses, the respondent submits that the cost of removing the implants at the cost of ksh. 150,000 was not controverted and that this issue was not a ground of Appeal, in any event.

### **Analysis and Determination**

10. As the first appellate Court, the Court's role is to revisit the evidence on record, evaluate it, and reach my own conclusion, This Court is guided by the holding in **Selle & Anor. v Associated Motor Boat Co. Ltd EA 123**, which mandates an exhaustive re-evaluation of the evidence.

11. I have considered the appeal, the record of the trial court, and the respective submissions. It is evident that the Appellant is challenging the award on general damages only.

12. Assessment of damages is an act of discretion by a trial court and past decisions of superior courts are replete with the principles that guide the Appellate court when faced with the decision of whether or not to interfere with such discretion. In **Kemfro Africa Ltd t/a Meru Express Services Gathogo Kanini v A.M. Lubia & another 1 KAR 727**, it was held:

*“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge... it must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages”.*

13. From the record, the medical evidence confirms that the Respondent sustained soft tissue injuries, lacerations to the left temporal region and foot, a parasymphyseal mandibular fracture, and a left 5<sup>th</sup> metatarsal fracture. The trial court awarded Kshs 1,200,000 guided by **Thuge Caroline & 2 others v Kimani Nganga Kago(2022) eKLR**.

14. I have considered the respective past decisions cited by the parties. I find the awards in **Mapesa case ( supra)** and **Maintenance Ltd ( supra)**, cited by the Appellant fairly compares well with the case. I also agree that the injuries appearing in the two decisions were of a severe nature. The decision of BAJ (supra ) has not been availed . I have also looked at the injuries in **Thuge Caroline & Ano ( supra ) relied on by the trial court**. The injuries included degloving wounds and multiple

orbito-zygomatological fractures. Evidently the injuries in the cited case were far more severe than the Respondent's injuries.

15. It is trite law that while no two cases are identical, there must be a measure of uniformity and predictability in judicial awards. In ***Southern Engineering Company Ltd. vs. Musingi Mutia(1985)eKLR***, the Court of Appeal stated:

*“It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award... It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion”*

16. The award of ksh. 1,200,000 was therefore excessive and this court has a reason to interfere with it. Relying on the decisions cited by the Appellant as aforesaid I find an award of ksh. 600,000 to constitute a fair compensation for the injuries in this case.

17. On the alleged costs of future medical expenses, I find it odd that both parties have gone out to read into the trial court's judgment things or an issue that

does not exist. There is no trace of ambiguity in the judgment. Nowhere does the court make any reference to future medical expenses, which in any event, is in the nature of special damages, and not general damages.

18. In conclusion, the Appeal succeeds.

a).The lower court award of ksh. 1,200,000 is hereby set aside, and substituted with ksh. 600,000, subject to the agreed apportionment.

b). The award will attract interests at court rates from the date of Judgment at the trial court.

c). The costs of this Appeal is awarded to the Appellant.

Dated , signed and delivered at Isiolo this 19<sup>th</sup> day of March 2026

S. Chirchir  
Judge

In the presence of :  
Roba Katelo- court Assistant

