



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E726 OF 2022**

**AGNES NJOKI WANJ.....**  
**APPELLANT**

**VERSUS**

**LINDA WAYUA KATIWA .....1<sup>ST</sup>**  
**RESPONDENT**

**MICHAEL OTIENO.....2<sup>ND</sup>**  
**RESPONDENT**

*(Being an appeal from the decision of Hon. Aduke JPA  
(SRM) delivered on 6<sup>th</sup> September, 2022 in Milimani CMCC  
No. E463 of 2021)*

**JUDGEMENT**

1. This is an appeal against quantum of general damages only. The Appellant by the Plaint dated 14<sup>th</sup> January, 2021 sued the Respondent following an accident that took place on 13<sup>th</sup> September, 2020 at the Kariobangi roundabout along Juja

Road while she was travelling as a pillion passenger aboard a motorcycle.

2. She claimed the motor vehicle registration number KCT 312G belonging to the 2<sup>nd</sup> Respondent was negligently driven by the 1<sup>st</sup> Respondent and knocked the motorcycle wherein she sustained serious injuries. She prayed for general damages for pain and suffering, special damages costs as well as interests of the suit.
3. The Respondents through their Statement of Defence dated 8<sup>th</sup> April, 2021 denied the claim as well as the particulars of injuries and blamed the occurrence of the accident on the Appellant.
4. The Trial Court in its judgment found the Respondents 100% liable for the accident and awarded the Appellant Kshs. 50,000/= as general damages, special damages of Kshs. 7,520/= as well as cost and interest of the suit.
5. The Appellant being aggrieved by the decision by way of Memorandum of Appeal dated 12<sup>th</sup> September, 2022 preferred the instant appeal on the following grounds:-

- i) That the Honourable Trial Magistrate erred in law and in fact when she failed to consider at all, the evidence tendered by the Appellant during the trial.**
- ii) That the Learned Trial Magistrate erred in Law and in fact in finding that the Plaintiff was entitled to general damages of Kshs.50,000.00/- which was too much on the lower side in view of the injuries suffered by the appellant that it presented miscarriage of justice.**
- iii) That the Learned Trial Magistrate erred in Law and in fact by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at the impugned figure on quantum.**
- iv) That the Learned Trial Magistrate erred in Law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low.**
- v) That the Learned Trial Magistrate erred in Law and in fact when making her award by failing to consider the passage of time and incidence of inflation.**

6. The Appellant thus prays that the Appeal be allowed; the Judgement of the Trial Court be set aside and the Court does reassess the general damages payable to the Appellant and that the costs of this Appeal and in the trial Court be awarded to the Appellant.
7. The Appeal was heard by written submissions. Only the Appellant's submissions are on record.

### **Appellant's Submissions**

8. Through her legal Counsel on record, the Appellant submits that she sustained serious injuries and the award was inordinately low. The Trial Magistrate is said to have failed to consider the authorities and the submissions of the Appellant before arriving at the impugned decision. The Appellant proposed an award of Kshs. 600,000 relying on the following cases in support of her position

**a. Njora Samuel Richard vs Nyangau Orechi**

**[2018] eKLR** where the Respondent had suffered a fracture of the 1<sup>st</sup> metatarsal with no permanent disability and was awarded Kshs. 500,000/= general damages.

**b. Grace Wamae vs Wicks Methi Njenga [2020]**

**eKLR** the Appellant was awarded Kshs. 500,000/= for blunt injury on lower limbs, swollen left tender foot and fracture of the 3<sup>rd</sup> and 4<sup>th</sup> metatarsal bones.

9. The Appellant further relies on the case of **Odinga Jacktone Ouma vs Maureen Achieng Odera [2016]**

**eKLR** where the Court found that damages should not be excessive but should be commensurate to the injuries suffered.

10. It is also submitted that the Appellant is entitled to costs and interest pursuant to the provisions of **Sections 26 and 27** of the **Civil Procedure Act**.

**Analysis and determination**

11. I have considered the Record of Appeal the submission and the authorities cited. This being a first appeal, I am guided by the settled principle in **Selle vs Associated Motor Boat Co. Ltd.[1965] EA 123** where it was held that the first appellate Court must re-consider and re-evaluate the evidence that was tendered before the trial Court, assess it and make its own independent conclusion.

12. As already observed, the Appeal is against quantum only. The question that falls for my determination is whether the award of Kshs. 50,000/= in general damages was so inordinately low as to amount to an erroneous exercise of discretion thereby warranting interference.
13. The Appellant pleaded that she suffered a compound fracture of the left 5<sup>th</sup> toe proximal phalanx and blunt injuries to the face and lower limbs.
14. There are two medical reports one from Dr. Wokabi dated 5<sup>th</sup> November, 2020 **P Exhibit 10**, which confirmed the injuries and opined that there was a possibility of the Appellant losing her toe or the toe could become too stiff to affect her ability to wear closed shoes. The medical report by Dr. Wambugu dated 17<sup>th</sup> June, 2021 **D Exhibit 1**, indicated that the appellant suffered a laceration wound dorsum of left foot base of the small toe. He observed that she was able to walk normally and could wear closed shoes.
15. I have scrutinized the medical records which more or less confirm the injuries as pleaded by the Appellant.

16. The *locus classicus* on the award of general damages is **Butt vs Khan [1978] 24 KECA (KLR)** which established that a Court sitting on appeal would not lightly interfere with the discretion of a trial Court in the assessment of damages. It will only do so where it is demonstrated that the Trial Court acted on wrong principles, misapprehended the evidence or made an award that is so inordinately high or low as to represent an entirely erroneous estimate.
17. This principle was echoed in **Gitobu Imanyara & 2 Others vs Attorney General [2016] KECA 557 (KLR)**, the Court of Appeal held that -

**“Further, it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the**

amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A .”

18. The trial Court in awarding Kshs. 50,000/= relied on the case of **Kweri Peter & Others vs Ann Wanjiku Maina** [2017] eKLR where the Appellant was awarded general damages in the sum of Kshs. 600,000/= after he suffered broken bones and loss of two incisor teeth. To then cite that authority and then proceed to award a paltry Kshs. 50,000/= in the instant matter is to my mind a misdirection.
19. I am therefore satisfied that the trial Court erred in principle, and that its award was inordinately low to warrant this Court’s interference with discretion.
20. Guided by the decisions in **Njora Samuel** and **Grace Wamae** *supra*, I would assess and grant general damages to the Appellant in the sum of Kshs. 400,000/=.

21. The Court accordingly allows the Appeal. The trial courts award in general damages is hereby set aside and substituted with an award of Kshs. 400,000/=. The Appellant is also awarded costs of the Appeal.

**J. M. NANG'EA - JUDGE.**

**Judgement Delivered Virtually this 15<sup>th</sup> day of April 2026.**

**In the presence of:**

**Appellants' Advocate, Ms Mwencha for Mr. Wanjohi**

**Respondents' Advocate, Ms Wangui**

**Court Assistant (Ng'eno)**

**J.M. NANG'EA - JUDGE.**