



**Kitale Industries Limited v Yakuti & another (Civil Appeal
269 of 2018) [2026] KEHC 4352 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 269 OF 2018
F WANGARI, J
MARCH 5, 2026**

BETWEEN

KITALE INDUSTRIES LIMITED APPELLANT

AND

EMMAH FADHILI YAKUTI 1ST RESPONDENT

RAMADHAN ALI RANGA 2ND RESPONDENT

(Being an appeal against the Judgment of Hon. Kyambia (SPM) delivered on 23rd November 2018 in Mombasa Chief Magistrate's Court Civil Suit No. 2893 of 2010, Emmah Fadhili Yakuti & Victoria Mamka Kitao v Kitale Industries Limited & Ramadhan Ali Ranga)

JUDGMENT

1. The Plaintiff/ 1st Respondent filed the lower court suit vide an Amended Plaintiff dated 8th November 2016. The Plaintiffs prayed for judgment against the 1st and 2nd Defendants/ Appellant and 2nd Respondent, jointly and severally for special damages of Kshs. 8,430, general damages, costs, interest on general and special damages, and further or any relief that the court deemed just and fit to grant, as a result of injuries sustained in a road traffic accident.
2. It is averred that on or about 10th September 2008, the Plaintiff was lawfully travelling as a fare paying passenger in the 2nd Defendant's motor vehicle registration number KAY 115Y along Mombasa – Malindi Road. While at Kisauni Junction, the 1st Defendant's authorized driver, servant, employee and/or agent so carelessly and negligently stopped motor vehicle registration number KBD 346F in the middle of the junction permitting the 2nd Defendant's motor vehicle registration number KAY 115Y which was also being driven carelessly and negligently, to collide with the same as a direct result of which the Plaintiff sustained serious injuries, loss and damage.



3. The Plaintiff averred that as a result of the accident, she sustained severe physical injuries which included severe blunt trauma on the lower back with inter-vertebral disc degeneration at L5, loss of lumbar lordosis due to muscle spasm and blunt trauma to the head.
4. The 1st Defendant entered appearance and filed its Statement of Defence where save for what was expressly admitted, it denied allegations in the Amended Plaint.
5. The suit was heard in the trial court and judgment delivered on 23rd November 2018 where the court entered judgment in favour of the Plaintiff as against the Defendants in the sum of Kshs. 1,500,000 in general damages and Kshs. 8,430 in special damages plus costs of the suit and interest from the date of judgment.
6. Being dissatisfied, the Appellant appealed the judgment through the Memorandum of Appeal dated 13th December 2018 on the following grounds: -
 - a. That the Learned Magistrate erred in law and in fact by awarding excessive damages in the circumstances.
 - b. That the learned magistrate misdirected herself on the applicable principles of law by failing to take into consideration and appreciate the authorities submitted to the court by the Appellant.
 - c. That the learned magistrate erred in law and in fact in failing to consider the evidence and facts placed before him.
7. The Appellant prayed for orders that the appeal be allowed with costs, that judgment of the learned magistrate made on 23rd November 2018 in RMCC No. 2893 of 2010 be set aside and substituted with a reasonable award in terms of general damages, that costs of the appeal be awarded to the Appellant, and that such and any other order as this court may deem fit.
8. The appeal was canvassed by way of written submissions. The Appellant in their submissions dated 6th November 2025 argued that the award of Kshs. 1,500,000 to the 1st Respondent in general damages was manifestly excessive and not supported by evidence on record or compatible with judicial authorities. The Appellant submitted that in the trial court, they proposed an award of Kshs. 500,000 relying on comparable authorities.
9. The Appellant submitted that the trial court failed to take into account the soft tissue nature of the injuries, relied on authorities involving more serious injuries, and arrived at an excessive and unjustified award not supported by medical evidence.
10. The 1st Respondent in its submissions dated 5th December 2025 argued that medical evidence of the injuries sustained by the 1st Respondent were never challenged at trial. That the award of Kshs. 1,500,000 was reasonable considering the injuries, the nature of incapacity at 7% and the cited authorities. The 1st Respondent urged the court to dismiss the appeal with costs.

Analysis

11. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E.A 123 as follows: -

“... Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”



12. I have considered the Record of Appeal, the Supplementary Record of Appeal and submissions by the parties. The issues for determination are: -
 - a. Whether the trial awarded excessive damages
 - b. Who should bear costs
13. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd Vs Meru Express Service Vs. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.”
14. Further, the Court of Appeal in *Odinga Jacktone Ouma V Maureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”
15. The Appellant disputes the award of general damages in favour of the 1st Respondent. The Appellant contends that the trial court’s award of Kshs. 1,500,000 for general damages was manifestly excessive and not supported by evidence on record or compatible with judicial authorities, while the 1st Respondent argued that the award was reasonable given the injuries, the 7% incapacity and that it was in line with the cited legal authorities.
16. As a result of the accident, the 1st Respondent sustained severe physical injuries which included severe blunt trauma on the lower back with inter-vertebral disc degeneration at L5, loss of lumbar lordosis due to muscle spasm and blunt trauma to the head.
17. This court has perused the authorities cited by the parties and noted that the Appellant on the one hand cited the case of *Kiptoo v Malahilu* [2025] KEHC 804 (KLR) where the respondent sustained soft tissue injuries: a deep cut wound to the left occiput, bruises of the lower 2/3 of the neck associated with contusion of the cervical vertebrae 6 and 7; Bruises on the right shoulder joint and between shoulder joint; bruises of the chest over the sternum, bruises to the lower lumbar spine and cervical spine; numbness of the right upper limb from the right side of the neck down the limb to all fingers; and foreign body left wrist antero-associated with a small puncture wound and numbness of the right thumb, with permanent incapacity of 24%. The court upheld the awarded Kshs. 380,000 and dismissed the appeal.
18. In the other case of *Musira v Makokha* [2025] KEHC 693 (KLR) as cited by the Appellant, the injuries sustained included T-11 and T-12 vertebral displacement and soft tissue injuries, and that he could not stand straight and constantly suffered from back pain. The appellate court set aside the award of Kshs. 140,000 and substituted it with an award of Kshs. 300,000 in general damages.
19. The 1st Respondent on the other hand cited the case of *Opondo v Dela Rue Currency and Security Print Limited* [2017] KEHC 2125 (KLR) where the Plaintiff sustained injuries in the course of his employment where he suffered loss of lumbar lordosis due to muscular spasm as a result of standing for long hours and manually carrying bank notes boxes weighing between 50 and 80kg for 8 hours a day. The Plaintiff was awarded Kshs. 1,200,000 in general damages.



20. The overriding principle remains that comparable injuries should attract comparable awards, and quantum must reflect established judicial trends. This court is therefore more inclined towards authorities involving road traffic accident injuries of similar nature as herein below.
21. In *Ben Mengesa v Edith Makungu Lande* [2013] KEHC 4496 (KLR), the respondent sustained blunt injury to the head, both shoulders, back, numbness of the lower limbs, tender lumbosacral spine, post traumatic osteoarthritis of the lumber spine, and injury on both legs and chest with permanent incapacity assessed at 5%. X-rays revealed degenerative changes of discs between L5 and S1 vertebral bones with muscle spasms. The appellate court upheld the award of Kshs. 900,000.
22. Further, in the case of *Nganga v Sinopec International Petroleum Services Corporations Limited* [2024] KEELRC 1627 (KLR), Kshs 1,000,000 was awarded as general damages for some tenderness in the lumber spine and leg raising was reduced by 70% on right leg and loss of lumber lordosis which was carried by spasm of muscles of lumber spine.
23. Based on the above comparative authorities, the damages awarded were excessive. In the circumstances, this court is satisfied that the appeal on quantum is merited and allowed. The award of Kshs. 1,500,000 as general damages is therefore set aside and substituted with an award of Kshs. 1,000,000, considering passage of time and inflation.
24. The appeal being partially successful, each party is to bear its own costs.

Determination

25. In the upshot, this court makes the following orders;
 - a. The appeal is partially successful and allowed on the following terms;
 - i. The judgment on general damages for Kshs. 1,500,000 is hereby set aside and substituted with judgment for Kshs. 1,000,000 as general damages.
 - ii. The rest of the orders remains undisturbed.
 - b. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026

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HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

Mr. Abaja Advocate h/b for Mr. Mogaka Advocate for the Appellant

Ms. Osino Advocate the Respondent

Ms. Salwa, Court Assistant

