



REPUBLIC OF KENYA



KENYA LAW
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**Moyore v Ombwori (Civil Appeal E032 of 2025)
[2026] KEHC 4450 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E032 OF 2025**

**TW CHERERE, J
MARCH 5, 2026**

BETWEEN

STANLEY KEBIBA MOYORE APPELLANT

AND

SARAH OMBWORI RESPONDENT

*(Being an appeal from the Judgment in Keroka MCCC E030
of 2022 by Hon. Ombija A.C. (SRM) on 06th November 2024)*

JUDGMENT

1. The primary suit filed vide the plaint dated 06th February 2022 arose from injuries suffered by the Appellant on or about 29th December 2019 when he was travelling as a pillion passenger on motorcycle registration number KMEP 914A along the Keroka-Kisii road. At Rigoma junction, motor vehicle registration number KBT 471L, along the said road, and which was allegedly recklessly, negligently, carelessly driven, controlled and/or managed by the Respondent, her driver, agent and/or servant, collided with the said motorcycle, thereby occasioning the Appellant serious injuries, loss and damage.
2. The Respondent denied the claim by way of a statement of defence dated 28th March 2022.
3. On 21st August, 2024 liability was agreed at 80:20% in favour of the Appellant.
4. Subsequently by judgment dated 06th November 2024, the trial court awarded general damages in the sum of KES. 300,000 less 20% contributory negligence, KES. 17,610 in special damages, costs of the suit and interest.
5. The Appellant, being dissatisfied with the quantum of damages awarded by the trial court, filed a Memorandum of Appeal dated 14th January 2025 challenging the general damages award of KES. 300,000 as inordinately low and not commensurate with the injuries sustained.



6. The P3 Form on record indicates that the Appellant was examined on 30th December 2019 at Tenwek Hospital following the road traffic accident. The P3 form details head injury, chin lacerations, whiplash neck injuries, chest tenderness consistent with chest contusion, and pelvic injury. In addition, the Medical Report dated 23rd August 2021 prepared by Dr. Daniel O. Nyameino of Shark Medical Centre, confirms the injuries as head injury, chin laceration, whiplash neck injuries, chest contusion, and pelvic fracture, specifically fracture of the left superior pubic ramus. The discharge summary from Tenwek Hospital dated 31st December further confirms the diagnosis of fracture of the pubis together with the associated injuries sustained in the accident.
7. Having carefully read the Appeal, the written submissions by the Appellant dated 02nd December 2025 and the Respondent's dated 18th December 2025, and all the authorities cited therein, this Court identifies the following issues for determination:
 1. Whether the trial court's award of KES. 300,000 as general damages was inordinately low in the circumstances
 2. If so, what constitutes appropriate compensation.
8. This being a first appeal, this Court is duty-bound to delve into factual details, re-evaluate, re-analyse and re-assess the evidence on record, and arrive at its own independent conclusions, while always remembering that the trial court had the distinct advantage of seeing and hearing witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123.)
9. It is trite that the appellate court will only interfere with an award of damages made by a trial court in limited circumstances. In *Nance v British Columbia Electric Railway Co. Ltd* (1951) AC 601, 613, as applied in East Africa by *Henry H. Ilanga v M. Manyoka* [1961] EA 705, 713, the Privy Council set out the governing principle thus:

“The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell*, [1935] 1 K.B.), approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.”
10. This principle was reaffirmed in *Mkube v Nyamuro* [1983] KLR 403, where *Kneller JA* and *Hancox Ag JJA* held that a court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.
11. In *Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v A M Lubia & Olive Lubia* [1985] KECA 137 (KLR), the Court of Appeal set out the principles to be considered before disturbing an award of damages:

“The principles to be observed by this appellate court, in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are, that 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 high that it must be wholly erroneous estimate of the damages."

12. The governing principles for the assessment of general damages in personal injury cases are well settled. In *West (H) & Sons Ltd v Shepherd* [1964] AC 326, as adopted in Kenya in *Cecilia W. Mwangi & Another V Ruth W. Mwangi* [1997] eKLR Civil Appeal 251 of 1996, Lord Morris articulated the foundational principle:

"But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that, so far as possible, comparable injuries should be compensated by comparable awards. When all this is said, it still must be that amounts which are awarded are to a considerable extent conventional."

13. This principle was further amplified by Lord Denning in *Kim Pho Choo v Camden & Islington Area Health Authority* (1979) 1 ALL ER 332, as adopted in the persuasive decision in *Nancy Oseko v Board of Governors Masai Girls High School* [2011] eKLR, where Wendoh J stated:

"In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation for both the plaintiff and the defendant. The plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably, but in the process should not punish the defendant."

14. These principles were similarly applied in the persuasive decisions in *Brian Kieya Mokuva v Christopher Komen* [2015] KEHC 2470 (KLR) and *Joseph Musee v Julius Mbogo Mugi & 3 Others* [2013] eKLR.

15. The Appellant challenges the award of KES. 300,000 as general damages on the ground that it was inordinately low in light of the injuries sustained. At the trial, the Appellant relied on *Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Galma Galgalo* [2019] eKLR, while the Respondent relied on *Joseph Musee Mua v Julius Mbogo Mugi & 3 Others* [2013] eKLR.

16. The injuries sustained by the Appellant were a head injury, chin lacerations, whiplash neck injuries, chest contusion and a pelvic fracture. There was no medical evidence of permanent disability.

17. The learned magistrate assessed quantum on the basis of the two comparative authorities cited before the trial court and did not have the benefit of considering the additional precedents relied upon on appeal. In those circumstances, the impugned award shall be examined against the material and authorities that were placed before that court.

18. In *Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Galma Galgalo* (supra), the respondent sustained a pelvic fracture and open back facial bruises. She was hospitalised for three days. There was no assessed permanent incapacity, although the medical evidence indicated the possibility of future pregnancy and delivery complications. The High Court set aside an award of KES. 2,000,000 and substituted it with KES. 1,400,000. In *Joseph Musee Mua v Julius Mbogo Mugi & 3 Others* (supra), the plaintiff sustained fractures of the left tibia and fibula with an overlying wound that became infected, shortening of the left leg by three centimetres, deformity of the left ankle joint, nerve injury resulting in foot drop, chest injury, right shoulder injury, bruises on the left elbow, broken upper molar and canine teeth, and a head injury. He underwent prolonged hospitalisation and multiple surgical procedures, and permanent disability was assessed at 5%. The Court awarded KES. 1,300,000/



= as general damages. The injuries in the case cited by the Respondent were clearly more severe, involving multiple long bone fractures, infection, limb shortening, deformity, nerve damage, dental injury and assessed permanent disability. The award in that case reflected the seriousness and lasting consequences of those injuries. The injuries in the case cited by the Appellant involved a pelvic fracture and facial bruising, without permanent incapacity, though with noted potential future complications. The award recognised the seriousness of a pelvic fracture even in the absence of permanent disability.

19. In the present case, the Appellant sustained a pelvic fracture together with additional soft tissue injuries to the head, neck and chest. However, there were no multiple long bone fractures, no infection, no limb shortening, no nerve injury, no deformity, no permanent disability and no medical evidence of anticipated long-term complications.
20. The Appellant's injuries therefore fall between the two cited authorities. They are less severe than those in the case cited by the Respondent but somewhat more extensive than those in the case cited by the Appellant in terms of the number of injuries sustained, albeit without permanent incapacity.
21. Confined strictly to those two cited cases, I am satisfied that the award of KES. 300,000 was inordinately low. Weighing the gravity of the pelvic fracture and associated injuries against the absence of permanent disability, and maintaining proportionality with the cited awards, I find that KES. 800,000 constitutes fair and reasonable compensation.
22. In the end, it is hereby ordered:
 1. The award of KES. 300,000 is set aside and substituted with an award of KES. 800,000 as general damages
 2. The findings on liability, special damages, costs and interest remain undisturbed.

DELIVERED AT NYAMIRA THIS 05TH DAY OF MARCH 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

For Appellant - Mr. Nyasongo for T.O.Nyangosi & Co. Advocates

For Respondent – Mr. Ombese for Mose, Mose & Mose & Co. Advocates

