

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA.
HC. CIVIL APPEAL NO. E003 OF 2025

SAMSON NGOLE KATODI 1ST APPELLANT
EDWIN PKEMOI 2ND APPELLANT
JOEL KIBET 3RD APPELLANT

- V E R S U S -

ALFRED Y. KORMOT RESPONDENT

J U D G M E N T

On 20/3/2025, Judgment was entered in favour of the Respondent (formerly plaintiff) against the appellants (formerly defendants) for a sum of Kshs.1,000,000/= as general damages for injuries sustained in an assault. The appellants are aggrieved by the said Judgment and filed this appeal. The Grounds of appeal are found in the Memorandum of Appeal dated 10/4/2025 filed by the firm of Nyamu Advocates.

They are as follows; -

- 1. That the trial magistrate misdirected herself on the assessment of general damages;**
- 2. That the assessment of damages was in excess and against the weight of the evidence;**

3. That the Respondent never proved the damages to the required standard to deserve an award of Kshs.1,000,000/=;
4. That the court in awarding the general damages failed to consider the standard of living of the appellants and the established precedents on the same.

The appellants therefore pray that the Judgment be set aside and the court do interfere in the award by reducing the amount awarded downwards.

This being a first appeal, this court is required to examine all the evidence tendered before the trial court, evaluate it and arrive at the court's own determination. The above guiding principle was espoused in **Selle & Another - Vs- Associated Motors Boat Company (1968) EA 123.**

The Respondent's claim was that the appellants attacked and assaulted him on 12/7/2020 as a result of which he suffered personal injury, loss and damage. The lower court found in his favour and assessed damages at the figure now disputed.

The appellants filed submissions through the firm of **Nyamu and Company Advocates**. Counsel submitted on the principles that guide the courts in award of damages; that award of damages is an exercise of the court's discretion which has to be exercised judiciously so that the award should not be too low nor too high as to amount to a wrong estimate and therefore an injustice. The

gist of the appellants submission is that the court failed to take into account the appellants' standard of living since they were even unable to afford bond of Kshs.20,000/= when they were charged in Criminal case no. 513/2020 **Republic -Vs- Samson Katodi Ngole and 2 others**; that the award is not supposed to be an unjust enrichment of a party and that in this instance, the court was not fair. Counsel also urged that the court failed to consider the fact that the 3rd appellant was a minor which fact was disclosed in Criminal case no. E013/2021. He urged the court to reduce the award to Kshs350,000/=

The Respondent's Counsel **Gacathi & Company Advocates** filed submissions in opposing the appeal. Counsel submitted that the appellants financial status is not a principle known in law in assessment of damages. He argued that the court can only interfere with the assessment of damages if the award was excessive. He submitted that the general approach is that comparable injuries should as far as possible, be compensated by comparable awards keeping in mind the awards in similar cases. He cited the cases of **H. West and Son Ltd - VS- Shepherd (1964) AC 326**. Where the court said **“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 endeavour to secure some uniformity in the general method of approach. By common consent 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.....”

The same principles were restated in **Bashir Ahmed Butt -V- Uwais Ahmed Khan (1982 -88) KAR 5** and **Kemfro Africa Limited t/a Meru Express Service & Another -Vs- A.M.M. Lubia & Another (1998) eKLR.**

Generally, an appellate court will be reluctant to interfere with an award of damages being the court’s exercise of discretion, unless it is shown that the lower court proceeded on wrong principles, or that it misapprehended the evidence so that it arrived at an award which was inordinately high or too low that it resulted in a wrong estimate.

Counsel further urged that the appellants intentionally inflicted bodily injuries on the Respondent and were sentenced to serve seven (7) years imprisonment each, that at the time of attack, he lost consciousness, was diagnosed with traumatic testicular rupture, was operated on and the testicle removed; that Dr. Jacob Ruto who examined the Respondent opined that subfertility may occur. In assessing damages, the court is guided by awards made for comparable injuries see **Kemfro Case and Simon Taveta -VS- Mercy Mutitu Njeru CA 26 of 2013 (2014) eKLR**; that in the lower court, the Respondent had suggested an

award of Kshs.2,000,000/= and relied on the cases of **J.M.L -Vs- The African Highlands**

Produce Co, Limited (2011) eKLR where an award of Kshs.1,000,000/=:, and **Patrick Muriithi Mukuha -VS – Edwin Warui Munene & 5 others (2005) eKLR** where an award of Kshs.1,200,000/= was made; that the trial court relied on **Club Heritage Ltd -VS- Stephen Muasya Wambua CA 19/2017**

I have duly considered the grounds of appeal and submissions by both Counsel.

As aptly put in the **Butt case (Supra)** the appellate court will always be slow to interfere in an award of damages unless they are inordinately high as low or to be an erroneous estimate. The court said **“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.....”**

The Court of Appeal also explained the said principles in the **Kemfro Case**.

I must point out that the appellants submission that the court should consider the financial standing of the Appellants is not one of the considerations in assessment of damages.

In assessing damages, the court must also be guided by comparable awards for similar injuries and the nature and extent of the injuries.

As per the Doctors report, the Respondent sustained traumatic testicular rupture to his testicle which was later removed through surgery

In HCC 3904/1989, **Isaac Kefa Lumbaya Vs- Morris & Co Ltd**, the court awarded Kshs.450,000/= for loss of one testicle. In **J.M.L Case** (Supra) where the plaintiff had suffered injuries to his testis that gave rise to psychosogenic impotence, the appellate court increased the award to Kshs.1,000,000/= in March 2011, about fifteen (15) years ago. In **Patrick Muriithi Case** (supra) an award of Kshs.500,000/= was made where the plaintiff lost a testicles and suffered other injuries to the chest, loss of upper premolar, cut on occipital loosening of the left upper incisor. The award was made on 30/6/2005, over twenty (20) years ago.

The trial court relied on the **Club Heritage case** (Supra) where the Judge awarded Kshs.1,000,000/= for fractured right fibula, soft tissue injuries to right shoulder form and traumatic injury to right testis. The award was made on 29/4/2020, about five (5) years ago.

Having considered the above comparable awards, the incidence of inflation, I find that the award made by the lower court was very reasonable in the

circumstances. Its neither too high nor too low, and the court finds no reason to interfere.

For the above reasons, I find no merit in the appeal. It is dismissed with costs to the Respondent.

Dated, signed and delivered at Kapenguria this 22nd day of April, 2026.

HON. R. WENDOH - JUDGE.

Judgment read in the presence of

Appellant- Mr. Nyamu

Respondent- Ms Masinde holding brief for Mr. Gacathi

Juma/Hellen-Court Assistants