

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MAKUENI**  
**CIVIL APPEAL NO. E060 OF 2024**  
**NEREUS GROUP LTD.....**

**.....APPELLANT**

**-VERSUS-**

**FELIX MUSAU MUIA.....**

**RESPONDENT**

*(Appeal from the Judgment of Hon. S. Jalang'o (SPM) in the Senior Principal Magistrate's Court at Tawa, Civil Case No.102 of 2023, delivered on 23<sup>rd</sup> May 2024)*

**JUDGMENT**

**Introduction**

1. The Respondent vide a plaint dated 2-8-203 filed a suit before the lower Court seeking general damages for personal injuries sustained from a road accident on 08/07/2023 (*material day*) along Kivii-Kangii murrum Road. He averred that he was lawfully riding motor cycle registration No. KMGG 222A along the said road when the Appellant's motor vehicle registration No. KCG 099P was managed and/or controlled so carelessly and negligently that it lost control, veered off the road and hit the motorcycle as a result of which he sustained severe bodily injuries. He also prayed for special damages to the tune of Kshs. 6000=, costs of the suit and interest.
2. The Appellant filed a statement of defense dated 16-8-2023 whereby it denied all the allegations contained in the plaint and called for strict

proof. It averred that the occurrence of the said accident was solely caused by the negligent acts of the Respondent.

3. The Respondent replied and joined issues with the Appellant in the statement of defence and reiterated the contents of the plaint.
4. Subsequently, parties recorded a consent on liability in the ratio of 80:20 in favor of the Respondent and thereafter, the trial court awarded Kshs. 300,000/= as general damages, less 20% hence a net award of Kshs. 244,800/=.

### **The Appeal**

5. Aggrieved by the award, the Appellant filed this appeal and raised the following grounds;
  - a) The learned magistrate failed to adequately evaluate the evidence and exhibits on record thereby arriving at an unsustainable decision.
  - b) The learned magistrate erred in law and fact in awarding damages so inordinately high that it amounts to a wholly erroneous estimate of damages awarded to the Respondent considering the injuries suffered by him.
6. The parties elected to canvass the Appeal through written submissions and appropriate directions were given. Accordingly, the parties complied and filed their respective submissions.

### **Submissions by the Appellant**

7. It was submitted that the award of Kshs. 300,000/= for soft tissue injuries is manifestly high and not in line with the accepted principle of awarding damages that; comparable injuries should as far as possible be compensated by comparable awards, keeping in mind the correct level of award in similar cases. Reliance was placed on the following cases;

- a) **Ochola -vs- Owuor (Civil Appeal E039 of 2022) [2024] KEHC 7689 (KLR) (Judgment)** where the High Court reduced an award of Kshs. 250,000/= to Kshs. 150,000/= for the Respondent who sustained the following injuries; soft tissue injuries of the right shoulder joint, blunt injury to the anterior chest wall leading to soft tissue injuries, blunt injury to the neck, blunt injury to the back and soft tissue injuries of both knee joints.
- b) **Pascal -vs- Ouko (Civil Appeal E005 of 2022) [2023] KEHC 24463 (KLR) (18 October 2023) (Judgment)** where the learned Judge reduced an award of Kshs. 211,550/= to Kshs. 155,000/= where the Respondent had sustained the following injuries; Chest contusion, blunt trauma to the back, blunt trauma to the scalp, blunt trauma to the neck, blunt trauma to the upper limbs, blunt trauma to the lower limbs and lacerations on the right knee.
- c) **Daniel Gatana Ndung'u & Anor -vs- Harrison Angore Katana (2020) eKLR** where the Respondent sustained a cut wound on the head, blunt injury to the right knee, multiple bruises on the upper limbs and bruises on the right knee. The

court set aside an award of Kshs. 350,000/= on general damages and substituted it with an award of Kshs. 140,000/=.

8. The Appellant submitted that the award of Kshs. 300,000/= should be substituted with Kshs. 150,000/=.

### **Submissions by the Respondent**

9. Reference was made to the case of **Kemfro Africa Ltd t/a Express Service Gathogo Kanini -vs- A.M Lubia & Olive Lubia (1982-88) 1KAR 727** for the submission that in determining whether to disturb the finding of the trial court on quantum, this court is duty bound to consider whether the trial court took into account a relevant factor or left out of account a relevant factor or the amount is so inordinately low or high that it must be a wholly erroneous estimate of damages.
10. It was submitted that the trial court exercised its jurisdiction properly as it considered the nature and extent of injuries sustained, took into account the medical evidence produced and considered comparable authorities cited by both parties. It was contended that the injuries sustained warranted substantial compensation as they were serious. Reliance was placed on the following cases;
  - a) **Mukunya Karanja & Anor -vs- Margaret Wambui Maina (2020) eKLR** where the High Court upheld an award of Kshs. 300,000/=.
  - b) **Francis Ochieng' & Anor -vs- Alice Kajimba (2015) eKLR** where the court awarded kshs 350,000/= in respect of multiple

soft tissue injuries without fractures that were sustained in 2012 and judgment delivered in 2014.

c) **Poa Link Services Co. Ltd & Anor -vs- Sindani Boaz Bonzemo (2021) eKLR** where the Plaintiff sustained; blunt injury to the chest, bruises on the lower abdomen, bruises on the right hip joint, bruises on the knee. The High Court confirmed that the award of Kshs. 350,000/= was fair in the circumstances.

11. It was submitted that although no injuries can be exactly the same, the injuries sustained by the Respondent are substantially similar to the cited authorities if not more severe. That, they are in the nature of severe and multiple soft tissue injuries. Consequently, it was submitted that Kshs. 400,000/= is a fair and reasonable award.

12. It was further submitted that the special damages of Kshs. 6,000/= were specifically pleaded and strictly proved.

13. With regard to costs, it was submitted that they follow the event as per **Section 27** of the **Civil Procedure Act**. That, demand letters were served and the Defendant fully acknowledged receipt by signing but there was no response or admission of liability.

#### **Duty of the Court.**

14. It is now settled that the duty of a first appellate Court is to analyze and re-evaluate the evidence on record in order to reach its own conclusion bearing in mind that it did not have the benefit of seeing or hearing the witnesses. [ see **Selle -vs-Associated Motor Boat Company (1969) E.A 123**].

15. Having looked at the grounds of appeal, the rival submissions and entire record, the only issue which germinates for determination is whether the award on general damages should be disturbed.

### **Analysis and determination**

16. The injuries sustained were pleaded as follows;

- a) Blunt head injury
- b) Blunt neck injury.
- c) Ears injury with bruises on the face.
- d) Blunt chest injury.
- e) Blunt back injury.
- f) Blunt injury on both shoulders.
- g) Cut wound right knee.
- h) Blunt injury both knee regions.

17. The medical report by Dr. Felix Musau Muia (P. Exh 3a) enumerated the injuries as pleaded and the opinion upon physical examination was stated to be; clinically stable. No abnormality noted. The Respondent was well managed and did well, back physiotherapy was advised and there was no permanent incapacity. Consequently, the injuries sustained are not in dispute. It is on the basis of this evidence that this court should determine whether the award of Kshs. 300,000/= as general damages should be disturbed.

18. It is trite that the appellate court will not disturb the trial court's award of damages unless the trial court took into account an irrelevant factor or left out of account a relevant one or that the amount is so inordinately low or high that it must be a wholly

erroneous estimate. It must be shown that the trial court proceeded on wrong principles or that it misapprehended the evidence in some material respect.

19. One of the principles in assessment of damages is that comparable injuries should attract comparable awards. **See Penina Waithira Kaburu v LP NYR HCCA 59 of 2016 [2019] eKLR** where the court stated as follows:

**“While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the trial court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar”.**

20. I have looked at the injuries sustained by the Respondent. I am also alive to the fact that no two cases can be completely similar.

21. In the cases cited by the Appellant, the Plaintiffs sustained soft tissue injuries and the awards were between Kshs. 140,000/= and Kshs. 155,000/=.

22. I have also looked at the cases cited by the Respondent. In **Mukunya Karanja & Anor -vs- Margaret Wambui Maina (supra)**, the injuries pleaded were; Swelling of upper part of the mouth, Alveolar fracture of both incisor teeth, soft tissue injuries on right leg and superficial wound. The trial court found that although the plaintiff's teeth were loose, no fracture occurred, and a "K" wire used on the teeth was intended to cure the injury. The Appellate court found that this finding of fact was not disputed and upheld the award of Kshs. 300,000/=.

23. The second case relied on by the Respondent was **Francis Ochieng' & Anor -vs- Alice Kajimba (supra)** and in reducing an award of Kshs. 500,000/= to Kshs. 350,000/=, the Appellate court stated as follows; "The injuries sustained by the Respondent were multiple soft tissue injuries without any fractures. I have also found that the respondent did not lose 7 teeth as stated in her testimony. The Respondent sustained head injuries which aggravated the injuries. Considering the cases cited and inflationary trends, I find that an award of Kshs. 350,000/= would be reasonable in the circumstances."

24. The third case cited by the Respondent was **Poa Link Services Co. Ltd & Anor -vs- Sindani Boaz Bonzemo (supra)** where the Respondent sustained blunt injury to the chest, bruises on the lower abdomen, bruises on the right hip joint, bruises on the knee. The Appellate court upheld the award of Kshs. 350,000/= and opined that the same is fair in light of inflation tendencies.

25. In the case of **Charles Gichuki v Emily Kawira Mbuba & another [2018] KEHC 1635 (KLR)** the respondent suffered blunt and tender

chest, shoulder, face and right thigh injuries and the court had this to say;

**“17. Upon weighing the competing arguments and the authorities relied upon, I am convinced that the award of KshS.300,000/= is reasonable and commensurate with the injuries suffered.**

**18. In the end the award of ksh.400,000/= given by the trial court is set aside and is substituted by an award of KshS.300,000/=”.**

26. Consequently, it is evident that in all the cases cited by the parties, the Plaintiffs sustained multiple soft tissue injuries just like the Respondent herein. It is also evident that all of them are quite recent except the one of **Francis Ochieng’ (supra)** which was decided over 10 years ago.

27. It is also clear from the judgment that the trial court was guided by the aforesaid Appellate decisions and also appreciated the principle of compensating comparable injuries using comparable awards. Taking into account the rate of inflation and the above cited case law, it is my considered view that the trial court’s exercise of discretion was proper and that the threshold which would warrant interference by this court has not been met. I find relevance in the case of **Kenya Power Ltd - vs- James Matata & 2 Others (Suing as the legal representative of the estate of Nyange Masaga) (2016) eKLR** where the court stated;

**“However, an appellate court cannot review the amount downwards merely because it could**

**have awarded a lower figure if it was the trial court. It can only interfere with such an award if the same is inordinately high or low so as to come up with a wholly erroneous estimate. This is a principle that is well settled in law.”**

28. The Respondent urged this court to award Kshs. 400,000/= but in the absence of a cross-appeal, that submission is untenable.

### **Conclusion**

Having taken into account the totality of the evidence presented before the court and the submissions of both parties and the relevant case law, I am inclined to find that there is no merit in the appeal herein. The same is devoid of merit hence dismissed with costs in favour of the respondent.

Dated, signed and delivered virtually this **8<sup>th</sup>** day of **May 2026**

.....  
J.N.ONYIEGO  
**JUDGE**