

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL APPEAL NO.E071 OF 2023**

**SAMUEL NYAKOIRO OBIRO.....APPELLANT**

**VERSUS**

**HARON MUNGAI KINUTHIA.....**

**RESPONDENT**

**JUDGMENT**

1. This is an appeal against the judgment of Hon. S.K. Mutai Senior Principal Magistrate delivered on 23<sup>rd</sup> October 2023 vide Kitale CMCC No.253 of 2021. In that case the respondent sued the appellant for negligence as a result of a road traffic accident that occurred on 23/8/2020 along Kitale-Eldoret road involving the appellant's motor vehicle Reg no.KAR 620F Suzuki Escudo and the respondent a pedal cyclist.
2. The trial court found that the appellant was 100% liable and awarded the respondent a total of Kshs.905,650/- general and special damages for the injuries sustained resulting from the said accident.
3. The appellant felt aggrieved on quantum and filed this appeal faulting the trial magistrate for adopting wrong

principles in the assessment of damages and failing to consider comparative and relevant authorities with respect to the injuries sustained.

4. This appeal is therefore only on quantum and I will go straight to the issue.
5. Assessment of damages is usually a discretionary matter and an appellate court would not interfere unless it is demonstrated that the trial court took into consideration irrelevant factors and failed to consider relevant ones or that the award on damages is so high or excessive that the trial court must have proceeded on wrong principle.
6. In assessment of damages payable what is significant is the nature of injuries sustained. This being a first appeal the mandate of this court is to re-evaluate the evidence tendered with a view to reaching own conclusion(s) on the issue at hand.
7. The respondent in his plaint pleaded the following injuries;
  - (i) *Bruises on the right anterior with a bruised scar about 4.0cmx2.0cm.*
  - (ii) *Fracture of the right humerus.*
  - (iii) *30% temporary incapacity.*
8. The appellant submits that the trial court erred in awarding general damages of Kshs.900,000/- given that the injuries suffered had healed satisfactorily without any permanent incapacity. He points out the medical report by Dr.Gaya (Dexhibit 1) to back up the contention.

9. He submits that an appellate court is justified to interfere with an award by a lower court where it is shown that the same is manifestly excessive. In that regard he relies on the decision of **Butt -vs- Khan (1981)KLR and Kenya Power & Lighting Co Ltd -vs- Kemei (2017)eKLR** where the court stated that damages must be fair and reasonable taking into consideration severity of injuries and recovery progress.
10. The appellant contends that in view of the injuries suffered the respondent should be awarded an amount in the range of Kshs.300,000/- and 400,000/-. He relies on the following authorities;

**(i) Waithaka & Anor -vs- Kanyi (Civil Appeal No.56 of 2016 (2022) KEHC 229154 (KLR)).**

**He contends that in that case the court awarded Kshs.300,000/- as general damages for the following injuries; fracture of the left humeral neck and fracture of the left scapula.**

**(ii) Maina -vs- Nyamweya (Civil Appeal No.30 of 2021)(2022)KEHC (KLR) where the High Court reduced the awarded amount from Kshs.750,000/- to 350,000/-for a claimant who suffered fracture of the tibia,**

***dismemberment of the left pinna, bruises and wound on the forehead.***

***(iii) Kiautha -vs- Ntarangwi (Civil Appeal No.E050 of 2021 (2022) KEHC 10595 (KLR) where the High Court upheld an award of Kshs.350,000/- for the plaintiff who sustained fracture of the left clavicle and blunt soft tissue injuries.***

11. He submits that the trial court did not consider medical opinions by Dr. Njenga and Dr.Gaya both of who opined that the respondent had healed without permanent incapacity.
12. The respondent on the other hand has opposed this appeal through written submissions dated 28/5/2025 by learned counsel M/s Gacathi and Co Advocates.
13. He contends that the assessment of damages by the trial court was correct and in his view based on correct principles given the injuries he sustained.
14. He submits that though the fracture he suffered has healed, money cannot renew a physical frame that has been battered and shattered.
15. He further submits that it is desirable that comparable injuries should be compensated by comparable awards. Courts should take into consideration that inflation has taken its toll.
16. He submits that the award given was modest and reasonable in his view and relies on the following authorities;

**(a) Joseph Kimanthi Nzau -vs- Johnson Macharia (2019)eKLR where he claims that the High Court upheld an award of Kshs.800,000/- as general damages for similar injuries.**

**(b) Francis Ndungu Wambui -vs- V K(2019)eKLR where the High Court awarded the claimant Kshs. 1 Million for injuries he claims were similar to the ones he sustained and**

**(c) Barnabas -vs- Ombati (2022)eKLR where the appellate court upheld an award of Kshs.800,000/- as general damages.**

17. The respondent contends that in view of the cited authorities the award of Kshs.900,000/- by the trial court was justified.

18. This court has considered the submissions by both the appellant and the response or opposition by the respondent. As observed above this appeal is basically on quantum only. The only issue for determination therefore is whether the trial court reached correct conclusion with regard to the assessment of quantum payable in light of injuries sustained.

19. It is uncontested that the respondent suffered both soft tissue and a fracture of the right humerus which at the time of trial had healed with no permanent incapacity going by medical opinion of 2 doctors whose reports were tendered in evidence by both parties in this case. Dr Njenga in his report stated that the respondent suffered a temporary incapacity

of 30% after the accident but had since healed with no permanent incapacity.

20. This court has perused through the 3 authorities cited by the respondent and to start with the case of **Joseph Kimanthi Nzau -vs- Johnson Macharia**, the plaintiff suffered serious fractures of the skull at suture region, fractures of 1<sup>st</sup> and 2<sup>nd</sup> rib and fracture of clavicle bone which made him unable to walk without support. Certainly those injuries cannot be compared with the present case because they are far too serious in nature. In the 2<sup>nd</sup> cited decision, the plaintiff sustained fracture of the upper arm, femur and pelvis with permanent disability of 50%. Again the nature of those injuries are incomparable with the present instance.

21. It is now well settled that guiding principle in the assessment of damages is that an award made should be reflective of trends of previous recent comparable awards. In assessment of damages the general approach should be that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the inflationary trends and the fact that injuries sustained in a given accident cannot be exactly the same given the different dynamics at play during such incidents.

22. I have looked at the authorities cited by the appellant and find that the injuries are comparable in severity with those suffered by the respondent. In the case of **John Waithaka & Anor -vs- Peter Wanjohi Kanyi (supra)** the

respondent pleaded to have suffered severe lacerations on the upper left arm, injuries to the lower and upper limbs, fracture of the left humeral neck and fracture of left scapula. The medical evidence tendered indicated that the injuries healed well with no permanent incapacity. In the cited case of **Florence Wangari Maina v-s- Benjamin Nyamwenya (supra)** the respondent suffered deep cut wound on the forehead, bruises on right cheek, left pinna completely cut off, bruises of the posterior forearm and fracture of left tibia. The appellate court reduced an award of Kshs.750,000/- given by the trial court to Kshs.350,000/-. In the case of Peter Wanjohi Kanyi, an award of Kshs.300,000/- was upheld.

23. Going by the above awards which I find to be comparable with the present case, this court finds that the award of Kshs.900,000/- was manifestly excessive and unjustified in the circumstances. To that extent I find merit in this appeal which I hereby allow. The award of Kshs.900,000/- in general damages is hereby reduced to Kshs.350,000/- plus Kshs.5,650/- special damages. The total amount award is Kshs.355,650/- plus costs and interests in the lower court. The appellant will have costs of this appeal.

**DELIVERED, DATED and SIGNED at KITALE this .....12<sup>th</sup> .... day of  
.....MAY....., 2026.**

**HON JUSTICE R.K. LIMO**  
**KITALE HIGH COURT**

***Judgment delivered in open court***

***In the presence of***

***Masinde for the Respondent***

***Gati for the Appellant***

***Duke/Chemosop- Court assistants***