



**Simon & 2 others v Kamau (Civil Appeal 11 of 2023)  
[2025] KEHC 3755 (KLR) (Civ) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL  
CIVIL APPEAL 11 OF 2023**

**KW KIARIE, J**

**MARCH 26, 2025**

**BETWEEN**

**KINGS SIMON ..... 1<sup>ST</sup> APPELLANT**

**SIMBA COLT CO-OPERATION LIMITED ..... 2<sup>ND</sup> APPELLANT**

**PAULINE MWANGI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**LUCY NJOKI KAMAU ..... RESPONDENT**

*(This is an appeal from the judgment and decree in Nyahururu Chief Magistrate's  
CMCC No.184 of 2018 by Hon. S.N. Mwangi, Senior Resident Magistrate)*

**JUDGMENT**

1. The three appellants were the defendants in Nyahururu Chief Magistrate's CMCC No.184 of 2018. They had been sued for a claim of general and special damages following a road traffic accident involving motor vehicle KBV 620V and the respondent. At the time of the accident, the respondent was a pedestrian. The driver of the said motor vehicle lost control and knocked her down. As a result of the accident, she sustained injuries. The parties entered into a consent agreement regarding liability, as follows: The respondent was found to be 20 percent liable, while the appellants were found to be 80 percent liable. The appellant was awarded Kshs. 380,00.00 in general damages and Kshs. 13371 in special damages before factoring in contributory negligence.
2. The appellants were aggrieved by the judgment and filed this appeal through Murimi Ndumia Mbago & Muchela Advocates. They raised the following grounds of appeal:



- a. The learned trial magistrate erred and misdirected herself to the nature of injuries and, therefore, erred in law in her assessment of damages awardable to the plaintiff, which was manifestly excessive.
  - b. The matter proceeded ex-parte when the court entered an ex-parte judgment on 1<sup>st</sup> March 2016 and awarded a sum of 150,000/= as general damages.
  - c. The learned trial magistrate erred in assessing damages and failed to apply the principles applicable to awarding damages, and comparable awards were made for analogous cases.
3. The respondent opposed the appeal through Matiri Gekong'a & Company Advocates; however, they did not file any submissions.
  4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
  5. The appeal concerns the quantum assessed for general damages. Before an appellate court can interfere with an award of damages, it must be satisfied that a wrong principle of the law was applied, some irrelevant factors were considered, some relevant ones were left out, or the award is so inordinately low or so inordinately high. These principles were laid down by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951]AC 601 on page 613, where it held:

The principles which apply under this head are not in doubt. Whether the assessment of damages is by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have granted 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 the law (as by taking into account 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 damages (*Flint vs Lovell* [1935] 1KB 354) approved by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941]AC 601.

6. Dr. Wellington Kiamba examined the respondent. The injuries were documented as follows:
  - a. Deep cut wound on the occipital region on the scalp;
  - b. Soft tissue injuries on the neck;
  - c. Soft tissue injuries on the rightsholder joint;
  - d. Soft tissue injuries on the lower back;

The report noted that the scalp injury had healed with a permanent scar.

7. At the trial, the respondent relied on the decision in *Devki Steel Mills Ltd vs James Makau Kisuli* [2012] eKLR; the respondent, who suffered Severe soft tissue injuries to the left side of the pelvis and severe blunt injury to the right shoulder, was awarded Kshs.250,000.00 in March 2012.
8. Conversely, the appellants proposed an award of Kshs. 50,000.00. They relied on *Nelson Njugi Njoki vs Laurel Investments Limited* [2016] eKLR. The appellant sustained a fracture of the right lateral



malleolus and soft tissue injuries of the right ankle joint. He was awarded Kshs. 60,000.00 in September 2016.

9. No two injuries are alike. The fact that injuries have been classified as soft tissue injuries does not necessarily mean they are less severe. I appreciate that comparable injuries should be awarded comparable damages. I concur with the learned trial Magistrate that the injuries in Devki Steel Mills Ltd are closely similar to those sustained by the respondent in this case.
10. I have not been persuaded to interfere with the award. The appeal is dismissed with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 26TH DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

