



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chgemoguy & another v Koech (Civil Appeal E026 of 2021)  
[2025] KEHC 3599 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3599 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E026 OF 2021  
JK NG'ARNG'AR, J  
MARCH 25, 2025**

**BETWEEN**

**STEPHANO CHGEMOGUY ..... 1<sup>ST</sup> APPELLANT**

**KPSET TEA FACTORY LIMITED T/A ROROK TEA  
FACTORY ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LEONARD KIPLANGAT KOECH ..... RESPONDENT**

*(Being an Appeal from the Judgment of Senior Resident Magistrate, Omwange  
J. at the Magistrate's Court at Sotik, Civil Suit Number 158 of 2019)*

**JUDGMENT**

1. The Respondent (then Plaintiff) sued the Appellants (then Defendants) for general and special damages arising out of a road traffic accident that occurred on 12th June 2019 along Koiwa-Siomo road.
2. During the trial, the Respondent called two witnesses and thereafter closed their case and the Appellant closed its case without calling any witness or tendering any evidence.
3. Parties recorded a Consent on liability on 6th July 2021 in the ratio of 80:20 in favour of the Respondent.
4. In its Judgment dated 31st August 2021, the trial court awarded the Respondent the net total of Kshs 484,440/=.
5. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 29th September 2021 appealing against the quantum and relied on the following grounds:-



- I. That the trial Magistrate erred in fact and law by awarding damages which were inordinately high in the circumstances.
  - II. That the trial Magistrate erred in law and fact by failing to consider the evidence adduced by parties.
  - III. That the trial Magistrate erred in law and fact by applying the wrong principles of law.
  - IV. That the trial Magistrate erred in law and fact by failing to consider the submissions tendered by the Respondent.
6. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. See *Selle vs Associated Motor Boat Company Ltd* (1968) E.A 123.
  7. I now proceed to summarise the parties' case before the trial court and their respective submissions in this Appeal in the succeeding paragraphs.

#### **The Plaintiff's/Respondent's case.**

8. Through his Complaint dated 2nd December 2019, the Respondent stated that on the material day (12th June 2019), he was a passenger in motor vehicle registration number KBK 984V when it was involved in a road traffic accident motor vehicle registration number KCH 690Z along Koiwa-Siomo road. It was the Respondent's case that the 1st Appellant was the driver of motor vehicle registration number KCH 690Z and the 2nd Appellant was its registered owner and was sued vicariously.
9. It was the Respondent's case that the 1st Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 6 of the Complaint.
10. The Respondent alleged that as a result of the accident, he suffered the following injuries:-
  - I. Traumatic avulsion of teeth 21, 22 and 42 with small linear undisplaced fracture.
  - II. Blunt injury to the face leading to soft tissue injuries.
  - III. Lacerated wound on the lower lip leading to soft tissue injuries.
  - IV. Bruised pelvis.
  - V. Bruises on the right side of the abdomen.
11. The Respondent prayed for Special and General Damages against the Appellant.
12. In his written submissions dated 11th December 2024, the Respondent submitted that the award of Kshs 550,000/= as general damages was just and sufficient and should not be disturbed. He relied on *Joseph Mutua Nthia vs Fredrick Moses M. Katuva* (2019) eKLR.

#### **The Defendants'/Appellants' case**

13. Through their Statement of Defence dated 10th March 2020, the Appellants denied the occurrence of the accident and further denied that the 1st Appellant was the driver of motor vehicle registration number KCH 690Z. The 2nd Appellant denied the allegations of vicarious liability.
14. It was the Appellant's case that if the accident occurred then it was caused by the negligence and recklessness of the Respondent. The particulars of negligence were contained in paragraph 7 of the Defence.



15. In their submissions dated 15th October 2024, the Appellants submitted that the award of Kshs 550,000/= as general damages was high for soft tissue injuries. They proposed an award of Kshs 200,000/= and relied on *Justine Nyamweya Ochoki & another vs Jumaa Karisa Kipingwa (2020) eKLR*, *Michael Odiwuor Obonyo vs Clarice Odera Ogunde (2021) eKLR* and *Michael Okello vs Priscilla Atieno (2021) eKLR*.
16. I have gone through and carefully considered the Record of Appeal, the Appellants' written submissions dated 15th October 2024 and the Respondent's written submissions dated 11th December 2024. The sole issue for my determination was whether the award on general damages was inordinately high.

### **Quantum**

17. As per the Plaintiff, the Respondent suffered the following injuries:-
  - I. Traumatic avulsion of teeth 21, 22 and 42 with small linear undisplaced fracture.
  - II. Blunt injury to the face leading to soft tissue injuries.
  - III. Lacerated wound on the lower lip leading to soft tissue injuries.
  - IV. Bruised pelvis.
  - V. Bruises on the right side of the abdomen.
18. The Respondent (PW2) testified that after the accident, he was transferred to Longisa Hospital where his tooth was removed. He further testified that he fractured his hand. PW2 produced a P3 Form and a Medical Report as P.Exh 4 and P.Exh 6(a) respectively.
19. Julius Magut (PW1) testified that the Respondent suffered the following injuries; missing teeth, fracture of the left alveolar process and soft tissue injuries. PW1 produced a CT Scan Report and treatment notes as P.Exh 1 and P.Exh 2 respectively.
20. I have looked at the exhibits above and I have noted that the contents support the testimonies of PW1 and PW2 Further the exhibits capture the same injuries as the ones pleaded in the Plaintiff. Based on the above, it is my finding that the Respondent suffered soft tissue injuries and the loss of teeth.
21. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected herself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of her discretion and that as a result there has been a miscarriage of justice. See *Gitobu Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)*
22. On the issue of general damages, the Appellants submitted that the award of Kshs 550,000/= was inordinately high and they proposed an award of Kshs 200,000/=. On the other hand, the Respondent asked this court to uphold the award as it represented a fair award.
23. Alongside the authorities proposed by both parties, I have found the following cases quite helpful in terms of comparison:-
  - i. In *ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021) [2023] KEHC 23549 (KLR) (5 October 2023) (Judgment)*, the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on



the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth. The appellate court upheld the award of Kshs 250,000/=.

- ii. In *Justine Nyamweya Ochoki & another v Prudence Anna Mwambu* [2020] KEHC 878 (KLR), the Respondent suffered loss of upper front incisor tooth, deep cut on the chin, cut on the lips, loosening of the upper teeth, injury to the right forearm and loss of consciousness. The appellate court reduced the award of Kshs 650,000/= to Kshs 300,000/=.
  - iii. In *Global Trucks Ltd vs Titus Osule Osoro* (2013) eKLR, the Court awarded Kshs.200,000/= for pain suffering and loss of amenities for loss of an incisor tooth, injuries to the left elbow and the abdomen with residual permanent disability.
24. I have considered the authorities submitted by the parties and the authorities above and the nature of the injuries suffered by the Respondent and I find that the award of Kshs 550,000/= as general damages by the trial court was inordinately high and was not commensurate to the injuries sustained by the Respondent. I therefore substitute it with an award of Kshs 400,000/=.
25. As regards special damages, the award of Kshs 56,550/= was not disputed by the parties and I therefore uphold the same.
26. In light of the foregoing, the amount awarded to the Respondent is as follows:-
- General damages Kshs 400,000/=
- Less 20% contribution Kshs 80,000/=
- Kshs 320,000/=
- Add Special damages Kshs 56,550/=
- Total Kshs 376,550/=
27. In the end, the Memorandum of Appeal dated 29th September 2021 succeeds partially as the amount awarded to the Respondent is reduced from Kshs 484,440/= to Kshs 376,550/=. Each party shall bear their own costs in the Appeal and the costs and interest in the original suit shall remain as awarded by the trial court.
28. 30 days stay of execution granted.

**JUDGEMENT DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF MARCH, 2025.**

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**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of the Nyahiro for the Appellants, Orina for the Respondent and Siele/Susan (Court Assistant).

