



REPUBLIC OF KENYA



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**Komen v Kingori & another (Civil Appeal 190 of 2022)
[2025] KEHC 5503 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 190 OF 2022
PN GICHOHI, J
APRIL 30, 2025**

BETWEEN

JACKSON KOMEN APPELLANT

AND

JOSEPH MURUNGA KINGORI 1ST RESPONDENT

MUGUMA NDIRANGU 2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. E Soita,
delivered on 21st November, 2022 in Molo CMCC No. E317 of 2021)*

JUDGMENT

1. The background of this Appeal is that the Appellant herein sued the Respondents vide a Plaint dated 12th October, 2021, seeking judgement against them for:-
 - a. General damages for pain and suffering.
 - b. Special damages of Kshs. 28,970 plus 16% VAT.
 - c. Costs of the suit.
 - d. Interest on (a), (b) and (c) above at Court rates.
 - e. Any other relief that this Honourable Court shall find fit and just to grant.
2. His claim was that on or about 9th September, 2021, he was travelling on board motor vehicle registration KAN 675T along Nakuru-Eldoret Highway at Ngata area when the 2nd Respondent carelessly and negligently drove and or controlled its motor vehicle registration number KAQ 029B, causing it to hit motor vehicle KAN 675T, as a result of which he sustained:-Intracranial bleed to the



head leading to severe head injury. Blunt injuries to the eyes leading to traumatic conjunctivitis. Blunt injury to the anterior chest, left shoulder joint, right hip joint, neck and leg leading to soft tissue injuries.

3. The particulars of negligence given are that, the 2nd Respondent, being the driver of the subject motor vehicle, was carelessly overtaking hence encroaching on the lane of Motor vehicle KAN 675T, failing to keep safe distance, driving without due care and attention, driving without proper look out, driving at excessive speed, failing to swerve or brake to avoid the accident, driving under the influence of alcohol, driving a defective motor vehicle and driving while sleepy. He also relied on the doctrine of *res ipsa loquitur*.
4. The Appellant stated further that at all material times relevant to this case, Motor vehicle registration number KAQ 029B was registered in the name of the 1st Respondent, therefore, the 1st Respondent is vicariously liable for the negligent acts of the 2nd Respondent.
5. The Respondents filed a joint Defence dated 20th November, 2021, denying the entire claim and pleaded that if indeed such an accident occurred, then it was occasioned solely by the negligence of the Appellant herein.
6. They particularized the negligence on the part of the Appellant that; he failed to buckle up inside the motor vehicle KAN 675T, boarding un-roadworthy vehicle, deliberately trying to jump out of a moving vehicle, destructing the driver while driving and engaging in other frolics while on board the said motor vehicle.
7. In the alternative and without prejudice, the Respondents pleaded that the accident was occasioned by the driver of motor vehicle Registration Number KAN 675T who drove the said vehicle at excessive speed, driving without due care and attention to other road users, driving a defective motor vehicle, failing to ensure the motor vehicle was road worthy, failing to break timeously, losing control of the said motor vehicle and causing it to veer of its lane to encroach on the rightful lane of motor vehicle registration number KAQ 029B and failing to stop/swerve and or maintain proper control of the motor vehicle KAN 675T as to avoid the subject accident.
8. Their case was that since the driver and the owner of Motor vehicle KAN 675T are fully or partially liable for the accident, they should bear a portion of the liability. They then undertook to join Evans Kiplangat and Jackson Komen, the driver and owner of Motor vehicle KAN 675T respectively to this suit.
9. However, at pre-trial stage, the parties entered into a consent on liability at the ratio of 85:15 in favour of the Plaintiff (Appellant herein). After hearing both parties on quantum, the trial court by its judgement of 21 November, 2022, found in favour of the Appellant as against the Respondents jointly and severally as follows: -
 - a. General damages.....Kshs 120,000.
 - b. Special damages.....Kshs 25,750.
Sub-total.....Kshs. 145,750
Less 15% liability Kshs. 18,257.50
Grand totalKshs. 123,887.50
10. Aggrieved by this decision on quantum, the Appellant filed a Memorandum of Appeal dated 19th December, 2022, on the following grounds:-



1. That the learned trial magistrate erred in law and in fact in making a finding and arriving at an award of Kshs. 120,000 being general damages which award is inordinately low as to represent an erroneous estimate of damages payable.
 2. That the learned Trial magistrate erred in law and in fact in failing to apprehend and consider the Appellant Submissions.
11. He therefore prayed for judgment as follows:-
- a. The finding of the trial magistrate on quantum be set aside, be reviewed and revised and or be substituted with the judgement of this Honourable Court.
 - b. The Honourable Court do make such further orders as it may deem fit.
 - c. The Appeal be allowed with costs to the Appellant.

Appellant's Submissions

12. He emphasised the injuries he sustained as a result of the said accident and argued that after the accident, he was taken to Nakuru Provincial General Hospital, where he was admitted from 10/9/201 till 13/9/2021. Later on, he was issued with a medical report dated 27/9/2021 confirming the injuries sustained, which were classified as grievous harm. Further that Dr. Omuyoma wrote a medical-legal report dated 7/10/2021 and confirmed the injuries listed and added that the CT scan showed intracranial bleed and that movements at the left shoulder joint and the right hip were restricted because of pain and also classified the injuries as grievous harm.
13. Based on the foregoing, the Appellant submitted that the award by the trial court is manifestly low and does not adequately compensate him for the pain and suffering he experienced. In support of this, he relied on the case of Easy Coach Limited V Emily Nyangasi [2017] eKLR, where an award of Kshs. 700,000 was upheld for the Respondent who sustained facial injury, injury to the chest back and right hand with cut wound, injury to the right leg with cut wound.
14. In conclusion, he urged this Court to set aside the trial Court's award and substitute it with an award that is consistent with the evidence tendered and relevant precedents. He also prayed for award of costs of this Appeal.

Respondents' Submissions

15. The Respondents submitted from the onset that the appeal is unmerited, baseless, vexatious and an abuse of the court process for the supreme reason that the award by the learned magistrate is within the comparable highest limits and that in any event, that if any review is to be done, then it should be reviewed downwards.
16. It was submitted that as per Dr. Malik's Report, the Appellant herein sustained soft tissue injuries only and therefore, the award herein was justified. In support of their view, the Respondents relied on the case of Millicent Atieno Ochunyo v Katola Richard[2015] eKLR and the case of HB (Minor suing through mother and next friend DKM) v Japer Nchonga Magari & Another [2021] eKLR, where the Court reiterated that comparable injuries so far as possible to be compensated by comparable awards.



17. The Respondents further relied on the case of Charles Oriwo deyo V Apollo Justus Andabwa & Another [2017] EKLR, where the Court of Appeal stated that: -

“The assessment of damages in personal injury case by court is guided by the following principles: -

1. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
2. The award should be commensurable with the injuries sustained.
3. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
4. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
5. The awards should not be inordinately low or high (See Boniface Waiti & another Vs Michael Kariuki Kamau (2007) eKLR.”

18. After laying emphasis on the role of the appellate court, the Respondents argued that exercise of discretion by a magistrate or a judge can only be interfered with if such a court erred in principle of law and arrived at a wrong decision. To support this, reliance was placed on the Court of Appeal decision in case of Meya Agri Traders Ltd V Elgon House [2010] ltd [2023] KECA 574 (KLR) and the case of Catholic Diocese of Kisumu V sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2KLR 55.

19. Accordingly, the Respondents argued that the trial court was alive to the principles applicable in awarding damages in such circumstances and therefore, the award was justified.

20. The Respondents further argued that if this Court is to interfere with the award of the trial court then the award should be reviewed downwards as award on damages on the type of injuries such as sustained by the Appellant herein range from Kshs. 60,000 to Kshs. 120,000. In support of this, they relied on the case of:-George Mugo & a mother V AKM (Minor suing through Next Friend and mother of ANK) [2018] eKLR, where Kemei J, substituted an award of Kshs. 300,0000 with an award of Kshs. 90,000 for soft tissue injuries to the left shoulder, blunt chest injury, bruises to the left wrist and blunt injury to the left arm.HB(Minor suing through mother and next friend DKM) v Japer Nchonga Magari & Another [2021] eKLR, where Nyakundi J upheld the trial courts award of Kshs. 60,000 for soft tissue injuries.

21. In conclusion, they submitted that the award by the trial court was within the highest acceptable limited and therefore, it should either be maintained or varied downwards.

Analysis and Determination

22. This is an appeal on quantum of damages only. Liability was recorded by consent in the ratio of 85:15 in favour of the Appellant as against the Respondents.

23. This being an appeal on quantum damages, I am guided by the legal principle enunciated in Butt –vs- Khan (1981) KLR 349, which was applied in Kemfro Africa Ltd t/a Meru Express Service & Gathongo



Kanini –vs- A.M Lubia and Olive Lubia (1982 – 1988) I KAR 727 at page 730, wherein Kneller JA stated as follows -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former court of Appeal for East Africa to be that it must be satisfied that either the Judge in assessing damages, took into account an irrelevant factor, or left out of account a relevant one or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

24. The Appellant argued that the award given by the trial Court is manifestly low and does not compensate him for the injuries sustained. The Respondents on the other hand maintained that the award was the highest possible given as per the soft tissue injuries the Appellant suffered.
25. In the Complaint dated 12th October, 2021, the Appellant herein alleged to have suffered; intracranial bleed to the head leading to severe head injury, blunt injuries to the eyes leading to traumatic conjunctivitis and blunt injury to the anterior chest, left shoulder joint, right hip joint, neck and leg leading to soft tissue injuries.
26. As per the Discharge Summary dated 13/9/2021, the Appellant herein was admitted to Nakuru Level 5 Hospital (PGH) from the date of accident on 10/9/2021 to 13/9/2021 and the main complaint was mild head injury.
27. The medical report from the same Hospital dated 27/9/2021 indicated that the Appellant suffered severe head injury together with neck, shoulder, hip and leg injuries.
28. In the medical-legal report dated 7/10/2021, Dr. Obed Omuyoma reported that the Appellant herein suffered; mild head injury, injury to both eyes leading to traumatic conjunctivitis and several soft tissue injuries to the anterior chest, left shoulder and right hip joint.
29. In the medical report for the Respondents dated 11/2/2022, Dr. M.S Malik indicated that the Appellant presented with swelling of the forehead and eye region, and pain in the chest, left shoulder joint and hip joint. However, upon examination, he noted that the appellant present occasional headaches, pain in the neck and hip joint only. He classified the injuries as soft tissue injuries.
30. From these medical reports, it is noted that though the treating Doctor at PGH Hospital did not mention any bleeding on the head, Dr. Omuyoma stated in his report stated that a CT scan revealed that there was Intracranial bleed. Among the documents he used when doing the report , Dr. Omuyoma listed the Discharge summary dated 19/9/2021 from Nakuru Level 5 Hospital and the P3 form filled by the same Hospital on 21/9/2021.
31. There was no mention of a CT scan being carried out by either, Nakuru PGH or by Dr. Obed Omuyoma himself. In the circumstances herein, it is safe to state that the Appellant suffered mild head injury, traumatic conjunctivitis and several soft tissue injuries.
32. In the case of Nkaruarau Lejumurt v Vegpro (K) Limited t/a Kantara Farm [2018] eKLR , the Appellant suffered traumatic injury to the right leg, blunt trauma to the right hand, a deep cut in the right upper limb, a traumatic mild head injury and multiple soft tissue injuries. The appellate Court awarded a sum of Kshs. 200,000/= as general damages.
33. In John Mwendwa Kuti & 2 others v Ibrahim Kunyaga [2020] KEHC 8491 (KLR), Gikonyo J, reduced an award of Kshs. 500,000 to Kshs. 350,000 for a Plaintiff that had suffered; serious head injury, multiple bruises on the scalp and injuries on the shoulder.



34. In awarding Kshs. 120,000 as general damages herein , the trial court relied on the case of Ndungu Dennis v Ann Wangari Ndirangu & Eddah Mwihaki (Civil Appeal 54 of 2016) [2018] KEHC 8799 (KLR) in where Prof. Joel Ngugi J (as he then was) found that the Respondent had suffered soft tissue injuries only and therefore reduced the award on general damages from Kshs. 300,000 to Kshs. 100,000.
35. A perusal of the trial court’s judgement indicates the said court duplicated the injuries as listed in the Plaint as the injuries the Appellant herein suffered. If the court indeed addressed its mind to the injuries suffered herein, it would have noted that injuries (a) (b) (c) & (d) as listed in paragraph 2 of the judgement are not soft tissue injuries as he concluded in the judgement.
36. This Court notes that the Appellant herein suffered soft tissue injuries, mild head injuries and traumatic conjunctivitis which the trial court appears not to have taken into consideration. Accordingly, the award of Kshs. 120,000 is manifestly low for the injuries suffered herein. The award is therefore substituted with an award of Kshs. 300,000.
37. The parties did not raise any issues on the award of Special damages, as such, the award granted by the trial court is maintained.
38. The upshot of the foregoing, is that this Appeal succeeds in the following terms.
1. The general damages for pain and suffering is substituted with an award of Kshs. 300,000.
 2. Special damages.....Kshs. 25,750.
Subtotal.....Kshs 325,750
Less 15% contributory negligence ..Kshs. 48,862.50.
Grand totalKshs. 276,887.50
 3. Interest on general damages at court rates from the date of this judgment.
 4. Costs of this Appeal is awarded to the Appellant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF APRIL, 2025.

PATRICIA GICHOHI

JUDGE

Ms Jeptanui fr the Chelagat for the Appellant

Ms Mwangi for Mr. Kisila for the Respondents

Ruto, Court Assistant

