



REPUBLIC OF KENYA



**Salim v Hassan t/a Husma Enterprises (Civil Appeal E239 of 2023)
[2025] KEHC 12079 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 12079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E239 OF 2023**

**F WANGARI, J
APRIL 30, 2025**

BETWEEN

ISLAM MBARUK SALIM APPELLANT

AND

SHANKARON ALI HASSAN T/A HUSMA ENTERPRISES RESPONDENT

*(Being an appeal from the judgment of Hon. N. Gatambia in Mombasa
Small Claims Court Civil Suit No. 302 of 2023, delivered on 31/08/2023)*

JUDGMENT

1. This is an Appeal from the Judgment of Hon. Gatambia Ndungu, Resident Magistrate/ Adjudicator delivered on 31/08/2023. The Appeal is on quantum only.
2. In the Statement of Claim dated 14/06/2023, the Appellant, who was the Claimant claimed damages for an accident that occurred on 08/02/2022 involving Motor Vehicle Registration Number KDE 117F owned by the Defendant/ Respondent and driven by his agent/ driver, while the Claimant/ Appellant was walking on the pedestrian lane along Kibokoni Road, Mombasa.
3. It was pleaded that the Respondent's driver carelessly drove the said motor vehicle and hit the Respondent resulting to serious injuries sustained by the Appellant and 8% partial permanent disability.
4. The Respondent did not enter appearance nor file the Response to the Claim. Interlocutory judgment was entered against the Respondent. The Court found 100% liability against the Appellant. Kshs. 300,000 was awarded as General Damages for pain and suffering, with special damages of Kshs. 17,665/=.
5. Aggrieved by the quantum awarded by the Trial Court, the Appellant lodged a Memorandum of Appeal hence this Appeal.



Submissions on quantum

6. In the trial court, the Appellant in his submissions sought for Kshs. 800,000 as General Damages for pain and suffering. He relied on the case of *George Osewe Osawa v Sukari Industries Limited* [2015] eKLR and *Ali Malik Brothers Motor (K) Limited & Another v Emmanuel Oduor Onyango*, NRB HCCA No. 252 of 2016 [2018] eKLR, in support of the claim.
7. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions. The Appellant complied by filing his submissions. The Appellant filed submissions dated 06/02/2025 submitted that the trial court's award of Kshs. 300,000 as General Damages was too low and the Court erred in law and fact by failing to take into account comparable authorities.

Analysis

8. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
9. In the cases of *Peters v Sunday Post Limited* [1958] EA 424, the court therein rendered itself as follows: -

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

Quantum

10. The Appellant submitted that an award of Kshs. 300,000 was too low for general damages for pain and suffering as commensurate compensation in the circumstances of this case was at Kshs. 800,000/=.
11. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd v Meru Express Service v. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.”
12. Fact finding is primarily the duty of the trial court and once evidence is presented before it on the basis of which it could arrive at a finding one way or the other, as was held in *Job Obanda v. Stage Coach International Services Limited & Another* Civil Appeal No. 6 of 2001, it is not for the appellate court to set aside the trial court's exercise of discretion and substitute its own simply because if it had been the trial court it would have exercised the discretion differently.
13. There is no dispute that the Respondent suffered the injuries as pleaded. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages.



14. The Court of Appeal in *Odinga Jacktone Ouma V Maureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”
15. The Appellant suffered the following injuries;
 - i. Mild head injury
 - ii. Fracture of the right pelvis
 - iii. Bruises on the forehead and neck
 - iv. permanent disability of 8%.
16. I have considered the authorities cited by the Appellant. In addition to the same, in the case of *Joseph Njeru Luke & 3 others v Stellah Muki Kioko* [2020] eKLR, the Plaintiff sustained pelvic fractures and soft tissue injuries, the High Court reduced the Lower Court’s award of Kshs. 1,700,000 to Kshs. 750,000.
17. From the nature of injuries sustained, and considering the loss of value for money, I find that an award of Kshs. 600,000 in General Damages would be adequate compensation based comparable authorities cited by the parties. The appeal on General Damages is partially successful.
18. The Appellant sought for future medical expenses which was estimated at Kshs. 30,000/=. The same had already been awarded by the Trial Court. The award shall remain undisturbed.
19. On costs, I consider that the appeal was partially successful. Litigation must come to an end, and no further proceedings need to be entertained. I hereby exercise the discretion of the court and order that the Appellant do bear his own costs.

Determination

20. In the upshot, I make the following orders: -
 - a. The Appeal succeeds to the extent that the General Damages award of Kshs. 300,000 is hereby set aside and substituted with an award of Kshs. 600,000.
 - b. The rest of the awards remains undisturbed.
 - c. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 30TH DAY OF APRIL, 2025.

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F. WANGARI

JUDGE

In the presence of;

Advocate for the Appellant

Advocate for the Respondent

M/S Salwa, Court Assistant

