



REPUBLIC OF KENYA



KENYA LAW
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**Matunda (Fruits) Bus Services Limited v Owino (Civil Appeal
105 of 2019) [2025] KEHC 5177 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 105 OF 2019
HI ONG'UDI, J
APRIL 29, 2025**

BETWEEN

MATUNDA (FRUITS) BUS SERVICES LIMITED APPELLANT

AND

PHOEBE ACHIENG OWINO RESPONDENT

(Being an appeal from the judgment of Honourable S.M Wabome (Chief Magistrate), delivered on 21st May 2019 in Molo CMCC NO. 300 of 2018)

JUDGMENT

1. Phoebe Achieng Owino the respondent herein filed a suit against Matunda (Fruits) bus services limited seeking general and special damages, costs plus interest arising from an accident that occurred on 31st December 2017 or thereabout. The accident involved a motor vehicle registration number KCC XXXX, in which she was a passenger travelling to Nairobi. As a result of the accident she suffered multiple injuries.
2. The appellant filed a defence denying the respondent's claims and blaming her plus the driver of motor vehicle KBK XXXX for the accident. Later the parties entered into a consent on liability in the ratio of 5:95 in favour of the respondent. The matter was then heard after which the respondent was awarded general damages of Ksh 700,000/= less 5% contributory negligence, special damages (shs 7,550/=) plus costs and interest until payments in full.
3. Aggrieved by the said judgement, the appellant filed this appeal against the lower courts' Judgement based on the following grounds; -
 - i. That the trial Magistrate erred in fact and in law in awarding the respondent general damages which is manifestly excessive and/or inordinately high as to be unjust.



- ii. That the Learned Magistrate erred in law and in fact in failing to accord due regard to the appellant's submissions on quantum on applicable principles for assessment of damages.
 - iii. That the learned magistrate erred in law and in fact by failing to consider authorities relied on by the appellants in their submissions.
4. The Appeal was canvassed through written submissions. It is only the appellant's counsel who filed submissions. The respondent did not file any submissions despite her being accorded several opportunities to do so. The same are not in the court file or the CTS portal.
 5. The appellant's submissions were filed by Kimondo Gachoka & company advocates and are dated 14th February, 2025. Counsel submitted that the grounds of appeal could be summed up to one issue of quantum. He reiterated and relied on their written submissions filed in the lower court and invited the court to consider them.
 6. He further submitted that the award of Kshs 700,000/= made by the trial court was too high, in view of the injuries suffered. He proposed an award of Ksh 300,000/= while relying on the following cases:
 - i. Jubilee Hauliers Limited & Another v Mary Waithera Wanja 2019 eKLR where the High Court upheld an award of Kshs. 200,000/= for degloving injuries to the elbow, multiple lacerations on the right arm and soft tissue injuries on the chest, cut on the tongue and bruises on the forehead.
 - ii. Martin Mutuku & another v SN (suing through his mother and next friend DC) [2021] eKLR where Sergio J. reduced an award of Ksh.600,000/= to Ksh.300,000/= for abrasions on the scalp, blunt injuries to the chest, blunt injuries to the abdomen, and degloving injuries on the left foot.
 - iii. Annet Noti Jefwa Kayaa v David Njau Kungu & another [2019] eKLR where Githua J. upheld an award of Ksh.250,000/= for a degloving injury of right leg and lower ankle, cut wound of the scalp and cut wound of the left elbow.
 7. In conclusion, he urged the court to allow the appeal and award the appellant costs.

Analysis and determination

8. This being a first appellate court, I am guided by the dictum in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to re-consider and re-evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.
9. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated thus:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”
10. Having considered the record of appeal, grounds of appeal, the submissions and the authorities relied on by the appellant, I opine that the issue for determination is whether the award on general damages was inordinately high.



11. The Court of Appeal in *Kemfro Africa Ltd t/a Meru Express & Another v A.M. Lubia & another (No.2) (1987)*) KLR 30 stated that:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by the trial judge were held by the former court of Eastern 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”

12. Further, the Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera [2016]* eKLR stated as follows: -

“comparable injuries should attract comparable awards”.

13. In awarding quantum, the trial magistrate considered the medical report by Doctor Kiamba produced as P exhibit 4(a) which classified the respondent’s injuries as grievous harm and assessed permanent disability at 10%. The court also noted that the grievous harm must have arisen from the degloving injury which was evident even at the time the respondent testified in court. She then made an award of general damages amounting to Kshs. 700,000/= after considering the nature of injuries suffered by the respondent, the submissions together with authorities therein.

14. The medical report P. Exhibit 4(a) outlines the injuries suffered by the respondent as: - degloving injury of the right leg and soft tissue injuries of the chest, lower back and forehead. It classifies the degree of injury as grievous harm and temporary disability up to three (3) months and permanent disability at ten per cent (10%).

15. This court notes that the trial court made the award of Ksh 700,000/- after considering the authorities cited by the parties in their submissions. In disputing the said award, the appellant cited the decision in *Mutuku Stanley & Another v Stephen Mwangela Maweu [2017]* eKLR, where the court awarded Kshs. 300,000/= to the plaintiff who had cut wounds on back, head, right hand, lacerations, cut wound on right elbow, degloving injury of left hand with deformity of the 3rd and 4th fingers, blunt injury to the left shoulder. In the present case, the respondent sustained degloving injury of the right leg and soft tissue injuries of the chest, lower back and forehead which are slightly similar to the injuries sustained in the decision cited by the appellant. However, the respondent also suffered a permanent disability of 10% which is not the case in the decision relied on by the appellant.

16. In *Wycliffe Lumula Mmasi v Ernest Waithaka & Another [2020]* eKLR, L. Njuguna J made an award of Kshs. 800,000/= to a claimant who had sustained extensive degloving injury on the right foot and extensive skin loss. Further, in *Kiru Tea Factory & Another v Peterson Watheka Wanjohi [2008]* eKLR the High Court upheld an award of Kshs. 800,000/= for degloving injury on the right hand with extensive skin and muscle loss on the forearm, fractures of the radius, ulna and right iliac bone and generalized pains.

17. In the above decisions, the injuries are slightly similar but more serious than the ones sustained by the respondent herein, I therefore find the award of Kshs. 700,000/= to have been inordinately high. I consider a sum of Ksh.450,000/= to be adequate compensation for the injuries suffered by the respondent.



18. The upshot is that the award of Kshs.700,000/= in general damages is set aside and substituted with an award of Kshs. 450,000/= less 5% (Kshs 22,500/=) = 427,500/=. The special damages of Kshs 7,550/= was not challenged and is thus upheld.
19. The appeal thus partially succeeds, I set aside the Judgment by the lower court and enter Judgment for the respondent as follows:
- a. General damages Ksh 427,500/=
 - b. Special damages Ksh 7,550/=
 - c. Costs in the lower court to the respondent
 - d. Each party to bear its own costs to the appeal.
 - e. Interest on both sums shall run from the date of Judgment in the lower court at court rates
20. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 29TH APRIL, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

