



**Pramukh Wholesalers v Omutiti (Civil Appeal E006 of 2024)  
[2025] KEHC 7539 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E006 OF 2024**

**A MABEYA, J  
MAY 30, 2025**

**BETWEEN**

**PRAMUKH WHOLESALERS ..... APPELLANT**

**AND**

**LYNETTE LUBANGA OMUTITI ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. F. Rashid PM delivered on the 5/12/2023 in the Kisumu Chief Magistrate's Court Case No. 121 of 2021)*

**JUDGMENT**

1. The respondent filed the primary suit before the trial court vide an amended plaint dated 17/3/2021 for general and special damages, loss of future earnings as well as costs of the suit with interest for injuries sustained following a road traffic accident.
2. The appellant opposed the suit vide an amended statement of defence dated 9/4/2021 in which it denied the respondent's claim. It contended contributory negligence on the part of the respondent.
3. The matter proceeded for trial and by a judgment delivered on 5/12/2023 the trial court held the appellant 100% liable and assessed general damages at Kshs. 700,000/-. It also awarded the plaintiff costs of the suit and interest.
4. Being dissatisfied with the said Judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 10/01/2024 and raised five (5) grounds of appeal as follows: -
  - a. The learned trial magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently coming to a wrong conclusion on the same.



- b. The learned trial magistrate misdirected herself in ignoring the principles applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
  - c. The learned trial magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondent (if any) and failed to apply precedents and tenets of law applicable.
  - d. The learned trial magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis-à-vis the respondent's claim.
  - e. The learned trial magistrate failed to apply herself judicially and to adequately evaluate the evidence and exhibits tendered on quantum thereby arrived at a decision unsustainable in law.
5. The appeal was disposed of by written submissions. The appellant submitted that the trial court relied on wrong principles when assessing damages thereby resulting to an inordinately high award to the respondent. That an award of Kshs. 500,000/- would be more reasonable and sufficient compensation to the respondent for the injuries sustained.
  6. On his part, the respondent submitted that the amount of Kshs. 700,000/- awarded was reasonable and commensurate to the injuries that she had sustained. That the court ought to grant her an award of Kshs. 2,000,000/- that she had prayed for before the trial court. That the trial court erred in dismissing an award under loss of future earnings and stating that the witness had failed to avail proof that the injuries she sustained would affect her work life.
  7. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial afresh and come to its own independent findings and conclusions but at all times having in mind that it did not see the witnesses testify. See *Selles & Anor vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123.
  8. Before the trial court, the respondent (Pw1) told the court that on or about the 3/6/2020, she was a lawful passenger abode motor vehicle registration number KBS 300G that was travelling along Kisumu – Kakamega road. That it collided with the appellant's motor vehicle registration number KAT 330S, a FH Mitsubishi Lorry that was being negligently, carelessly and negligently driven thus causing the accident that led to the respondent sustaining serious bodily injuries. That prior to the accident, she had no eye problems.
  9. Pw2, George Mwita, a Senior Clinical Officer at Ahero testified to examining the respondent a month after the accident. He noted that her soft tissue injuries had healed. That the respondent had been attended at Sabatia Eye Clinic though he himself was not an eye specialist.
  10. The appellant did not file his defence or call any witnesses in support of his defence.
  11. I have considered the evidence tendered before the trial court and the submissions made before me. Having perused the grounds of appeal pleaded by the appellant, it is my view that the only issue for determination is whether the trial magistrate followed the correct principles in awarding damages to the respondent.
  12. Circumstances in which an appellate court will interfere with the quantum of damages awarded by a trial court were clearly laid out in the case of *Kenya Bus Services Limited v Jane Karambu Gituma* Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows: -

“ ... in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with



the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages.”

13. In *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2)* [1985] eKLR, the Court of Appeal held 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 of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the 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.”

14. From the record, the respondent pleaded and testified that she sustained the following injuries: -

- a. Tenderness and head injury
- b. Tenderness and pain in the left eye injury
- c. Permanent vision impairment of the left eye
- d. Loss of vision of the left eye
- e. Tenderness and swollen left side of the neck
- f. Chest and back pain
- g. Pain and swollen left side of the shoulder
- h. Tenderness and swollen left leg at the hip joint
- i. Bruises on the knees.

15. I have reevaluated the evidence produced by the respondent. I note that the injuries are what was stated by Pw2, George Mwita, the clinical officer who examined her a month after the accident. It is contained in the clinical documents produced as Exhibit 1. Pw2 noted that the injuries were soft tissue in nature and that they had healed. He however admitted that he was not an eye specialist but that he noted the same observations as those by the eye specialist who had examined the respondent.

16. 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 damages for similar or relatively similar injuries. In *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR, the court stated that “comparable injuries should attract comparable awards”.

17. The principle on the award of damages is settled. In *Charles Oriwo Odeyo v Appollo Justus Andabwa & Another* [2017] eKLR, the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -

- a. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- b. The award should be commensurable with the injuries sustained.



- c. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
  - d. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
  - e. The awards should not be inordinately low or high.
18. My duty is thus to analyze similar injury cases to arrive at a decision whether the trial court did not factor in the principles applicable to the award of general damages.
19. No single case is typically identical to the other. In *Penina Waithira Kaburu v LP* [2019] eKLR, the Court stated thus on the issue of award of general damages: –
- “While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the trial court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award, must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar.”
20. In *Fred Ben Okoth v Equator Bottlers Ltd* (2015) eKLR (cited by the trial court), *Peter Gichuri Mwangi v James Kabathi Mwangi* (2007) eKLR, & *Laban Buyole Mamboleo v Rift Valley Textiles* (1998) eKLR the courts awarded average damages of between Kshs. 600,000/- to Kshs. 650,000/-, while in *David Omuteleva Opon v Dela Rue Currency & Security Print Ltd* (2017) eKLR, the court awarded Kshs 1,200,000/= for eye injury leading to 30% disability.
21. I do find that given the inflationary rates and comparable awards awarded for similar injuries the award made by the trial court was proportionate. In arriving at this finding, I have considered the respondent’s injuries, all the medical reports, the comparable citations by both parties as submitted before the trial court and before me.
22. The upshot is that the appeal is unmerited and the same is dismissed with costs.

It is so decreed.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

