



**Abdalla Mohamed v KM (Minor Suing through his Mother and Next Friend JUM)
(Civil Appeal E199 of 2023) [2025] KEHC 12144 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 12144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E199 OF 2023**

F WANGARI, J

MAY 29, 2025

BETWEEN

ABDALLA MOHAMED APPELLANT

AND

**KM (MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND
JUM) RESPONDENT**

*(Being an appeal from the judgment by Hon. E. Muchoki, SRM
delivered 13/07/2023 in Mombasa CMCC No. E1395 of 2017)*

JUDGMENT

1. Through a Plaintiff dated 23/06/2017, the Respondent claimed general and special damages as a result of injuries sustained in an accident that occurred on 01/11/2014.
2. It was pleaded that the Respondent, a minor suing through the mother was a lawful pedestrian along Mombasa- Malindi road when the driver of motor vehicle registration no. KBK 875L Nissan Matatu registered in the name of the Appellant, negligently drove the said vehicle knocking down the Respondent.
3. The Trial Court heard the Plaintiff's evidence only. The defence case was closed due to non-attendance of the Defendant. The court proceeded to render judgement on 13/07/2023 entering liability against the Defendant at 100%. Kshs. 900,000 was awarded as General Damages for pain and suffering, with special damages of Kshs. 2,000.
4. Aggrieved by the finding of the Trial Court, the Appellant lodged a Memorandum of Appeal hence this Appeal. The appeal was on quantum only.
5. The appeal was canvassed by way of written submissions. Both parties complied by filing their rival submissions. The Appellant filed submissions dated 09/02/2024 submitting that the trial court's



award of Kshs. 900,000 as General Damages was inordinately high considering the injuries suffered. An award of Kshs. 400,000 was proposed as being sufficient and adequate compensation.

6. The Appellant relied inter alia on cases of *Herbart Otara Marube v Dankan Ochora* [2022] eKLR where Kshs. 450,000 was awarded and *Wakim Sodas Limited v Sammy Aritos* [2017] eKLR where Kshs 400,000 was awarded for injuries similar to that of Respondent. He prayed that the appeal be allowed and the judgment of the lower court be set aside.
7. The Respondents submitted that the award in the lower court was an exercise of discretion by the trial court based on evidence hence this court ought not to interfere with the damages awarded.

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. (see *Peters v Sunday Post Limited* [1958] EA 424 and *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)

Quantum

9. The Appellant submitted that an award of Kshs. 900,000 was too high for general damages for pain and suffering as commensurate compensation in the circumstances of this case.
10. 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.”

11. It is thus settled that for the Appellate court, to interfere with the award it is not enough to show that the award is high or had if I handled the case in the subordinate court, I would have awarded a different figure. Damages are said to be at large. They must be commensurate with similar injuries.
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 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; -
- 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.
16. The Appellant suffered the following injuries;
- a. Comminuted and displaced fractures of the mid shaft of the
 - b. right tibia
 - c. Comminuted and displaced fractures of the proximal right fibula
 - d. Bruises on the forehead
17. In *Ali Malik Brothers Motor (K) Limited and Another v Emmanuel Oduor Onyango* NRB HCCA No. 252 of 2016 [2018] eKLR, the plaintiff sustained a fracture of the pelvic sprain hymen and cuts of the right knee and was awarded Kshs. 700,000/- which was affirmed by the High Court. In *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.
18. From the above, the Plaintiffs suffered injuries almost similar to those suffered by the Respondent. Considering the loss of value for money over the years, I find that the award of Kshs. 900,000 granted as general damages was commensurate to the injuries suffered. I find no reason to interfere with the quantum as awarded in the lower court.
19. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR. The court exercises this discretion and award costs to the Respondent.

Determination

20. In the upshot, I make the following orders: -
- a. The Appeal lacks merits and is hereby dismissed.
 - b. Costs awarded to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 29TH DAY OF MAY, 2025.

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F. WANGARI

JUDGE

In the presence of;

M/S Magina Advocate h/b for Mr. Ndolo Advocate for the Appellant

Mr. Mokaya Advocate h/b for Mr. Nyabena Advocate for the Respondent

M/S Norah, Court Assistant

