



REPUBLIC OF KENYA



**KENYA LAW**  
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**Orukan v Patel & another (Civil Appeal 29 of 2023)  
[2025] KEHC 7180 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7180 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA**

**CIVIL APPEAL 29 OF 2023**

**PJO OTIENO, J**

**MAY 29, 2025**

**BETWEEN**

**PATRICK ALEX ORUKAN ..... APPELLANT**

**AND**

**JAYESHKUMAR RAMJIBHAI PATEL ..... 1<sup>ST</sup> RESPONDENT**

**SAHAJANAND ENTERPRISES ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment of Hon. Caroline  
Cheruiyot (RM) in Kakamega CMCC Case No. E150 of 2021)*

**JUDGMENT**

**Background of the Appeal**

1. By way of an amended plaint dated 16<sup>th</sup> November, 2021, the appellant sued the respondents for general damages, interest and costs of the suit.
2. The appellant's case was that on 16/6/2021 he was riding on a motorbike registration number KMDE 218P along Kakamega Mumias Road when motor vehicle registration number KAV 156B registered in the name of the 1<sup>st</sup> respondent was carelessly driven as a result to which it veered off the road and hit the appellant thus occasioning to him severe bodily injuries. The appellant set out the particulars of negligence as well as those of the injuries suffered and prayed for an award for General damages, costs of the suit and Interests.
3. By a statement of defence dated 11<sup>th</sup> January, 2022, the respondents only admitted only the descriptive paragraphs of the plaint but denied the appellant's claim entirely then pleaded in the alternative but without prejudice basis that if at all the accident occurred then it was occasioned by the appellant's negligence and/or the negligence of the rider of motor cycle registration number KMDE 218P. the particulars of negligence separately attributed to the plaintiff and the rider were set out separately



- for each of the two. It was then pleaded that the plaintiff's suit was bad in law, incurably defective, attracting a preliminary objection for being struck off, is otherwise misconceived, frivolous, scandalous, vexatious and an abuse of the court process and otherwise poorly and ambiguously pleaded.
4. In a judgment of the trial court delivered on 31<sup>st</sup> January, 2023, the court found the respondents 100% liable for the accident and awarded the appellant general damages in the sum of Kshs. 50,000/- together with costs and interest of the suit.
  5. Aggrieved with the decision of the trial court, the appellant's lodged a memorandum of appeal dated 23<sup>rd</sup> February, 2023 premised on the following grounds;
    - a. That the learned magistrate erred in law and in fact by finding that the appellant was entitled to general damages of Kshs. 50,000/- which was too much on the lower side in view of the injuries suffered by the appellant that it presented a miscarriage of justice.
    - b. That the learned magistrate erred in law and in fact by failing to consider the appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
    - c. That the learned magistrate erred in law and in fact by failing to consider conventional awards for general damages for pain and suffering which is very low.
    - d. That the learned magistrate erred in law and in fact when making her award by failing to consider the passage of time and incidence of inflation.
  6. For the above reasons, the appellant prays that the judgment of the trial court be set aside and that this court does reassess the general damages payable to the appellant. Even when expressed to be on four grounds, the appeal essentially challenges the assessment of general damages and nothing else.
  7. The appeal has been canvassed by way of written submissions which the court summarises as below;

### **Appellant's Submissions**

8. It is the appellant's submission that even though the award of general damages is at the discretion of the court, there is always a room for interference by an appellate court provided that it be demonstrated that; the trial court acted upon some wrong principle of law or that the sum awarded is so extremely high or so very low as to evince an entirely erroneous estimate of the damages due. For that submission, the appellant cited the decision in *Gitobu Imanyara v Attorney General* [2016] eKLR.
9. It is then added that even in exercising the undoubted discretion, the court is bound to apply the principle of law that comparable injuries should attract comparable awards. It is argued that the injuries he suffered were soft tissue in nature and comparable to those in *Bungoma Civil Appeal No. 18 of 2019 POA Kenya Services Ltd & another v Getrude Namalwa Wanjala* [2021] eKLR where the court awarded a sum of Kshs. 350,000/-.
10. On the incidental costs of the appeal the appellant relies on the provisions of section 27 of the *Civil Procedure Act* as applied in the decision in *Cecilia Karugu Njau v Barclays Bank of Kenya and Another* [2016] eKLR for the principle of law that even though costs fall for award at the discretion of the court, the guiding principle is that costs ought to follow the even unless for a good reason to be recorded.

### **Respondents' Submissions**

11. It is the respondent's submission that the injuries suffered by the appellant were limited to chest pain, pain on the right shoulder and bruises on the knees bilaterally swollen, which are symptoms of a



soft tissue injury and that the sum for general damages awarded in the sum of Kshs. 50,000/- was appropriate. In that regard the respondent cites; Eastern Produce Ltd v Mamboleo Khamadi [2015] eKLR where the High Court reduced the general damages of Kshs. 120,000/- awarded by the trial court to Kshs. 50,000/- in a case where the plaintiff had suffered a cut wound on the right middle finger and severe pains incurred during and after injury; Buds and Bloom Ltd v Lawrence Emusugut Obwa [2016] eKLR where the High Court reduced the general damages of Kshs. 70,000/- awarded by the trial court to Kshs. 50,000/- in a case where the plaintiff had suffered a deep cut wound on the left leg and soft tissue injuries on the leg and; Kipkere Ltd v Peterson Ondieki Tai [2016] eKLR as quoted in the case of Rege v LA (*Minor suing through her father and next friend GAA*) (Civil Appeal No. E111 of 2021) where the High Court reduced the general damages of Kshs. 100,000/- awarded by the trial court to Kshs. 30,000/- in a case where the plaintiff had suffered a deep cut wound on the left leg, chest contusion and bruises on the left shoulder.

12. It is further submitted that the trial court indeed considered the appellant's submissions at page 76 of the record of appeal by noting that in the case the appellant had relied on to convince the court to make an award in the sum of Kshs. 350,000/- demonstrated more severe injuries than those suffered by the plaintiff.

### **Issues, Analysis and Determination**

13. The court has duly considered the grounds of appeal, the proceedings of the lower court and the submissions by both the appellant and the respondent and discerns the sole issue for determination to be whether the damages awarded by the trial court were inordinately low.
14. Since the Court of Appeal in the case of Gitobu Imanyara & 2 Others v. Attorney General (supra) it is now "firmly established that an appellate Court will be disinclined to disturb the finding of a trial Judge, as to the amount of damages merely because it thinks that had it tried the case in the first instance, it would have given a larger sum. The decision of the trier of facts on the question of quantum of damages will only justify reversal on appeal where the appellate court is convinced either that; the court below acted upon some wrong principle of law, or that the amount awarded was so extremely high and excessive, or so very low as to make it, in the judgment of the appellate Court, an entirely and evidently, an erroneous estimate of the damages".
15. According to the evidence of PW3, a clinical officer at Kakamega General County Referral Hospital, found on page 69 of the record of appeal, the appellant is said to have suffered injuries on the right shoulder, lower knee injury and painful knees and he classified the injuries as soft tissue injuries. In awarding general damages for the proved injuries, the trial court placed reliance on the case of Kipkere Limited v Peterson Ondieki Tai [2016] eKLR where the High Court on appeal awarded general damages in the sum of Kshs. 30,000/- for soft tissue injuries to the left leg, chest centrisms and bruises on the left shoulder. That was in line with the decision in the case of Arrow Car Limited v Elijah Shamall Bimomo & 2 Others [2004] eKLR, reiterating the principle of law that comparable injuries should receive comparable awards.
16. The appellant in the trial court placed reliance in the case Poa Link Services Ltd & another v Gertrude Namalwa Wanjala [2021] eKLR in their pursuit for quantum of general damages in the sum of Kshs. 350,000/- which authority they claim the trial court failed to consider. The court has had the benefit of reading that decision and notes that the injuries sustained by the plaintiff therein were more severe and extensive including; a blunt injury to the chest with bruises, bruises and blunt injury to the lower abdomen, blunt injury to the right shoulder, a deep cut wound on the right leg and loss of consciousness. This court finds that the trial court cannot be faulted for having not been guided by



that decision. Even the fault that the trial court failed to take it into account cannot be true because the court alluded to having read and appreciated the decision in its judgment.

17. Because it remains the trite position of the law that assessment of damages is at the discretion of the trial court and that it takes a very strong case to interfere with such discretion, there has not been satisfaction on this court that the trial court acted on wrong principles of law, misapprehended the facts in evidence or just that the award was so low as to amount to a misery.
18. The court has at own time looked at case of Rege v LA (*Minor suing through her father and next friend GAA*) (*Civil Appeal E111 of 2021*) [2022] KEHC 16634 (KLR) (20 December 2022) (Judgment) where the respondent sustained; bruises on the right hand, blunt trauma to the right hand; and chest contusion and the High Court reversed an award of Kshs 400,000.00 in general damages to Kshs. 80,000/-. The court find the nature of the injuries suffered by the plaintiff in the cited case to be severer and more extensive compared to those suffered by the appellant in the instant case and for that reason the court declines to disturb the award of general damages made by the trial court.
19. Accordingly, for the reasons set out above, I find the appeal to be devoid of merit and it is therefore dismissed with costs.
20. Owing to the value of the decree and in order that no further costs are incurred by way of taxation, the court assesses the costs of the appeal at Kshs 20,000/=.

**DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**PATRICK J O OTIENO**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**S. MBUGI**

**JUDGE**

In the presence of:

No appearance for the parties

C/A: Agong'a

