



**Gatakaa v Mawira & another (Civil Appeal E094 of 2024)
[2025] KEHC 7133 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E094 OF 2024
RM MWONGO, J
MAY 28, 2025**

BETWEEN

NICHOLAS GATAKAA APPELLANT

AND

DANIEL MAWIRA 1ST RESPONDENT

THE OPTION ONE DISTRIBUTORS (EA) LIMITED 2ND RESPONDENT

*(An Appeal from the Judgment of Hon. Vincent Masivo in Runyenjes
MCCC No. E048 of 2024 delivered on 26th September 2023)*

JUDGMENT

The Appeal

1. Through a memorandum of appeal dated 22nd October 2024, the appellant is seeking the following orders:
 1. This appeal be allowed;
 2. This Honourable court do set aside and vacate the orders of the Honourable Senior Resident Magistrate in the judgment dated 26th September, 2024 on the award of general damages;
 3. That this honourable court be pleased to reevaluate the evidence and make its own judgment in regards to the award of general damages; and
 4. The cost of the subordinate court and this appeal be borne by the Respondents.
2. The appeal is premised on the following grounds that:
 1. The Learned Trial Magistrate erred and misdirected himself in law and in fact in his assessment of general damages awardable to the Plaintiff by awarding damages of Kshs.100,000/= that



were manifestly and so inordinately low and not commensurate with the appellant's injuries therefore arriving at a wrong conclusion as relates general damages; and

2. The learned trial magistrate erred in law and in fact by disregarding and failing to appreciate the facts, documentary evidence, written submissions and the binding authorities made on behalf of the appellant in arriving at an award on general damages that is unreasonably low in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the Respondent thus leading to a miscarriage of justice.

Background

3. In the lower Court, the appellant filed a plaint dated 08th May 2024 seeking judgment against the respondents for general damages for pain and suffering and loss of amenities, special damages of Kshs.12,300/=, costs of the suit and interest on the monetary awards. The particulars were that on or about 21st November 2023 along Embu-Meru Road around Thuci bridge area, the appellant was a lawful passenger aboard motor vehicle registration number KDJ 967D. It was then that the respondents' authorized driver drove motor vehicle registration number KBX 153K so recklessly and negligently that the vehicle lost control and hit motor vehicle Registration Number KDJ 967D in which the appellant was aboard, causing him injuries. In the plaint, he pleaded that he suffered a cut wound and swelling on the left knee and swollen painful tender left leg.
4. The defendants filed a joint statement of defense denying the averments made in the plaint. They attributed negligence to the driver of the motor vehicle in which the appellant was travelling.
5. The parties agreed on liability at the ratio of 80: 20 in favour of the plaintiff, and the trial court directed them to submit on quantum. The trial court considered the submissions in which the appellant proposed an award of Kshs.450,000/= relying on the cases of Wahinya v Lucheveleli (Civil Appeal E046 OF 2021) [2022] KEHC 13762, Robinson Njoroge v Daniel Obasa [2021] eKLR and John Kaindo Ngugi & Another v John Kimani Iraya [2020] eKLR. The respondents proposed and award of Kshs.50,000/= and relied on the cases of Chemelil Sugar Company Limited & another v Samson Odhiambo Onyaka [2018] KEHC 8771 (KLR) and HB (Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another [2021] eKLR.

Finding of the Trial Court

6. The trial court considered the cases of Lilian Anyango Otieno v Philip Mugoya Ogila [2022] eKLR, Francis Omari Ogaro v JAO (a minor suing through next friend and father God [2021] eKLR, Kimori v Mangare (Civil Appeal E004 of 2021) [2022] KEHC 14283 (KLR) and Janevams Limited v Caltex Kenya Limited [2003] eKLR and assessed general damages and awarded Kshs.100,000/=.

Written Submissions on the Appeal

7. In this present appeal, the court directed the parties to file their written submissions and they complied.
8. The appellant relied on the case of Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123 and urged the court to reconsider the evidence adduced at trial. He argued that the general damages awarded by the trial court is inordinately low and that the court should set it aside. For this argument, he relied on the case of Kemfro Africa Limited t/a "Meru Express Services [1976]" & another v Olive Lubia & another [1983] KECA 61 (KLR).
9. He urged the court to rely on the cases of Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] eKLR, National Industrial Credit Ltd & 2 others v MNO (minor suing through next friend and mother FNM) [2024] KEHC 3824 (KLR) and Mbacho & another v Kamba (Civil



Appeal 138 of 2021) [2024] KEHC 6567 (KLR) where the courts awarded between Kshs.300,000/= and Kshs.350,000/=. It was his submission that comparable injuries should attract comparable awards as was held by the Court of Appeal in the case of Odinga Jacktone Ouma v Moureen Achieng Odera [2016] eKLR.

10. In their submissions, the appellants relied on the cases of Simon Taveta v Mercy Mutitu Njeru [2014] eKLR, Ephraim Wagura Muthui 2 others V Toyota Kenya Limited & 2 others [2019] eKLR, Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR, John Wambua v Mathew Makau Mwololo & another [2020] eKLR and Jyoti Structures Limited & another v Truphena Chepkoech Too & another [2020] eKLR where the awards of the courts were maintained or reduced to between Kshs.100,000/= and Kshs.120,000/=.

Issues for Determination

11. The sole issue for determination is whether the trial court's award of general damages for pain and suffering and loss of amenities was inordinately low.

Analysis and Determination

12. The duty of an appellate court is to reexamine the evidence adduced at trial and reach its independent finding. This was held in the case of PIL Kenya Limited v Oppong [2009] KLR 442, thus:

“It is the duty...of a first appellate court to analyze and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanor and giving allowance for that”.

13. The only issue in contention is the trial court's award of general damages. It is trite that in awarding damages, a court should be guided by other decided cases. This was held in the case of Millicent Atieno Ochuonyo v Katola Richard [2015] eKLR where the court held as follows:

“It is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. The court has to strike a balance between endeavoring to award the plaintiff a just amount, so far as money can ever compensate, and entering a realm of very high award, which can only in the end have a deleterious effect.”

14. Through the plaint, the appellant stated that he suffered a cut wound and swelling on the left knee and swollen painful tender left leg. The appellant relied on the case of National Industrial Credit Ltd & 2 others v MNO (minor suing through next friend and mother FNM) (supra) where the respondent suffered chest contusion, cut wounds on the left knee, blunt trauma to the scalp and blunt trauma to the neck. The appellate court upheld an award of Kshs.300,000/= as general damages, noting there were only soft tissue injuries and the damages were awarded in reference with comparable awards.
15. The Appellant also relied on the case of Mbacho & another v Kamba (supra) where an award of Kshs.300,000/= was given for trauma to the right eye, cut wound with swelling on the right knee and blunt injury to the right knee. In that case, the court found no reason to enhance the award, stating that it was commensurate with the injuries.
16. The medical report dated 19th December 2023 from Sinai Hospital Rongai stated that the appellant was treated for soft tissue injuries. The injured leg was still swollen during subsequent visits and the doctor opined that the appellant would require more care until full healing of the leg is achieved. Another



medical report authored by Dr. G.K. Mwaura of Kinoo Medical Clinic also assessed the injuries and classified them as soft tissue injuries.

17. Other comparable awards for soft tissue injuries as given by various courts are as follows:
1. In *Ndungu Dennis v Ann Wangari Ndirangu & Eddah Mwihaki* [2018] KEHC 8799 (KLR), the Court made an award of Kshs 100,000/= . Injuries included minor bruises on the back, impact on the tibia or fibula area of the right leg with no fractures and tenderness on the right leg. The injuries sustained were described as multiple soft injuries to lower right leg and soft injuries to the back.
 2. In *LNK (A Minor Suing through CNK as Next Friend) & 2 others v Simon Gatuni Njuki* [2022] eKLR, the court awarded Kshs.80,000/= for a cut wound to the occipital region, cut wound on the neck, cut wound on right ankle and foot, soft tissue injuries occipital region forehead and left cheek and soft tissue injuries of the left lower limb. These were soft tissue injuries on various parts of the bodies of the appellants.
 3. In *Edward Mutevu Maithya & another v Edwin Nyamweya* [2022] eKLR the respondent was awarded Kshs. 100,000/= for the following injuries: Cut wounds on the scalp, bruises the back, bruises on the right upper limb and bruises on the left lower limb. These were also soft tissue injuries suffered.
 4. Finally, in *Asad Motors Limited & 2 others v Yaa* [2023] KEHC 24279 (KLR), the High Court reduced an award of Kshs.300,000/= to Kshs.100,000/= as general damages for deep cuts on the forehead and upper lip, blunt object injury to the right lower limb, loosening of the upper front tooth and bruises on the right leg.

Conclusions and Disposition

18. Considering the foregoing decisions on awards made in light of soft tissue injuries, I find that there is no legal justification for the allegation by the appellant that the trial court's award of general damages is inordinately low. Accordingly, there is no legal basis to interfere with the trial court's award of general damages. In the cases of *Butt v Khan* [1981] KLR 470 and *Kitavi v Coastal Bottlers Ltd* [1985] KLR 470 the courts held:

“Although one would expect that in the normal course of things, the claimant to the accident might get well and restored to his or her original health status prior to the accident sometimes that is not the case in most instances. It is necessary to find the correct bearing which seldom alludes the Judges with expertise and knowledge on these areas of specialization. An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirety erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.” [Emphasis added]

19. Ultimately, I find that the appeal lacks merit and it is hereby dismissed. Costs of the appeal are awarded to the respondents.
20. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28TH DAY OF MAY, 2025.

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R. MWONGO



JUDGE

Delivered in the presence of:

Mugane for Applicant

Masudi for Respondent

Francis Munyao - Court Assistant

