



**Kiraithi & another v George (Civil Appeal E141 of 2023)  
[2025] KEHC 10227 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10227 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E141 OF 2023**

**AC BETT, J  
JUNE 30, 2025**

**BETWEEN**

**DAVID KIMATHI KIRAITHI ..... 1<sup>ST</sup> APPELLANT**

**QUICK SHUTTLE SERVICES ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MAGOIGA SINDA GEORGE ..... RESPONDENT**

**JUDGMENT**

**Introduction.**

1. On September 8, 2023, the Small Claims Court entered Judgment against Appellants in the following terms:  
Liability..... 100%  
Special damages.....Kshs 650/=  
General damages.....Kshs 500,000/=  
Total.....Kshs 500,650/=
2. Aggrieved by the said decision, the Appellants lodged the present appeal. The Appeal is predicated on grounds inter-alia that the Learned Trial Adjudicator erred and misdirected herself by proceeding on wrong principles when assessing damages to be awarded to the Respondent under the head of future medical expenses. This ground appears misplaced as there was no award for future medical expenses and therefore I will not address it in this judgement.
3. The Learned Trial Adjudicator is also faulted for failing to take into account the minor soft tissue injuries suffered by the Respondent, considering comparable reasonable awards thereby arriving



at an erroneous estimate of the corresponding compensatory award which was excessive in the circumstances.

4. The Appellants thus urged the court to allow the appeal, set aside the award of general damages, and accordingly re-assess the general damages downwards.

#### **Issues for Determination.**

5. In view of the parties' pleadings, submissions, evidence and the grounds of appeal highlighted above, this court construes the following singular issue for determination:
  - (i) Whether the Learned Trial Adjudicator erred in assessing general damages due to the Respondent.

#### **Analysis and Determination**

Whether the Learned Trial Adjudicator erred in assessing general damages due to the Respondent

6. An Appellate Court faced with a first appeal is obliged to re-evaluate and subject the evidence submitted before the trial court to a fresh analysis so as to reach an independent decision as to whether or not, the trial court erred in it reaching its conclusions.
7. That said, the court appreciates that pursuant to the provisions of Section 38 of the *Small Claims Court Act*, appeals to this court are limited to matters of law only.
8. In the instant case, the Learned Trial Adjudicator is faulted for failing to make a proper assessment of the general damages due to the Respondent in view of the injuries sustained and thus making an award that was excessive in the circumstances.
9. In their submissions before the trial court, the Appellants proposed an award of the sum of Kshs. 300,000/= in general damages and cited the decision of the court in Daniel Owino & another v. Elizabeth Otieno Owuor [2020] eKLR where an award of Kshs. 600,000/= was reduced to Kshs. 400,000/= over injuries involving a fracture of tibia fibula, head injury among other soft tissue injuries.
10. On his part, the Respondent herein proposed an award of Kshs. 700,000/= under this head and relied on the decision of the court in Godfrey Wamalwa Wamba & Another vs Kyalo Wambua [2018] eKLR where an award of Kshs. 700,000/= was made over injuries involving a compound fracture of the right distal tibia/ fibula, cut wound on the scalp, cut wound on the chest and a cut on the lower lip.
11. From the medical report, P.3 form, and the treatment notes submitted in evidence, the court notes that the Respondent had suffered the following injuries: Fracture on the right tibia/bruises on the knee/loss of the nail on the left big toe/soft tissue injuries/bruises on the face, arm and knee
12. In *Kemfro Africa Limited t/a Meru Express Services & Another vs A.M. Lubia and Another (No.2)* (1982-88) L KAR 727 at page 703 it was held that:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below, simply because it would have awarded a different figure if it had tried the case at first instance.

The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or



misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

13. Having considered the foregoing, the court observes that both the Appellants and the Respondent submitted decisions where awards made in similar injuries were between Kshs. 400,000/= and Kshs. 700,000/=.
14. The trial court on its part went further and considered the award made by the court in the case of *Nahson Nyabaro Nyandega v Peter Nyakweba Omboga* [2021] KEHC 5158 (KLR) where an award of Kshs. 650,000/= was made on account of injuries relating to bruises on the face, compound fracture of the right tibia bone and a cut wound on the right leg.
15. The court however notes that though the injuries suffered in the case of *Nahson Nyabaro Nyandega v Peter Nyakweba Omboga* (supra) are somewhat similar to the ones in the instant case, the fracture suffered in that case was a compound one, hence more serious than the fracture in this case.
16. Be that as it may, this court appreciates that the trial court made an adjusted award of Kshs. 500,000/= which is clearly within the range of awards in the comparable cases cited before her.
17. Moreover, in the case of *Vincent Mbogholi vs. Harrison Tunje Chilyalya* [2017] eKLR, an award of Kshs. 500, 000/= was made in respect to injuries involving a fracture of the left tibia leg bone (medial malleolus), blunt injury to the chest and left lower limb, bruises on the left forearm, right foot and right big toe, was upheld on appeal.
18. This court therefore finds no reasonable cause to conclude that the trial court applied the wrong principles or misapprehended the evidence before it hence making an award that was inordinately excessive as to represent an erroneous estimate of the damages payable.
19. Since the instant appeal was on quantum only, the finding on liability and award on special damages, shall remain undisturbed.
20. In the circumstances, this appeal lacks merit and is hereby dismissed with costs to the Respondent. I hereby assess the costs at Kshs. 60,000/=.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

**A. C. BETT**

**JUDGE**

**In the presence of:**

No appearance for the Appellants

Mr. Otieno for the Respondent

Court Assistant: Polycap

