



JW (Minor Suing through her Next Friend EWM) v Naekena Route 134 Coop & Credit Limited (Civil Appeal E185 of 2021) [2025] KEHC 9553 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E185 OF 2021**

EN MAINA, J

JUNE 26, 2025

BETWEEN

JW APPELLANT

MINOR SUING THROUGH HER NEXT FRIEND EWM

AND

NAEKENA ROUTE 134 COOP & CREDIT LIMITED RESPONDENT

*(Being an appeal from the judgment of the Principal Magistrate
Hon. B. Kasavuli delivered on the 11th November 2021 in the
Principal Magistrate Court at Mavoko in PMCC Case No. 78 of 2020)*

JUDGMENT

1. This is an appeal on the adequacy of damages awarded to the Appellant in the court below for injuries suffered in a motor accident that was attributed to negligence on the part of the Respondent. The motor accident is said to have occurred along the Nairobi-Mombasa Road on 10th November 2019 involving motor vehicles KCU 270C and KBP 376Q.
2. According to the Appellant the accident occurred when the driver of KCU270C who was at a high speed, lost control as he was overtaking KPB 376Q as a result of which a collision occurred and he suffered injuries to wit; blunt injuries to the chest and bruises on the right upper hand.
3. In a statement of defence dated 5th March, 2020 the Respondent denied that the accident claim and averred that if at all the accident occurred it was occasioned by the negligence of the Appellant. It urged this court to dismiss the suit with costs.
4. At the hearing, the Appellant called two witnesses while the Respondent did not call any witness. After considering the evidence adduced by the parties, the learned magistrate found in favour of the Appellant and held the Respondent 100% liable and proceeded awarded the Appellant Kshs 50,000



as general damages, Kshs 3,550 as special damages, costs and interest on special damages from the date of filing suit until payment in full.

5. Being aggrieved, the Appellant preferred this appeal. The appeal is premised on the following grounds:-

- a. That the learned magistrate erred in law and fact and ended up misdirecting himself in awarding extremely low quantum of damages of Kshs 40,000 for pain and suffering by failing to appreciate and be guided by the prevailing range or comparable awards granted to the appellant herein.
- b. That the learned magistrate erred in law in making such a low award as to show that the magistrate acted on a wrong principle of law.
- c. That the learned magistrate's award was made without considering the medical evidence before the court and failed to appreciate the nature of injuries sustained by the plaintiff and failed to be guided by authorities on comparable awards and hence ended up making a low award in view of the medical evidence presented before the court.
- d. The learned Trial Magistrate erred in law and fact in failing to consider the plaintiff's submissions and authorities in making a finding on quantum
- e. The whole judgment on quantum was against the weight of evidence before the court."

6. The Counsel for the parties consented to canvassing the appeal by way of written submissions.

Submissions

7. For the Appellant it was submitted that the damages are inordinately low in view of the injuries and this court should enhance the same to Kshs 200,000. Reliance was placed on the cases of Samwel Martin Njoroge Kamunyua vs Mildred Okweya Barasa [2020] eKLR, Poa Link Services Boaz Bonzemo [2021] eKLR, Butt vs Khan [1977] Eklr 1 KAR, Selle vs Associated Motor Boat Company Limited [1968] EA 123 and Kemfro Africa Limited t/a Meru Express Services and another vs A.M. Lubia and another (1985) e KLR.

8. On his part learned Counsel for the Respondent submitted that the award was reasonable and ought to be upheld. Counsel placed reliance on the cases of Ndungu Dennis Vs Ann Wangari Ndirangu [2018]eKLR and Eva Karemi & 5 others vs Koskei Kieng & Another [2020]eKLR.

Analysis and determination.

9. This being an appeal on the quantum of damages only the principles that should guide this court are firstly, that an appellate court can only disturb the award if the award the lower court acted on a wrong principle or if it considered on an irrelevant factor or left out a relevant factor or if the award was so inordinately high or low as not to reflect the injuries suffered(see the case of Catholic Diocese of Kisumu v Tete [2004] eKLR the Court of Appeal stated:

"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 present an entirely erroneous estimate.”

10. Secondly the court is guided by the principal that similar injuries must attract comparable awards so as to promote consistency in the award of damages. The court was enjoined to take inflation and the passage of time into account. This was so held in the case of *Ali vs Muhozozo* [1983] KLR where the court of appeal stated :-

“It is an error in principle in determining the appropriate award of general damages, if the court decision does not take into account awards for similar injuries in previous cases and the effect of inflation.”

11. In this case, the injuries sustained were proven by the evidence of PW1, Dr. Titus Ndeti who produced a medical report dated 7th January 2020. In his opinion, the Plaintiff sustained soft tissue injuries which amounted to harm. Injuries classified as harm come at the lowest degree of injuries are of the caused her pain and suffering.
12. In his submissions in the trial court, the Appellant relied on the case of *Catherine W. Kingori & 3 others vs Gibson Theuri Gichubi*, [2005] eKLR where in 2005 the 1st Plaintiff was awarded Kshs 300,000 for injuries on the left ankle, injuries on the legs and injuries on the chest. The Respondent on the other hand relied on the cases of *HB(Minor suing through mother and next friend DKM) vs Jasper Nchonga Magari and another* [2021] KEHC 7971 (KLR) where in 2021, the High court upheld an award of Ksh.60,000/= for pain and suffering for similar injuries. The case of *Kiplere Limited vs Peterson Ondieki Tai* (2006) eKLR, where in 2006, the trial court awarded Kshs. 100,000/= for a deep cut wound on the left leg, chest contusion and bruises on the left shoulder but where on appeal to the High Court the award was reduced substituted the award with Kshs. 30,000/.
13. The Respondent also relied on the case of *Buds and Bloom Limited vs Lawrence Emusugut Obwa* [2016] KEHC 5392 (KLR) where the lower court awarded Kshs. 70,000/= for a deep cut wound on the left leg and soft tissue injuries on the leg but which was reduced the award to Kshs. 50,000/ by the High Court in 2016. Learned Counsel also placed reliance on the case of *Samwel Mburu N Ng’ari, Sarah Wanjiku N Ng’ari, Grace Waithira N Ng’ari, Mary Waithira Mburu & Jeanette Wangui Mburu v Wangiki Wangare & Christopher Kimani Kuruma* [2014] KEHC 8083 (KLR) where the 4th Plaintiff suffered minor injuries, abrasions and bleeding and was awarded Kshs 50,000 in 2014.
14. In this case, the Appellant who was 8 years old at the time of the accident, suffered soft tissue injuries. I have considered the cases cited and I am persuaded that the award of kshs.50,000/- was inordinately low as the same did not take into account the passage of time and inflation. Had the learned magistrate taken those factors and cases of similar injuries into account he would have arrived at a different award. In the case of *Ndungu Dennis v Ann Wangari Ndirangu & Eddah Mwihaki (Civil Appeal 54 of 2016)* [2018] KEHC 8799 (KLR) which was decided six years ago Kshs 100,000 was awarded for soft tissue injuries to the lower right leg and to the back which like the Appellant’s injuries can also be classified as harm. In the premises taking into account all what I should and doing the best I can I hereby set aside the award of kshs50,000 and substitute it with an award of kshs100,000 as general damages for pain, suffering and loss of amenities. The award for special damages shall remain undisturbed.
15. The Appeal therefore succeeds and judgment is entered for the Appellant against the Respondent as follows:
 - a. Liability 100%.



- b. General damages kshs100,000.
- c. Special damages kshs3,550.
- d. Costs of this appeal and in the court below.
- e. Interest at court with that on specials being from the date of filing suit and that on general damages from the date of judgment in the court below.

Orders accordingly.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF JUNE 2025.

E. N. MAINA

JUDGE

In Presence Of:

Miss Naswa Advocate for the Appellant.

Mr Njuguna Advocate for the Respondent.

Geoffrey Court Assistant.

