



REPUBLIC OF KENYA



**Kiprono v Omondi (Civil Appeal E164 of 2022)
[2025] KEHC 8884 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8884 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E164 OF 2022
RN NYAKUNDI, J
JUNE 24, 2025**

BETWEEN

SAMUEL KIPRONO APPELLANT

AND

EDWIN OWINO OMONDI RESPONDENT

*(Being an Appeal from the Judgement/Decree of Hon. N. Wairimu
(SPM) delivered on 28/10/2022 in Eldoret CMCC No. 500 of 2020)*

JUDGMENT

Representation:

Kimondo Gachoka & Co. Advocates

Mwinamo Lugonzo & Co. Advocates

1. This appeal arises from the judgement delivered by the Honourable Naomi Wairimu on 28/10/2022 in Eldoret CMCC No. 500 of 2020 where the Plaintiff was awarded a total award of kshs. 300,000 in General Damages. The Defendant now the Appellant was held 80% liable.
2. The Appellant being aggrieved by the said Judgement instituted this appeal vide a Memorandum of Appeal dated 03/11/2022. The memorandum of Appeal was premised on the following 6 grounds;
 - a. That the learned trial Magistrate erred in law and fact by awarding kshs. 300,000/= as general damages which award is inordinately high in view of the injuries sustained by the Respondent.
 - b. That the Learned Magistrate misdirected herself by failing to take into account the well-established principle requiring comparable awards to be made for comparable injuries sustained thereby failing into an error by awarding Kshs. 300,000/= as general damages which award is manifestly excessive.



- c. That the Learned Trial Magistrate erred in law and in fact by making an award of kshs. 300,000 as general damages whereas the Respondent only sustained soft tissue injuries.
 - d. That the Learned Trial Magistrate erred in law and in fact by awarding Kshs. 300,000/= as general damages which award is excessive in view of the injuries sustained by the Respondent thereby deviating from the principle of stare decisis requiring comparable awards being made for comparable injuries sustained.
 - e. That the Learned Trial Magistrate erred in law and fact by disregarding and failing to appreciate the judicial authorities on quantum cited by the Appellant in his written submissions thereby making an award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of an award on general damages in view of the injuries sustained by the Respondent.
 - f. That the Learned Trial Magistrate erred in law and fact by making an award of Kshs. 300,000/= as general damages without giving any cogent justification and/or reasons and/or authority relied on whereas the Respondent sustained soft tissue injuries.
3. In light of the Memorandum of Appeal, the Appellant sought the following prayers;
 - a. That the Appeal be allowed.
 - b. That the Judgement delivered on the 28th day of October 2022 in Eldoret CMCC No. 500 of 2020 by Hon. N. Wairimu (SPM) on the issue of quantum be set aside and an order re-assessing the award of quantum downwards to be made.
 - c. That the Appellant be awarded costs of the Appeal.
 4. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

5. The Appellant filed his written submissions dated 28th March 2024 through the firm of Kimondo Gachoka & Co. Advocates in which the Learned Counsel on record submitted as follows;
6. The Plaintiff sustained the following injuries: blunt injury to the head, chest, back and right and foot. On the issue of quantum, the Learned submitted that a re-evaluation of the quantum herein would be most prudent in view of the very mild nature of injuries sustained-mild soft tissue and that it is trite law that assessment of quantum of damages in a claim for general damages is a discretionary exercise. Counsel also submitted that the law has set dimensions for an exercise of discretion: must be exercised judicially, with wise circumspect and upon some legal principles and that the said dimensions are vital such that when the trial court has violated a legal principle(s), the appellate court will interfere with exercise of discretion by the trial court.
7. The learned counsel moreover submitted that the discretion in assessing the amount of general damages payable will be disturbed if the trial court: took into account an irrelevant factor; left out of account a relevant factor or, short of this and the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages. It was further submitted that awards must be within consistent limits and the court awards for damages must be made taking into account comparable injuries or similar injuries and awards. Reference was made to the case of Denshire Muteti Wambua Vs Kenya Power & Lighting Co. Ltd [2013] eKLR and Godfrey Wamalwa Wamba & Another Vs Kyalo Wambua [2018] eKLR.



8. The learned counsel also urged this Honourable Court to revise downwards the award of Kshs. 300,000 in general damages as the same is overly exaggerated because the Plaintiff sustained very mild soft tissue injuries. Reference was made to the following cases: George Mugo & Another Vs AKM (Minor suing through next friend and Mother of ANK (2018) eKLR; George Kinyanjui T/A Climax Coaches & Another Vs Hussein Mahad Kuyala [2016] eKLR and Ndung'u Dennis Vs Ann Ndirangu & Another [2018] eKLR.
9. The learned Counsel also submitted that in PF (Suing as next friend and father of SK (Minor) Vs Victor O Kamandi & Another [2018] eKLR, the Plaintiff in the lower court had been awarded kshs. 500,000 for sustaining:
 - a. Cut wound to the forehead.
 - b. Multiple small abrasions to the face.
 - c. Blunt injury to the head leading to the loss of consciousness for some time.
 - d. Abrasions to the back.
 - e. Abrasion wounds to the dorsum of the right hand.
 - f. Cut wound to the right leg.
10. The Appellant's counsel submitted that upon appeal, the award was substituted with that of kshs. 100,000 and highlighted this matter in as far as comparable awards for comparable injuries goes. Reference was made to the case of Blue Horizon Travel Co. Ltd Vs Kenneth Njoroge [2020] eKLR. It was counsel's submission that in line with the above decisions vis a vis the above decisions the injuries sustained by the Plaintiff/Respondent, the award rendered was totally unjustified and inordinately high as to warrant this Honourable Court's intervention and reviewing of the award downwards.
11. The learned counsel submitted that a re-evaluation on the issue of quantum in this matter is pertinent and especially because the plaintiff sustained and pleaded mild soft tissue injuries and that the Appellant urge this Honourable Court to set aside the Judgement of the trial court therein and uphold the appeal. Counsel also opined that they be awarded costs of this appeal.

Respondent's Written Submissions

12. The Respondent filed his written submissions dated 9th February 2024 through the Firm of Mwinamo Lugonzo & Co. Advocates in which the Counsel on record submitted as follows;
13. That the appeal in quantum of damages and liability. On the issue of Liability, the Counsel submitted that they support the trial court's finding on the issue of liability and its findings at arriving at that conclusion and that the evidence of the respondent, the police officer and the Appellant's witness shall be relevant in re-determining the issue of liability. Counsel also submitted that the Respondent was candid in his evidence and stated that on 21st December 2019 he was walking at the main stage near the Total Petrol Station Eldoret when Motor Vehicle Registration KBA 039V suddenly reversed and knocking him down and that the motor vehicle reversed ramming into him. Counsel further submitted that the police stated that the Respondent was knocked down when motor vehicle Registration KBA 039V reversed suddenly and knocked down the Respondent who was away from the path of Motor Vehicle Registration KBA 039V.
14. The Learned Counsel submitted that failure of the Appellant's driver, agent, servant and or employee to see or notice the Respondent was an indicator that the driver suddenly reversed and hence the



- accident. It was submitted that the Trial Magistrate was right and proper in finding that the Appellant and or his agent, servant, driver and or employee 100% liable for the accident as: -
- a. The Appellant and or his driver, agent, servant and or employee caused Motor vehicle KBA 039V to reverse suddenly knocking down the Respondent.
 - b. The Appellant and or his driver, agent, servant and or employee caused Motor vehicle KBA 039V to reverse suddenly knocking down the Respondent whilst he was away from the road.
 - c. The Appellant and or his driver, agent, servant and or employee caused Motor vehicle KBA 039V reverse suddenly knocking down the Respondent who was away from the path of the Motor vehicle KBA 039V.
 - d. The Appellant and or his driver, agent, servant and or employee did not brake, slow down or otherwise exercise adequate control of the Motor vehicle KBA 039V as to prevent the same from suddenly reversing thus knocking down the Respondent.
 - e. The Respondent was knocked down whilst away from the Path of Motor Vehicle registration KBA 039V which suddenly reversed.
15. On the quantum of damages, the Learned Counsel submitted that from the medical documents the Respondent sustained the following injuries: -
- a. Blunt injury to the head.
 - b. Blunt injury to the chest.
 - c. Blunt injury to the back.
 - d. Blunt injury to the right hand
 - e. Blunt injury to the right foot.
16. Counsel Submitted that in view of the injuries sustained, the award of Kshs. 300,000 as general damages by the trial court sufficed as just and adequate compensation to the Respondent for injuries that were sustained and made reference to the following authorities: Catherine W. Kingori & 3 Others Vs Gibson T. Gichubi; Martin M. Mugi Vs AG; Jyoti Structures Limited & Anor Vs Charles Ogodia Ochola & Emily Otieno & Anor Vs Wilberforce Mwanga.
17. It was Learned Counsel's submission that the award of general damages was not excessive to warrant a review or setting aside of the award of the same and the award given was a reasonable compensation considering inflation and effluxion of the time.

Analysis and Determination

18. This case is about personal injury of the respondent which might arise in diverse way. It could be physical, emotional, psychological, mental, or a combination or two or more of this cluster. In the case of personal injury it may be as a result of a negligence action of the defendant or his or her agent, or employee who occasions harm impacting on the limb or limbs of the human body and within that scope one seeks compensation for the loss. Besides physical injuries arising out of an accident there are also other intangible injuries such as psychological, emotional trauma, grief, shocks, and mental suffering arising out of injuries. In Kenya sometimes recovering damages or compensation in such kind of cases is an appeal task for the plaintiff or claimant must discharge the burden of proof on a balance of probabilities as stipulated in Section 107 (1) 108 & 109 of the *Evidence Act*. It is indeed an evidential burden and that burden never shifts to the defendant or respondent. The question is whether the



award of quantum or compensation is commensurate with the injuries suffered or loss is a question of both mixed facts and law to be determined in accordance with the evidence and the laid down case law from the Superior Courts.

19. The duty of the Appellate Court as regards damages is that of discretion. The Court of Appeal for East Africa in *Shah v Mbogo & Another v Shah* [1968] EA 93, held as follows; -

“The (appellate Court) should not interfere with the exercise of discretion of a (trial court)..unless satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision or unless it is manifested from the cause as a whole that the Judge was clearly wrong in the exercise of this discretion and that as a result there has been an injustice.”

20. The instant appeal is only on quantum. When considering whether to modify the quantum awarded by the lower court, this Court must recognize the boundaries of its appellate jurisdiction. Since the determination of damages involves judicial discretion, any review must be conducted judiciously rather than arbitrarily. My role is not to replace the trial court's discretionary assessment with my own judgment. Appellate intervention in damages awards is only warranted when the quantum is so excessive or inadequate that it constitutes a clear error in the estimation of appropriate compensation.

21. The High Court, in *Kemfro Africa Ltd v Meru Express Service v AM Lubia & Another* 1957 KLR 27 stated 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 fact 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.”

22. Consequently, as an appellate court, my intervention in the damages assessment requires more than a mere demonstration that the award appears substantial or that I might have reached a different quantum had I presided over the matter at trial level.

23. Comparatively, few instances occur where appellate courts reverse judgements secured at the trial court solely on the ground of erroneous error on the so called measures of damages. For this court to address this appeal in perspective, the question of award of damages as being excessive, it is prudent to look at the recent decisions on the same facts to establish whether the matter of excessiveness of damages as raised by the Appellant holds any weight.

24. The injuries suffered by the respondent were soft tissue injuries. My reading of the following comparable cases will help in arriving at a fair determination:

25. In *Justine Nyamweya Ochoki & another v Jumaa Karisa Kipingwa* (2020) eKLR, the respondent suffered a blunt object injury to the lower lip, blunt object injury to the chest and blunt object injury to the left wrist and was awarded Kshs. 300,000/=. On appeal the court set aside that amount and awarded Kshs. 150,000/=.

26. In *Daniel Gatana Ndungu & another v Harrison Angore Katana* (2020) eKLR the respondent sustained a cut wound on the head, blunt injury to the right knee, multiple bruises on the upper limbs and bruises on the right knee. The court set aside the finding by the subordinate court that awarded Kshs 350,000/- on general damages and substituted it with an award of Kshs 140,000/-.



27. Finally, in *Pascal v Ouko* (Civil Appeal E005 of 2022) [2023] KEHC 24463 (KLR), the respondent suffered a chest contusion, blunt trauma to the back, blunt trauma to the scalp, blunt trauma to the neck, blunt trauma to the upper limbs, blunt trauma to the lower limbs, Lacerations on the right knee and was awarded Kshs. 200,000/=. On appeal Korir J set aside that amount and awarded Kshs. 150,000/=.
28. Having considered all the parameters the court should look at in awarding quantum, I do find that the award of a sum of Kshs. 300,000/= for soft tissue injuries the respondent suffered is truly a wholly erroneous estimate of the damages suffered. The said award is exorbitant and does not match similar awards for similar injuries.
29. The upshot is that this appeal has merit and the same is allowed. The award of damages being Kshs 300,000/= awarded to the respondent in is hereby set aside and the same is substituted with an award of Kshs. 180,000/=.
30. The appellant is awarded costs of this appeal.
31. Orders accordingly..

SIGNED, DATE AND DELIVERED AT ELDORET THIS 24TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

