



REPUBLIC OF KENYA



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**Matheka v Were (Civil Appeal E198 of 2023)
[2025] KEHC 11203 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E198 OF 2023**

**A MABEYA, J
JULY 30, 2025**

BETWEEN

LUCY MATHAMBA MATHEKA APPELLANT

AND

PETER OUMA WERE RESPONDENT

(Being an appeal from the judgment and decree of Hon. Cheruiyot SPM delivered on the 29/9/2023 in Ksm CMCC No. 88 of 2021, Peter Ouma Were v Lucy Mathamba Matheka)

JUDGMENT

1. The respondent filed the primary suit before the trial court vide a plaint dated 12/03/2021. He sought general damages for injuries sustained following a road traffic accident that occurred on the 6/03/2021 along Obote road involving his motorcycle registration number xxx and the appellant's motor vehicle registration number xxx.
2. The appellant opposed the suit vide a statement of defence dated 24/04/2021 in which she denied the respondent's claim and alleged contributory negligence on the respondent's part.
3. The matter proceeded to trial and by a judgment delivered on 29/9/2023, the trial court decreed that: -
 - a. Liability in the ratio of 70:30 in favour of the plaintiff as against the defendant.
 - b. General damages Kshs. 1,600,000/-
 - c. Less 30% contributory negligence Kshs. 480,000/-
 - d. Net Award Kshs. 1,120,000/-
 - e. The plaintiff is also awarded Costs and Interest.



4. Being dissatisfied with the said Judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 22/11/2023 and raised six (6) grounds of appeal as follows: -
 - a. The learned trial magistrate grossly misdirected himself in treating the evidence and submissions on quantum before him superficially and consequently coming to a wrong conclusion on the same.
 - b. The learned trial magistrate misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
 - c. The learned trial magistrate erred in not sufficiently taking into account all the evidence presented before him in totality and in particular the evidence presented on behalf of the appellant.
 - d. The learned trial magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondents, if any, and failed to apply precedents and tenets of law applicable.
 - e. The learned trial magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstance that it represented an entirely erroneous estimate vis-à-vis the respondent's claim.
 - f. The learned trial magistrate failed to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.
5. The appeal was disposed off by written submissions. The appellant submitted that the respondent failed to adduce any evidence showing the extent of the fracture he had sustained and as such he had fully healed with no incapacitation. That in granting the award, the trial court relied on authorities provided by the respondent which showed different injuries to those sustained by the respondent. That as a result, the trial court relied on wrong principles when assessing damages thereby resulting in an inordinately high award.
6. That an award of Kshs. 350,000/- would be sufficient compensation for the respondent and thus the trial court's award should be set aside. Reliance was placed on *Civicon Limited v Richard Njomo Omwancha & 2 Others* 2019] eKLR, *Daniel Otieno Owino & Another v Elizabeth Atieno Owuor* [2020] eKLR, *DG (minor suing through next friend MOR v Richard Otieno Onyisi* (2021) eKLR, *Herbert Otara Marubw v Dankan Ochora* (2022) eKLR & *Teresia Wanjiku Munene v Loise Muthoni Mbarire* [2023] eKLR.
7. On the other hand, the respondent submitted that he suffered multiple traumatic injuries the nature of which justified the general damages awarded. He relied on the cases of *H.K.N v Kenafric Bakery Ltd & another* [2010] eKLR where the Court awarded general damages at Kshs. 2,500,000/- and *Devna Pandit v Kennedy Otieno Obara & another* [2016] KEHC 6468 (KLR) where the Court awarded general damages of Kshs. 2,000,000/- for fracture dislocation left hip with fracture head of femur, fracture left tibia comminuted, fracture right face/maxilla.
8. That the appellant had not shown that the trial court acted upon some wrong principle of law, or that the amount awarded was so extremely high to warrant interference by this Court and as such the appeal ought to be dismissed with costs.
9. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See *Selles & Anor v Associated Motor Boat Co Ltd & Others* [1968] EA 123.



10. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal held that: -

“ This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”
11. Before the trial court, the respondent testified as PW1. He told the court that he was knocked down by a motor vehicle and sustained injuries to the shoulder, legs, forehead, chest and fractured broken teeth. That the injuries were not minor and he was still using crutches at the time of the trial. He produced treatment notes from Avenue Hospital, P3 form and a medical report by Dr. Okombo in support of his case.
12. DW1, Michael Otieno Lumumba testified on behalf of the appellant. He told the court that he was driving the car and that he blamed the respondent (motor cyclist) for the accident.
13. From the foregoing, the grounds of appeal may be summarized into one, viz, ‘That the trial court misdirected itself in ignoring the evidence, submissions, authorities and principles applicable on quantum and consequently came to a wrong conclusion on the same’.
14. The appellant’s appeal is basically on quantum, which she deems to be inordinately high. The general rule is that assessment of damages lies in the discretion of the trial court and an appellate court will only interfere with an award of damages where it is inordinately high or low as to represent an erroneous estimate.
15. In *Butt v Khan* (1977) I KAR, the Court of Appeal held that: -

“ An appellate court will not disturb an award for damages unless it is inordinately high or low as to entirely represent an 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 at a figure which was either inordinately high or low.”
16. In the present case, the trial court at paragraph 9 of the judgment stated that it relied on “similar cases, extension of time and inflation as well as the opinion of counsels on record on quantum.”
17. In giving the award of a global sum of Kshs. 1,600,000/- as damages, the trial court considered the evidence before court, the submissions by Counsel and the authorities relied on by them, similar cases and inflation.
18. The injuries pleaded and supported by the medical evidence on record are as follows:
 - a. Swollen forehead with laceration wounds on the right side and loss of consciousness,
 - b. Tender right jaw with fracture molar teeth lower jaw,
 - c. Injury to the facial region with cut wound,
 - d. Injury to the Chest,
 - e. Injury to the right shoulder with dislocation,
 - f. Bruises elbow and tender wrist joint,



- g. Swollen right knee with multiple bruises with dislocation,
 - h. Tender swollen right rib and bruises,
 - i. Tender swollen left knee joint with dislocation,
 - j. Fracture of the distal tibia with displaced fragments, and
 - k. Injury to the left ankle joint with dislocation
19. The medical report by Dr. Okombo dated 19/7/2021 and produced as Exhibit 6 detailed that the respondent's general condition was good though the injuries had not yet fully recovered at the time of examination. A look at the medical records presented by the respondent revealed that in addition to the soft tissue injuries sustained to the face, chest, shoulder and legs, he also sustained cracked teeth and fracture to the leg.
20. In considering comparable awards, I have examined the following decisions: -
- a. In *Ndwiga & another v Mukimba* (Civil Appeal E006 of 2022) [2022] KEHC 11793 (KLR), Njuguna J. reduced an award of Kshs 1,200,000/= to Kshs 500,000/= where the respondent had sustained tenderness and swelling of the left leg and fracture of tibia and fibula left leg.
 - b. In *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* (supra) where the respondent had suffered a fracture of tibia and fibula bones of the right leg, deep cut wound and tissue damage of the right leg, head injury with cut wound on the nose, blunt chest injuries and soft tissue injury on the lower left leg and the High Court set aside the award of Kshs 600,000/= and replaced it with Kshs 400,000/=.
 - c. In *Tirus Mburu Chege & Another v JKN & Another* (2018) eKLR where the respondent suffered fractures on the tibia and fibula on both legs, blunt injury on the forehead, broken upper right second front tooth, nose bleeding and consistent loss of consciousness the court reduced the award for general damages from Kshs 800,000/= to Kshs 500,000/=.
21. Upon review of the decisions mentioned above, it should be abundantly clear that the damages awarded were so inordinately high, as to suggest application of a wrong principle. An appropriate award should have been Kshs. 1,000,000/-. Accordingly, this Court sets aside the said award and substitute the same with an award of Kshs. 1,000,000/- upon taking into account the seriousness of the injuries, the fluctuation of the local currency and the dates on the authorities reviewed.
22. Subjecting the award to the 30% contributory negligence by the respondent, the net award shall therefore be Kshs. 700,000/-. The award of costs and interest remain undisturbed. The appeal herein is allowed in those terms. Each party shall bear its own costs.

It is so decreed.

DATED and DELIVERED at Kisumu this 30th day of July, 2025.

A. MABEYA, FCI Arb

JUDGE

