



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simba Coach Limited v Mjomba (Civil Appeal E051 of 2021)  
[2025] KEHC 12047 (KLR) (11 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12047 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E051 OF 2021  
TM MATHEKA, J  
AUGUST 11, 2025**

**BETWEEN**

**SIMBA COACH LIMITED ..... APPELLANT**

**AND**

**ANASTANZIA MANGA MJOMBA ..... RESPONDENT**

*(Appeal from the judgment delivered by the Honorable Magistrate CA  
Mayamba HSC in Kilungu MCCC no. 148 of 2020 on the 6th August 2021)*

**JUDGMENT**

1. This is an appeal from the judgment delivered by the honorable Magistrate CA Mayamba HSC in Kilungu MCCC no. 148 of 2020 on the 6<sup>th</sup> August 2021
2. According to the Memorandum of Appeal dated 13<sup>th</sup> August 2021 the appellant was dissatisfied with the award of general damages in that his judgment. The judgment was pursuant to the suit by the respondent through a plaint dated 20<sup>th</sup> April 2020 in which she sought judgment against the appellants for General damages for pain and suffering and loss of amenities ;Special damages of Ksh5750 and Costs and interest,
3. It was the respondent's case that on 14<sup>th</sup> February 2020 she was travelling as a passenger in m/v registration no. KBQ 581C along NBI-MSA road at Kyumbi when the 2<sup>nd</sup> defendant respondent so negligently drove the said m/v that it was involved in an accident out of which she sustained injuries causing her to suffer pain , loss and damages.
4. In his judgment in arriving at the award of general damages the learned magistrate noted that in the medical report tendered during the hearing the plaintiff had sustained fracture of the left 3<sup>rd</sup> and 4<sup>th</sup> metacarpal bones, had a swollen and painful tender left hand and blunt injuries to the chest.



5. He analyzed the submissions by each party and noted that the plaintiff/respondent had proposed a figure of Kshs 700 000, while the defendant/appellant had proposed a figure of Kenya shillings 100 000. It was his view that one was too high while the other was too low.
6. I reproduce here in his analysis at paragraph 15 of the judgment
7. In conclusion he stated that considering the injury sustained by the plaintiff which had hampered her livelihood to a great extent it would be fair and considering all factors to award the sum of Kshs 450,000 in general damages for pain and suffering
8. The appellant was dissatisfied by this outcome and filed a memorandum of Appeal on the grounds that the trial magistrate erred in law and fact by disregarding established legal precedent and thereby erroneously arriving at a wrong conclusion on quantum; that the magistrate erred in not making an award which was within limits of already decided cases of similar nature and that it was an error for the magistrate to award Kshs 450,000 general damages and Ksh 5750 in special damages without showing how he had arrived at that figure and in total disregard of the submissions of the defendant on the issue of quantum.
9. The appellant sought from the court that the whole judgment of the honorable magistrate be set aside and the same be assessed afresh. The appellant also sought the costs of the appeal and at the trial court.
10. Their appeal is opposed through the respondent's written submissions dated 4<sup>th</sup> July 2024.
11. The respondent sets out two issues for determination whether the court erred in its on liability and whether the court erred in its finding on general damages.
12. From the appeal the issue of liability is not an issue
13. On damages the responded reiterated the injuries the plaintiff /respondent had sustained and referred the court to a number of documents including the medical report by Dr GK Mwaura who examined the respondent on the 1<sup>st</sup> April 2020 ;That the respondent also produced notes from Kangundo level 4 hospital; the ultrasound from MP Shah Hospital; treatment notes from Machakos level 5 hospital, x ray form ,the P-3 form ;police abstract; all of which confirmed the injuries she sustained.
14. This court was urged to be persuaded by the decision of the High Court in Mash East Africa Limited v Kamau [2024] KEHC 2118 (KLR) where the court upheld the sum of Kenya shillings 500,000 for comparable injuries. And also, Samuel Samuel Ndung'u Mbugua v Jane Wambui Gitahi & another [2022] KEHC 2019 (KLR) where the trial court findings on general damages were enhanced from 200,000 to 400,000 for comparable injuries.
15. I checked both on CTS and in the record and I did not find any submissions by the appellant

### **Analysis and Determination**

16. The first thing I note is that the heading in the appeal is not the same as the heading in the proceedings in the subordinate court. The civil suit in Kilungu 148 of 2020 was between Anastanzia Manga Mjomba vs Tabasam Coach Limited and Joseph Mwangi Thunu. The appeal ought to be headed Tabasam Coach Limited and Joseph Mwangi Thunu vs Anastanzia Manga Mjomba. Evidently the Appellant sued the wrong person in their appeal.
17. Be that as it may the submissions by Counsel for the respondent appear to be with respect to the proper party in the Subordinate court. No prejudice has been suffered by any party.



18. That said the duty of the first Appellate Court is to evaluate the trial court's evidence analyze it and draw its own conclusion always bearing in mind. That it neither saw nor heard the witnesses. This was discussed in *Selle vs Associated Motor boat Company Ltd.* [1968] E.A 123.
19. Having considered the grounds of appeal , the submissions for the respondent and the record, the only issue for determination is whether the trial magistrate erred in the award of the damages.
20. It is settled that an appellate court will only interfere in certain specified circumstances: the award is too high or too low, the trial court failed to take into consideration relevant factors or ignored relevant factors.
21. To determine the extent of general damages I have looked at the medical reports; the one dated first April. 2020. Indicates that. She sustained blunt injuries and pain and tenderness to the chest. She had swollen painful tender left hand she had fracture of the left 3<sup>rd</sup> and 4<sup>th</sup> metacarpal bones. By that time, she had not fully healed. She was on treatment and the POP was in situ. The doctor found that healing was incomplete and that she sustained grievous harm injuries and soft tissue injuries which were expected to recover within the next eight months but the pain and weakness was going to persist. He awarded permanent degree of incapacity at 5% on the left upper limb.
22. This finding on grievous harm was consistent with that of the P-3 that indicated that the respondent had sustained grievous harm.
23. It is noteworthy that before the subordinate court the appellant submitted that the plaintiff had sustained minor soft tissue injuries which had healed completely without any complications or permanent disability. Relying on *Richard Kieti Kathuu vs Musee Mutemi* [2018] eKLR where the court upheld the sum of Kshs 150,000 as general damages in 2018.
24. In the record of appeal, the appellant did not file the plaintiff's submissions. I found those in the lower court file where the plaintiff had relied on *Tarmal Wire Products Limited vs Ramadhan Fondo Ndegwa* [2014] eKLR , *Crystal industries limited. Vs Sevas Mutunga Kilonzo* [2015] eKLR among other authorities.
25. The authorities cited in the submissions by the parties have not highlighted similar injuries. To assist this court the following authorities which are persuasive in nature were found:
 

In *China Road & Bridge Corporation (K) Ltd v Muthuva* [2023] KEHC 23772 (KLR), the court reduced the award of Kshs 1,000,000/= to Kshs 800,000/= for amputation of the left thumb, fractures of the left 2nd, 3rd and 4th metacarpal hand bones, deep cut on the left hand and multiple lacerations sustained at the left knee.

In *Mbithi Muinde William v Rose Mutheu Mulatia* [2019] eKLR [as quoted in *DG (Minor suing through her next friend MOR v Richard Otieno Onyisi* [2021] eKLR], the respondent was awarded the sum of Kshs. 400,000/= as compensation for a swollen, tender left wrist and left leg, fracture of the left 5th metacarpal bone and fracture of the right tibia.

In *Richard & Another vs Ngomo (Civil Appeal 35 of 2020)* [2023] KEHC 17349 (KLR), the Respondent sustained Distal fracture of the fifth metacarpal bone, Blunt injury on the head, Blunt injury right elbow, Blunt injury on the right hand with fracture on 5th metacarpal , Cut wound on the left leg. Kshs. 400,000 was awarded as adequate compensation for pain and suffering.
26. In this case, it is evident from the foregoing authorities that the general trend is an award of about 400,000 for these injuries.



27. In the circumstances I find that the learned trial magistrate was not off tangent in the award he made hence the appeal has no merit.
28. The same be and is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 11<sup>TH</sup> AUGUST 2025**

**MUMBUA T MATHEKA**

**JUDGE**

