



**Kariuki v Otwoma (Civil Appeal E824 of 2024)  
[2025] KEHC 11673 (KLR) (Civ) (4 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11673 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E824 OF 2024**

**WM MUSYOKA, J**

**AUGUST 4, 2025**

**BETWEEN**

**ANN ROSE WANJIKU KARIUKI ..... APPELLANT**

**AND**

**MOSES OTWOMA ..... RESPONDENT**

*(Appeal from the judgement and decree of Hon. ZK Kiboss, Resident Magistrate, of 24th June 2024, in Milimani CMCCC No. E479 of 2022)*

**JUDGMENT**

1. The suit, at the primary court, was by the respondent, against the appellant, for compensation, arising out of a motor traffic accident on 8<sup>th</sup> February 2021, along Nairobi-Mombasa Road. The allegation was that his motor vehicle, registration mark and number KCJ 661Q collided with that belonging to the appellant, registration mark and number KCJ 310T, and he suffered injury and loss.
2. The claim was resisted by the appellant, who denied everything pleaded in the plaint, but alleged that the accident was caused solely by or was substantially contributed to by the negligence of the respondent.
3. A trial was conducted. 2 witnesses testified for the respondent, and 1 for the appellant. Judgement was delivered on 24<sup>th</sup> June 2024. Kshs. 400,000.00 was awarded as general damages for pain and suffering, and Kshs. 11,050.00 as special damages. Liability was assessed at 50:50. The total amount came to Kshs. 211,050.00.
4. The appellant was aggrieved, hence the instant appeal, on grounds that the general damages were awarded based on wrong principles; there was failure to scrutinize and evaluate the evidence on the injuries suffered, and to relate them to the case law cited, and failure to arrive at a fair and reasonable



- compensation; reasons were not given for the award; and the award of general damages was inordinately high.
5. Directions were given, on 23<sup>rd</sup> January 2025, for disposal of the appeal by way of written submissions. Both sides complied, for they have filed detailed written submissions, supported by appropriate case law. I have read both sets of written submissions, and the case law, and I have noted the arguments made.
  6. From the grounds of appeal and the written submissions, I have deduced the issues for determination to be whether the award of Kshs. 400,000.00 was warranted, whether the appeal is merited and who should pay the costs of the appeal.
  7. The injury, pleaded by the respondent, in his plaint, was a fracture of the right hand and blunt injuries to the right hand and back. The appellant does not contest those injuries. Her contention is that the award of general damages, for the injuries, was excessive. She argues that Kshs. 100,000.00 could be a more realistic figure, while the respondent pleads that the amount by the trial court be upheld.
  8. The guiding principle ought to be that set out in *Bashir Ahmed Butt vs. Uwais Ahmed Khan* [1982] KAR 5 [1978] eKLR (Madan, Wambuzi & Law JJA), that an appellate court ought not disturb an award of general damages unless the same is so inordinately high or low, as to represent an entirely erroneous estimate. The other principle, on assessment of general damages, for personal injury, was stated in *Odinga Jactone Ouma vs. Moureen Achieng Odera* [2016] eKLR (Majanja, J), that comparable injuries ought to attract comparable awards.
  9. I have conducted a review of several awards for comparable injuries, to evaluate whether the amount awarded by the trial court was excessive or exorbitant.
  10. In *Naom Momanyi vs. G4S Security Services Kenya Limited & Another* [2018] KEHC 6218 (KLR) (Majanja, J), the injuries were a fracture of the left condylar tibia, blunt injuries on the back, and multiple bruises on the left arm, an award of Kshs. 300,000.00 was made. In *Gladys Lyaka Mwombe vs. Francis Namatsi & 2 others* [2019] eKLR (Musyoka, J) an award of Kshs. 300,000.00 was made, for a fracture of the lower tibia and fibula, accompanied by a cut wound on the interior part of the scalp, head injuries, spinal cord injury, neck injury and cut wound on the face. In *Kiama vs. Mutiso* [2024] KEHC 5732 (KLR) (Majanja, J), Kshs. 400,000.00 was awarded for fracture of the left tibia bone (upper 1/3), with a blunt injury to the left leg and thigh, with 8% disability.
  11. In view of the above decisions, I am of the persuasion that the award of Kshs. 400,000.00, was within the range. There would be no basis for disturbing it, in the circumstances. Consequently, I find no merit in the appeal. The same is accordingly dismissed, with costs to the respondent.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 4<sup>TH</sup> DAY OF AUGUST 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Diru, instructed by Kiarie Kariuki & Associates, Advocates for the appellant.



Mr. Kiptanui, instructed by Waiganjo Wachira & Company, Advocates for the respondent.

