



**Atisa v Nyakoni (Civil Appeal E156 of 2023)
[2025] KEHC 15856 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E156 OF 2023
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

GERALD MAKORI ATISA APPELLANT

AND

REBECCA KEMUNTO NYAKONI RESPONDENT

*(Being an Appeal from the Judgment of Senior Principal Magistrate, Omwansa
B.O. at the Magistrate's Court at Kisii, Civil Suit Number 654 of 2022)*

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and damages arising from a road traffic accident on 24th April 2022. The Respondent stated that she was a passenger on motor vehicle registration number KCW 146R when it was involved in a road traffic accident along Metamaywa-Kisii Road with motor vehicle registration number KBJ 723C. The Respondent blamed the Appellant for causing the accident.
2. The trial court conducted a hearing where the Respondent called four (4) witnesses in aid of her case and the Respondent did not call any witness.
3. In its Judgement dated 11th December 2023, the trial court awarded the Respondent general damages of Kshs 250,000/= and special damages of Kshs 14,630/=
4. Being aggrieved with the Judgment of the trial court, the Appellant filed her Memorandum of Appeal dated 22nd December 2023 appealing against the quantum which she termed as excessive.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Kiilu & Another v. Republic (2005)1 KLR 174.



6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through her Plaintiff dated 1st August 2022, the Respondent stated that she was a passenger aboard motor vehicle registration number KCW 146R when it was involved in a road traffic accident with motor vehicle registration number KBJ 723C.
8. The Respondent stated that the Appellant was the owner of motor vehicle registration number KBJ 723C and he was negligent in causing the accident. The particulars of the negligence were listed in paragraph 4 of the Plaintiff.
9. That as a result of the accident, the Respondent suffered the following injuries: -
- i. Blunt back trauma.
 - ii. Chest contusion.
 - iii. Bruising of the upper limbs.
 - iv. Cut wounds on both legs.
 - v. Deep cut on the knee.
10. The Respondent prayed for general and special damages.
11. Through her written submissions dated 8th September 2025, the Respondent submitted that the award of Kshs 250,000/= as general damages was not inordinately high and was fair. She relied on Blue Horizon Travel Co. Ltd v Kenneth Njoroge (2020) eKLR, Samwel Martin Njoroge Kamunyu v Mildred Okwera Barasa (2020) eKLR, Anthony Nyamwaya v Jackline Mora Nyandemo (2022) eKLR et.al. That the trial court based its award on the correct principles.
12. It was the Respondent's submission that the Medical Report she produced confirmed the injuries she sustained and the Appellant did not produce any controverting evidence. It was the Respondent's further submission that the trial court's award on special damages was merited in fact and law.

The Defendant's/Appellant's case

13. Through his Statement of Defence dated 10th November 2022, the Appellant denied that he was the registered owner of motor vehicle registration number KBJ 723C and further denied the Respondent was a passenger in motor vehicle registration number KCW 146R.
14. The Appellant denied the particulars of negligence levelled against him. That if any accident happened, it was caused solely by the negligence of the Respondent and the driver of motor vehicle registration number KCW 146R. He particularized the negligence in paragraph 4 and 5 of his Defence respectively.
15. Through his written submissions dated 16th December 2024, the Respondent submitted that the award of Kshs 250,000/= as general damages was inordinately high and proposed an award of Kshs 80,000/= . He relied on HB (minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another (2021) eKLR, Eva Karemi & 5 others v Koskei Kieng & another (2020) eKLR et.al.
16. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 16th December 2024 and Respondent's written submissions dated 8th September 2025. The singular issue for my determination was whether the award of general damages was excessive.



Quantum

17. The Respondent (PW2) testified that she was involved in a road traffic accident and suffered blunt back trauma, chest contusion, bruising of the upper limbs and cut wounds on both legs.
18. Daniel Nyameino (PW3) a senior clinician at Kisii Teaching and Referral Hospital produced a Medical Report as P. Exh 2(a) and Dr. Lidquos Abida (PW4) produced a Discharge Summary as P. Exh 3. When PW3 and PW4 were cross examined, they testified that the nature of the Respondent's injuries was soft tissue and were expected to heal. I have looked at the Discharge Summary and the Medical Report and I am satisfied that the Respondent suffered the injuries as pleaded in the Plaintiff.
19. As earlier stated, the trial court awarded Kshs 250,000/= as general damages, an amount which the Appellant stated was excessive and the Respondent stated was sufficient and commensurate to her injuries.
20. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko [2006] KECA 130 (KLR).
21. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. In addition to the Appellant's and Respondent's authorities, I have found the following cases quite helpful in terms of comparison:-
 - I. In Godwin Ireri v Franklin Gitonga [2018] KEHC 6614 (KLR), the claimant sustained a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee. An award of Kshs. 300,000/= was reduced to Kshs. 90,000/= on appeal.
 - II. In Mburugu & another v Nyongesa [2023] KEHC 24047 (KLR), the court upheld the award of Kshs 300,000/= for a degloving injury to the right knee joint and severe soft tissue injuries of the right leg.
 - III. In Samwel Martin Njoroge Kamunyu v Mildred Okwuya Barasa [2020] KEHC 4339 (KLR), the plaintiff sustained; two deep cut wounds on the forehead horizontally, bruises and lacerations on the right cheek, blunt injury to the shoulder and chest, blunt injury to the pelvis, deep cut wounds on right and left legs. The High Court awarded of Kshs 300,000/= as general damages.
 - IV. In Marube & Another V Nyambogo (civil Appeal E011 of 2023) [2024] KEHC 3395 (KLR) (12 March 2024) (Judgment), the court upheld the award of Kshs 350,000/= for the following injuries; blunt trauma to the neck, chest contusion, bruises on the right upper limb, bruises on the left upper limb, bruises on the left lower limb, bruises on the right lower limb and cut wounds on the right lower limb
22. I have considered the authorities above and the nature of the injury suffered by the Respondent and I find that the Kshs 250,000/= awarded as general damages by the trial court was commensurate to the injuries sustained. I hereby uphold the award of Kshs 250,000/= as general damages.
23. Regarding special damages, I uphold the trial court's award of Kshs 14,630/= being receipts for payment of the Medical Report (P.Exh 2b), Motor Cycle Search and treatment (P.Exh 7).



24. In the final analysis, it is the finding of this court that the trial court did not err in its award on general and special damages. Therefore, there is no reason for this court to interfere with the trial court's award.
25. In the end, the Appeal dated 22nd December 2023 has no merit and is dismissed. The Respondent shall have the costs of the Appeal.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele (Court Assistant).

No appearance for the Appellant

Maronga holding brief for the Respondent

