



**Vicapia Enterprises Limited v Mwendwa (Civil Appeal E137 of 2024)
[2025] KEHC 17878 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E137 OF 2024
EN MAINA, J
NOVEMBER 27, 2025**

BETWEEN

VICAPIA ENTERPRISES LIMITED APPELLANT

AND

LYDIA MWENDWA RESPONDENT

*(Being an appeal from the judgment of the Hon R.W Gitau (SRM)
delivered on 28.11.2023 in Mavoko CMCC No E252 of 2023)*

JUDGMENT

1. The Respondent sued the Appellant for compensation for injuries sustained in a motor accident which occurred along the Nairobi/Mombasa road, on 31st October 2021, and which she attributed to the negligence of the Appellant and or his authorized driver. She averred that the Appellant's vehicle was so carelessly and or negligently managed driven, that it lost control and knocked her grievously injuring her.
2. In his written statement of defence dated 25.03.2023 the Appellant denied the particulars of negligence attributed to him in the plaint and attributed the accident to the negligence and/or the contributory negligence on the part of the Respondent. However, by consent of the advocates for the parties, liability was agreed the in favour of the Respondent against the Appellant in the ratio of 80:20. The court was then left to assess the quantum of damages only which it did as follows-
 - a. Liability 80:20.
 - b. General damages Kshs 400,000
 - c. Special damages Kshs 58,375
 - d. Costs and interest



3. Being aggrieved by the award, the Appellant preferred this appeal. The gist of the appeal is that the damages for pain, suffering and loss of amenities were excessive and the same should be reduced; that the learned magistrate erred in awarding damages that were inordinately high and which did not take comparable awards into account.
4. The Appeal was canvassed by way of written submissions.

Appellants Submissions

5. Relying on the case *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] eKLR, counsel for the Appellant submitted that an award of Kshs300,000 would have been reasonable compensation for the injuries sustained by the Respondent. Counsel contended that the award of Kshs400,000 was excessive. Counsel urged this court to consider the cases of *Duncan Mwenda & 2 others v Silas Kinyua Kithela* [2018] eKLR, *Daniel Gatana Ndungu & another v Harrison Angore Katana* [2020] eKLR and *Justine Nyamweya Ochoki & another v Jumaa Karisa Kippingwa* [2020] eKLR.
6. For the Respondent, it was submitted that injuries sustained were proved; that award for pain, suffering and loss of amenities was not excessive and it should not be disturbed. In support of his submission counsel placed reliance on the case of *Total Kenya Limited Formerly Caltex Oil Kenya Ltd v Janevams Limited* [2015] eKLR and the case of *Simon Taveta vs Mercy Mutitu Njeru* [2014] eKLR. Counsel argued that the award of kshs400,000 was based on the evidence and comparable cases, and also the passage of time and was a fair compensation of the pain, suffering and loss of amenities.

Analysis and determination

7. The principles which ought to guide an appellate court in considering whether or not to disturb an award of damages by a lower court were settled in the case of *Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (N0.2)*[1985] KECA137(KLR) to be that "either the court took into account an irrelevant factor, or left out a relevant one, or that, the amount of damages is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage." It is also a tenet of the law that similar injuries should attract comparable awards and must take inflation into account.
8. In the case of *Stanley Maore v Geoffrey Mwenda* [2004] eKLR the Court of Appeal stated: -

".....Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases."
9. The medical report prepared and produced in evidence by Dr. Wambugu confirmed that the Plaintiff/ Respondent sustained soft tissue injuries. The Trial Court considered the injuries sustained vis a vis a recent case of similar assessment and came to the figure of Kshs 400,000/- as general damages. It is not excessive considering the nature of injuries and the inflationary trends. This Court finds no legal basis to disturb the assessment of damages

Disposition

10. In the upshot, the appeal fails and judgment is entered for the Respondent as against the appellant as follows;
 - a. Liability 80:20%



- b. General damages Kshs 400,000
- c. Special damages Kshs 58,375
- d. Less 20% Contribution Kshs 267,130
- e. Total Kshs 366,700
- f. Costs of the appeal and interest

Orders accordingly.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY THIS 27TH NOVEMBER 2025.

E.N.MAINA

JUDGE

In the presence of:

Mr Ochieng for Appellant

Ms Onyango for Respondent

C/A: Geoffrey

