

KENYA / JUDGMENT

Liban v Muturi [2026] KEHC 13722 (KLR)

[2026] KEHC 13722 (KLR)**COURT**

High Court

BEFORE

MW Mutuku

CASE / FILE NUMBER

Civil Appeal E128 of 2026

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Liban v Muturi (Civil Appeal E128 of 2026) [2026] KEHC 13722 (KLR) (17 September 2026)
(Judgment) Neutral citation:

[2026] KEHC 13722 (KLR) Republic of Kenya In the High Court at Kiambu Civil Appeal E128 of 2026 MW Mutuku, J September 17, 2026 Between Ibrahim Boru Liban Appellant and Simon Njuguna Muturi Respondent (Being an appeal from the judgment of Hon. W. Njuguna, Resident Magistrate, delivered on 24th July 2025 in Kiambu CMCC No. E093 of 2024)

Judgment

Background

1. This appeal arises from a road traffic accident which occurred on 13th August 2023 along the Northern Bypass Road. The Appellant, Ibrahim Boru Liban, was a pedestrian when he was knocked down by motor vehicle registration number KDJ 498G, which was being driven by the Respondent. 2. By a plaint dated 12th March 2024, the Appellant instituted Kiambu CMCC No. E093 of 2024 against the Respondent. He attributed the accident to the negligence of the Respondent and sought general damages for pain, suffering and loss of amenities, special damages, costs and interest. 3. The Respondent filed a defence denying liability. He averred that the accident was caused or substantially contributed to by the Appellant, who allegedly attempted to cross the road without keeping a proper lookout for approaching vehicles. 4. At the hearing, the Appellant testified as PW1. He adopted his witness statement and produced the documents contained in his list of documents. His evidence was that he was walking along the road and was not crossing it when the Respondent's motor vehicle approached at a high speed and struck him. He stated that he attempted to move away, but the vehicle came towards where he was walking. 5. PW2, Galma Jillo, testified that he witnessed the accident. He stated that the Appellant was walking ahead of him when he was struck by the motor vehicle. 6. The Respondent testified as DW1. His evidence was that the Appellant was crossing the road when the accident occurred. He stated that he was not

charged with any traffic offence and that the police did not visit the scene and could not therefore determine who was responsible for the accident. 7. Upon considering the evidence, the trial magistrate found the Respondent wholly liable for the accident. The court thereafter entered judgment in favour of the Appellant as follows: i) General damages KShs. 1,000,000 ii) Special damages KShs. 83,135 Total KShs. 1,083,135 8. The Appellant was also awarded the costs of the suit and interest. B. The Appeal 9. The Appellant was dissatisfied with the assessment of general damages and lodged the present appeal on the following grounds: a. The learned trial magistrate erred in law and fact by awarding manifestly low damages of KShs. 1,000,000 in comparison with the injuries pleaded and proved; b. The learned trial magistrate failed to appreciate and adequately consider the parties' submissions, particularly those filed by the Appellant; c. The learned trial magistrate failed to consider and appreciate the judicial precedents cited by the parties and other comparable awards; and d. The learned trial magistrate erred by making an award that was lower than the respective awards proposed by both parties. 9. The Appellant consequently asks this Court to allow the appeal, set aside the award of general damages and substitute it with a fair and reasonable award. 10. Liability and special damages are not challenged in this appeal. Appellant's Submissions 12. The Appellant submitted that the award of KShs. 1,000,000 was inordinately low and did not reasonably compensate him for the serious injuries he sustained. 13. The injuries set out in the medical evidence were: a. Loss of consciousness; b. Right subdural haematoma; c. Brain contusion; d. Fracture of the right temporal bone of the skull; e. Fracture of the right parietal bone of the skull; f. Haemosinuses, being collection of blood within the sinuses; g. Fracture of the second right metatarsal bone; h. Deformity of the right side of the face caused by paralysis of the facial nerve; i. Excessive watering of the right eye; and j. Swelling and tenderness of the right foot. 14. The Appellant submitted that the injuries were established by treatment records from Nairobi Adventist Hospital, Teresa Hospital Limited and St. Bridget Hospital, the P3 form and the medical report prepared by Dr M.W. Wokabi. The P3 form classified the injuries as grievous harm. 15. Counsel pointed out that before the trial court, the Appellant proposed an award of KShs. 3,000,000, while the Respondent proposed KShs. 2,000,000. It was argued that the trial court's award of KShs. 1,000,000 was not supported by comparable contemporary awards. 16. The Appellant relied on *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982–88] KAR 5 and *Sheikh Mustaq Hassan v Nathan Mwangi Kamau Transporters & 5 others* [1986] KLR 457 on the circumstances in which an appellate court may interfere with an award of damages. 17. On comparable awards, the Appellant relied on *Francis Gachau Ndung'u & another v Peter Irungu Mbau* (Civil Appeal E002 of 2022) [2023] KEHC 26167 (KLR), *Kimani v Easy Coach Limited* [2023] KEHC 25376 (KLR) and *Joseph Gichui Thomas v KG* (Minor suing through his mother and next friend SNN) [2018] eKLR. 18. The Appellant urged this Court to set aside the award of KShs. 1,000,000 and substitute it with an award of KShs. 3,000,000. Respondent's Submissions 19. The Respondent opposed the appeal. He submitted that assessment of damages is an exercise of discretion and that an appellate court should not interfere with an award merely because it would have arrived at a different figure. 20. The Respondent relied on *Catholic Diocese of Kisumu v Sophia Achieng Tete* [2004] eKLR, *Bashir Ahmed Butt v*

Uwais Ahmed Khan [1982–88] KAR 5, *Selle & another v Associated Motor Boat Co. Ltd & others* [1968] EA 123 and *Abok James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR. 21. Although the Respondent did not dispute the injuries, he emphasized that Dr Wokabi did not assess any permanent incapacity. The doctor expected the head injuries and facial-nerve paralysis to resolve within six to eight months. The facial deformity and excessive watering of the right eye were similarly expected to resolve once the facial nerve healed. 22. It was therefore submitted that the injuries did not result in permanent disability and that the authorities cited by the Appellant concerned either more severe injuries or lasting incapacity. 23. The Respondent relied principally on *Watu Credit Co. Limited v Matere* (Civil Appeal E055 of 2023) [2025] KEHC 2608 (KLR) and *Kariuki v Maina alias Peter Murimi* (Suing through Next Friend Rosemaru Muthoni) (Civil Appeal E009 of 2023) [2025] KEHC 7831 (KLR). 24. The Respondent urged the Court to find that the award of KShs. 1,000,000 was reasonable and to dismiss the appeal with costs. Issue for Determination 25. Having considered the record of appeal, the impugned judgment and the parties' submissions, the sole issue for determination is whether the award of KShs. 1,000,000 as general damages was so inordinately low, or was reached upon an erroneous application of the relevant principles, as to warrant appellate interference. Duty of the First Appellate Court 26. This is a first appeal. The Court is under a duty to reconsider and re-evaluate the evidence placed before the trial court and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses testify. 27. In *Selle & another v Associated Motor Boat Co. Ltd & others* [1968] EA 123, the Court stated that a first appeal proceeds by way of a retrial and that the appellate court must reconsider the evidence, evaluate it and draw its own conclusions, while making due allowance for the fact that it did not hear the witnesses. 28. The same principle was restated in *Abok James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR. 29. In the present appeal, however, the Court's reconsideration is confined to quantum because neither the finding on liability nor the award of special damages has been challenged. Principles Governing Interference with Damages 30. Assessment of general damages is primarily within the discretion of the trial court. That discretion must, however, be exercised judicially, upon the evidence and established legal principles. 31. In *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982–88] KAR 5, the Court held that an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. Interference is also justified where the trial court proceeded on a wrong principle or misapprehended the evidence in some material respect. 32. In *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M. Lubia & Olive Lubia* [1982–88] 1 KAR 727, the Court similarly held that an appellate court may interfere where the trial court took into account an irrelevant factor, left out a relevant factor, or made an award so high or low that it amounted to an erroneous estimate of the damage. 33. The principle was reiterated in *Catholic Diocese of Kisumu v Sophia Achieng Tete* [2004] eKLR, where the Court emphasized that it is not sufficient for an appellate court to consider that it would have awarded a different sum. It must be demonstrated that the trial court applied a wrong principle or that the award was inordinately high or low. 34. Comparable injuries

should, as far as reasonably possible, attract comparable awards. Nevertheless, precedents are guides and not rigid tariffs because the nature, severity, treatment, prognosis and consequences of injuries differ from one claimant to another. 35. In *Denshire Muteti Wambua v Kenya Power & Lighting Company Limited* [2013] eKLR, the Court of Appeal observed that awards in decided cases are merely guides and that each case must be determined according to its peculiar circumstances. 36. Courts must also consider the passage of time and changes in the value of money. At the same time, an award must remain reasonable, moderate and commensurate with the injuries proved. 37. The injuries sustained by the Appellant were not disputed. They were supported by the treatment records, P3 form and the medical report of Dr Wokabi. 38. The medical evidence demonstrates that the Appellant suffered significant head trauma. Loss of consciousness, a subdural haematoma and brain contusion are indicative of intracranial injury. These injuries were accompanied by fractures of two separate bones of the skull, namely the right temporal and right parietal bones. 39. The Appellant also suffered haemosinuses. The head injuries affected the facial nerve, resulting in paralysis and deformity of the right side of his face. The facial-nerve impairment further caused excessive watering of the right eye. 40. In addition to the head and facial injuries, the Appellant suffered a fracture of the second right metatarsal bone, together with swelling and tenderness of the right foot. 41. These injuries must be evaluated cumulatively. It would be erroneous to treat the Appellant's condition merely as a skull fracture without considering the associated intracranial injury, facial-nerve paralysis, facial deformity and foot fracture. 42. The trial magistrate correctly noted that Dr Wokabi did not assess permanent incapacity. The doctor expected the head injuries and facial-nerve paralysis to heal within six to eight months. He further expected the facial deformity and excessive watering of the right eye to disappear once the facial nerve recovered. 43. That favourable prognosis is an important factor in assessing damages. It distinguishes the Appellant's case from cases involving permanent neurological impairment, permanent disfigurement or lasting physical disability. 44. Nevertheless, the absence of permanent incapacity does not render otherwise serious injuries minor. General damages compensate not only permanent disability but also the pain, suffering, inconvenience and loss of amenity experienced during treatment and recovery. 45. The Appellant suffered multiple fractures, intracranial bleeding, brain contusion and temporary facial paralysis. Even though those injuries were expected to resolve, their nature and combined effect called for substantial compensation. 46. Before the trial court, the Appellant proposed an award of KShs. 3,000,000, while the Respondent proposed KShs. 2,000,000. A court is not bound by the figures proposed by the parties. Submissions do not constitute evidence, and the court retains an independent duty to assess fair compensation. 47. The fact that an award falls below or exceeds the figures proposed by both parties does not, by itself, amount to an error of law. The decisive question is whether the award is supported by the injuries, the medical evidence and comparable decisions. 48. In the present case, however, the Respondent's proposal of KShs. 2,000,000 provides relevant context. An award amounting to half the Respondent's own assessment required cogent comparative justification. 49. In *Kimani v Easy Coach Limited* [2023] KEHC 25376 (KLR), the

claimant suffered bilateral longitudinal fractures of the temporal bones, fracture of the right sphenoid bone, parietotemporal contusions, extradural haematoma and cerebral haemorrhage. The High Court upheld an award of KShs. 1,800,000. 50. That decision bears a close relationship to the present appeal because both cases involved skull fractures, brain contusions and intracranial bleeding. The present Appellant additionally suffered facial-nerve paralysis, facial deformity and a metatarsal fracture, although he was not assessed as having sustained permanent disability. 51. In *Francis Gachau Ndung'u & another v Peter Irungu Mbau* [2023] KEHC 26167 (KLR), the claimant suffered a concussion with loss of consciousness, a fracture of the parietal bone of the skull, blunt injury to the chest and a fracture involving the right knee. An award of KShs. 2,000,000 was upheld. 52. The injuries in that case are also broadly comparable. The present Appellant suffered a more extensive combination of head injuries, although the medical prognosis remained favourable and no permanent incapacity was assessed. 53. In *Joseph Gichui Thomas v KG (Minor suing through his mother and next friend SNN)* [2018] eKLR, an award of KShs. 1,800,000 was affirmed for a head injury together with multiple cuts and bruises. While the precise consequences differ, the decision remains relevant to the general range of awards for significant head injuries. 54. The Respondent relied on *Watu Credit Co. Limited v Matere* [2025] KEHC 2608 (KLR). In that matter, the claimant suffered loss of consciousness, depressed skull fractures, a cut wound on the forehead and soft-tissue injuries. The court considered KShs. 500,000 appropriate. 55. That authority is distinguishable. The claimant in that matter was not shown to have suffered the present combination of a subdural haematoma, brain contusion, two skull fractures, facial-nerve paralysis and a metatarsal fracture. 56. Moreover, the appeal in *Watu Credit Co. Limited v Matere* was ultimately dismissed as incompetent for failure to include a certified decree in the record of appeal. Its discussion of the appropriate quantum must therefore be understood within that procedural context. 57. The Respondent also relied on *Kariuki v Maina alias Peter Murimi (Suing through Next Friend Rosemaru Muthoni)* [2025] KEHC 7831 (KLR). The principal skeletal injury in that matter was a linear frontal-bone fracture accompanied by several soft-tissue injuries. The award was reduced to KShs. 500,000. 58. That decision is likewise distinguishable. The injuries did not include a comparable subdural haematoma, brain contusion, facial-nerve paralysis, facial deformity or an additional foot fracture. 59. The trial magistrate cited *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR and *Musendu Kasoo Muindu v Charles Mbuthi Kinyanjui & another*, Civil Appeal No. E032 of 2022. The trial court was therefore alive to the general principle that damages should be assessed with reference to comparable injuries and awards. 60. The question, however, is not merely whether an authority was cited but whether the award ultimately made reasonably reflected the totality of the injuries and the range disclosed by sufficiently comparable contemporary awards. 61. The trial court placed substantial weight on the absence of permanent incapacity. It did not, however, adequately address the intracranial injuries, the multiplicity of the skull fractures, the temporary facial-nerve paralysis and the separate metatarsal fracture. 62. The closer authorities place compensation for multiple skull fractures accompanied by intracranial injury at approximately KShs. 1,800,000 to KShs. 2,000,000. The lower awards in the 2024 and

2025 authorities relied upon by the Respondent concerned materially less extensive injuries and are not appropriate measures of the Appellant's loss. 63. Having regard to the Appellant's additional facial-nerve paralysis, facial deformity and metatarsal fracture, balanced against the favourable prognosis and absence of permanent incapacity, an award of KShs. 2,000,000 falls within, rather than outside, the reasonable range established by comparable decisions. 64. The award of KShs. 1,000,000 was substantially below the awards made in the closer comparators. In my view, that disparity is sufficiently significant to demonstrate that the trial court's award was an erroneous estimate of reasonable compensation. 65. The Appellant asks this Court to enhance the award to KShs. 3,000,000. Although his injuries were undoubtedly serious, the medical evidence did not establish permanent incapacity. The doctor anticipated complete recovery of the head injuries and facial-nerve paralysis within six to eight months. 66. In those circumstances, an award of KShs. 3,000,000 would exceed a reasonable award when considered against the medical prognosis and the comparable authorities. 67. On the other hand, KShs. 1,000,000 does not adequately reflect the multiple skull fractures, intracranial bleeding, brain contusion, facial-nerve paralysis, facial deformity and metatarsal fracture. 68. Taking into account the nature and multiplicity of the injuries, the pain and temporary loss of amenity, the expected recovery period, the absence of permanent incapacity, comparable awards, the passage of time and the need to maintain consistency and moderation, I find that KShs. 2,000,000 constitutes fair and reasonable compensation and the same is awarded. 69. The figure is not adopted merely because it was the amount proposed by the Respondent before the trial court. It is independently supported by the medical evidence and the closer comparable awards. 70. I am therefore satisfied that the Appellant has established a proper basis for appellate interference. Costs 71. The award of costs is governed by section 27(1) of the Civil Procedure Act, which provides that costs are within the discretion of the Court, subject to the general principle that costs follow the event unless the Court, for good reason, directs otherwise. 72. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate & 4 others* [2014] eKLR, the Supreme Court explained that the purpose of an award of costs is ordinarily to reimburse the successful party for expenses reasonably incurred in prosecuting or defending proceedings. The Court affirmed that, although costs generally follow the event, this remains a judicial discretion which must be exercised reasonably and upon the circumstances of each case. 73. The "event" for purposes of section 27 of the Civil Procedure Act is the result of the proceedings. The Court may consider the parties' respective success, their conduct, the nature of the dispute and any other relevant circumstances when determining the appropriate order on costs. 74. In this appeal, the Appellant has successfully demonstrated that the trial court's award of general damages was inordinately low and warranted appellate interference. Although this Court has not awarded the entire KShs. 3,000,000 sought by the Appellant, he has succeeded on the substance of the appeal: the award of general damages has been set aside and substantially enhanced. 75. The fact that the substituted award is lower than the amount proposed by the Appellant does not deprive him of his status as the successful party. I find no conduct or other circumstance that would justify departing from the general rule that costs follow the event. The Appellant

shall therefore have the costs of this appeal. The trial court's order awarding him the costs of the original suit remains undisturbed. L. Disposition 76. In the result, the appeal succeeds, and I make the following orders: a. The appeal against the assessment of general damages is allowed. b. The award of KShs. 1,000,000 as general damages for pain, suffering and loss of amenities is set aside and substituted with an award of KShs. 2,000,000. c. The award of KShs. 83,135 as special damages was not challenged and is upheld. d. The Appellant's award is therefore recalculated as follows: Head of damages Award General damages KShs. 2,000,000 Special damages KShs. 83,135 Total KShs. 2,083,135 e. The finding on liability at 100% against the Respondent remains undisturbed. f. The substituted award shall attract interest in accordance with the orders of the trial court. g. The Appellant is awarded the costs of this appeal. h. The order on costs before the trial court remains undisturbed. 74. It is so ordered. DELIVERED, DATED, AND SIGNED ON THIS 17 TH DAY OF SEPTEMBER, 2026. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM. MARTHA MUTUKU JUDDGE In the presence of: - No appearance for the Appellant. Miss Amera h/b for Miss Kinyua for Respondent. Court Assistant- Mr. Kibet. 30 days stay of execution granted.

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