



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mkaluma v Mutangili (Civil Appeal E074 of 2022)  
[2024] KEHC 7659 (KLR) (Civ) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7659 (KLR)

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

**CIVIL**

**CIVIL APPEAL E074 OF 2022**

**WM MUSYOKA, J**

**JUNE 26, 2024**

**BETWEEN**

**DAINES KULOLA MKALUMA ..... APPELLANT**

**AND**

**SYLVIA WAVINYA MUTISO MUTANGILI ..... RESPONDENT**

*(An appeal arising from the judgment of Hon. E Wanjala, Principal Magistrate,  
PM, delivered on 28th January 2022, in Milimani CMCCC No. E1803 of 2021)*

**JUDGMENT**

1. The suit, at the primary court, was initiated by the appellant, against the respondent, for compensation, arising from a road traffic accident, which allegedly happened on 23<sup>rd</sup> January 2021, along Zanzibar Road, Nairobi, involving the appellant and motor vehicle registration mark and number KAV 865G, allegedly owned or controlled by the respondent at the material time. The appellant was allegedly injured in the accident, and he attributed it to negligence from the respondent. The respondent filed a defence, in which she denied liability, and everything else pleaded in the plaint. In the alternative, she attributed negligence on the appellant.
2. No formal hearing was conducted, as a consent on liability was recorded on 25<sup>th</sup> October 2021. Liability was apportioned at 80%:20% in favour of the appellant. Quantum was canvassed by way of written submissions. Judgment was delivered on 28<sup>th</sup> January 2022. The appellant was awarded Kshs. 900,000.00, less 20% contribution, plus Kshs. 77,113.18 special damages, Kshs. 120,000.00 loss of earning capacity, and costs.
3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 27<sup>th</sup> August 2021, revolve around the award of Kshs. 900,000.00, general damages, being inordinately low; and the trial court not considering the submissions made by the appellant.



4. Directions on the disposal of the appeal were given on 30<sup>th</sup> October 2023, for canvassing of the appeal by way of written submissions. Both sides filed written submissions.
5. The appellant has submitted that the trial court should have considered awarding Kshs. 1,500,000.00, upon taking into account the injuries sustained, and the decisions in *James Gathirwa Ngungi vs. Multiple Hauliers (EA) Limited & another* [2015] eKLR (Ougo, J), *Frankline Chilibasi Spii vs. Kirangi Liston* (2017) eKLR (Chitembwe, J) and *Godfrey Mwaniki Mwinzi vs. Ibero (K) Limited & another* [2014] eKLR (Waweru, J).
6. The respondent wholly supports the award of the trial court, and cites *Aloise Mwangi Kahari vs. Martin Muiya & another* [2020] eKLR (Ng'etich, J) and *Daniel Otieno Owino & another vs. Elizabeth Atieno Owuor* [2020] eKLR (Aburili, J).
7. The appeal turns only on assessment of damages.
8. The medical record filed by the appellant, to guide the court, was the medico-legal report by Mr. WM Wokabi, dated 8<sup>th</sup> March 2021. The injuries noted were compound fractures of the left tibia and the right fibula, with a few wounds below the knee, and scars on the linear aspect of the left thigh. Permanent disability was assessed at 8%. She was subsequently seen by Dr. PM Wambugu, who prepared a second medico-legal report, dated 8<sup>th</sup> June 2021, who identified the injuries sustained as a compound fracture of the tibia and fibula involving the middle third, and bruises.
9. The authorities cited by the appellant are largely unhelpful. *James Gathirwa Ngungi vs. Multiple Hauliers (EA) Limited & another* [2015] eKLR (Ougo, J) and *Frankline Chilibasi Spii vs. Kirangi Liston* (2017) eKLR (Chitembwe, J) as turned on compound communitated fractures of the tibia and fibula, which were unrelated to the injuries sustained by the appellant herein, who only sustained simple compound fractures. *Godfrey Mwaniki Mwinzi vs. Ibero (K) Limited & another* [2014] eKLR (Waweru, J) involved extensive compound fractures of the tibia and fibula, with extensive damage to the sift tissue injuries of the left leg, and disability was assessed at 55%, as opposed to the case here, where the compound fractures do not appear to have been that bad, for disability was assessed at 8%.
10. The authorities cited by the respondent are more helpfully, that is to say *Aloise Mwangi Kahari vs. Martin Muiya & another* [2020] eKLR (Ng'etich, J) and *Daniel Otieno Owino & another vs. Elizabeth Atieno Owuor* [2020] eKLR (Aburili, J), as they both turned on simple compound fractures of the tibia and fibula bones, and soft tissue injuries. I have noted that the courts awarded Kshs. 500,000.00 and Kshs. 400,000.00, respectively.
11. I have surveyed the following decisions, where the claimants had suffered similar or comparable injuries. In *George Raini Atungu vs. Moffat Onsare Aunga* [2021] eKLR (Ougo, J), Kshs. 650,000.00 was awarded for a fracture of the right tibia and fibula bones, a fracture of the left radius and ulna, and contusions to the chest and the pelvis. *Nahson Nyabaro Nyandega vs. Peter Nyakweba Omboga* [2021] eKLR (Maina, J), it was a compound fracture of the right tibia bone; cut wound on the right leg; and bruises on the face, and the court awarded Kshs. 650,000.00. In *Atunga vs. Mogambi* [2022] KEHC 9854 (KLR)(Ougo, J), the injuries were fractures of the tibia and fibula bones; dislocation of the right hip joint; multiple lacerations on the lower limb; bruises, with multiple cut wounds, on the upper limbs; Dislocation of the right shoulder; chest trauma; and bruises on the frontal part of the head, and Kshs. 550,000.00 was awarded.
12. The decision, the subject of the instant appeal, was rendered in 2022, and the award it made, on general damages, for compound fractures of the tibia and fibula, and the soft tissue injuries, was within range, as emerges from the decisions reviewed above, and the trial court cannot, therefore, be said to have



awarded an incredibly low award, which the appellate court should interfere with. Consequently, I find no merit in the instant appeal, and I hereby dismiss it. Each party shall bear its own costs.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 26<sup>TH</sup> DAY OF JUNE 2024**

**W MUSYOKA**

**JUDGE**

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Mugo, instructed by Kiama Kibathi & Company, Advocates for the appellant.

Ms. Wekesa, instructed by Julia Kariuki & Company, Advocates for the respondent.

