



**Maina v Ngumbi & another (Civil Appeal E773 of 2022)
[2024] KEHC 7663 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E773 OF 2022
WM MUSYOKA, J
JUNE 25, 2024**

BETWEEN

FRANCIS MWANGI MAINA APPELLANT

AND

KYALO NGUMBI 1ST RESPONDENT

RAM HARDWARE SUPPLIERS LIMITED 2ND RESPONDENT

(An appeal arising from the judgment of Hon. Caroline Ndumia, Senior Resident Magistrate, SRM, adjudicator, delivered on 2nd September 2022, in Milimani SCCC No. E1249 of 2022)

JUDGMENT

1. The suit, at the primary court, was initiated by the appellant, against the respondents, for compensation, arising from a road traffic accident, which allegedly happened on 18th January 2022, along Jogoo Road, Nairobi, involving the appellant and motor vehicle registration mark and number KAL 020A, allegedly owned or controlled by the respondents at the material time. The appellant was allegedly injured in the accident, and he attributed it to negligence from the respondents. The respondents filed a defence, in which they denied liability, and everything else pleaded in the plaint. In the alternative, they attributed negligence on the appellant.
2. No formal hearing was conducted. A consent was recorded on 3rd August 2022. Liability was apportioned at 60%:40% in favour of the appellant. Quantum was canvassed by way of written submissions. Judgment was delivered on 2nd September 2022. The appellant was awarded Kshs. 400,000.00, less 40% contribution, plus Kshs. 9,480.00 special damages, and costs.
3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 20th September 2022, revolve around the award of Kshs. 400,000.00, general damages, being inordinately low; the trial court not appreciating the gravity of the injuries sustained by the appellant;



- the court disregarding the case presented by the appellant; the court not taking into account passage of time and the incidence of inflation; among others.
4. The record is silent on whether directions were ever given, on the disposal of the appeal, for the file was never placed before a Judge for directions. The appeal, was, nevertheless, canvassed by way of written submissions. Both sides filed written submissions.
 5. The appellant has submitted, based on section 38 of the *Small Claims Act*, Cap 10A, Laws of Kenya, and *Nzuki Isaac Muveke v Francis Njogu Njebia* [2021] eKLR (HA Omondi, J), that there was jurisdiction for the appellate court to consider the appeal, for the exercise of discretion by a trial court is a matter of law. It is submitted that the trial court should have considered awarding damages in the region of Kshs. 1,700,000.00, upon taking into account the injuries sustained, and the decisions in *John Mutuga Kamau v Kanini Haraka Enterprises Limited* [2019] eKLR (Mwongo, J), *James Gathirwa Ngungi v Multiple Hauliers (EA) Limited & another* [2015] eKLR (Ougo, J), *Robert Jeriot v Geoffrey Nyakundi Aberu* [2021] eKLR (Maina, J) and *Zachary Kariithi v Jashon Otiemo Ochola* [2016] eKLR (Majanja, J).
 6. The respondents submit that the pecuniary jurisdiction of the Small Claims Court is limited to Kshs. 1,000,000.00. They argue that the appellate court should only interfere where it is established that the award made, of general damages, was outrageously low. They submit that the award made of Kshs. 400,000.00 was within range, and cite *Sebastian Mutuku Mbuli v Dhanji & Wahnji & Co.* HCC No. 3036 of 1989 Nairobi, *James Rutto v The Hon. Attorney General* HCCC No. 165 of 1996 Nairobi, *James Musau Kimweli v Benard Ndegwa Kiseu & another* HCC No. 133 of 1997 Machakos and *Abdillahi Shee Mwachalika v Tawfiq Bus Services* HCCC No. 67 of 999 Mombasa.
 7. The appeal turns largely on assessment of damages.
 8. The medical record filed by the appellant, to guide the court, was the medico-legal report by Dr. GK Mwaura, dated 26th April 2022. The injuries noted were bruises to the left side of the head and neck, bruises on the upper limbs, cut wound to the right leg, and fracture of the left malleoli/ankle. He was subsequently seen by Mr. WM Wokabi, who prepared a second medico-legal report, dated 29th June 2022, who identified the injuries sustained as bimalleolar fractures of the left leg (fracture of the tibia and fibula). Disability was assessed at 10%. Mr. Wokabi confined himself to the fractures, while Dr. Mwaura included the other injuries. The principal injury was the fracture of the tibia and fibula bones, with several soft tissue injuries.
 9. The authorities cited by the appellant are largely unhelpful, save for, *Zachary Kariithi v Jashon Otiemo Ochola* [2016] eKLR (Majanja, J), as they turned on fractures of the pubic ramus and of the radius, which were unrelated to the injuries sustained by the appellant herein. In *Zachary Kariithi v Jashon Otiemo Ochola* [2016] eKLR (Majanja, J), the injuries included fractures of the tibia and fibula bones, but the award made, of Kshs. 1,500,000.00, exceeded the pecuniary jurisdiction of the Small Claims Court, of Kshs. 1,000,000.00. The respondents have been lazy in their approach to this matter, for the authorities they have cited are of no use to this court, for they are unreported, and copies of the said decisions have not been attached, and I have no idea where I would get them from. Furthermore, the said decisions are outdated, for they relate to suits that were filed in the 1980s and 1990s.
 10. I have surveyed the following decisions, where the claimants had suffered similar or comparable injuries. In *George Raini Atungu v 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. *Nabson Nyabaro Nyandega v 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 *Ndwiga & another v Mukimba*



[2022] KEHC 11793 (KLR)(Njuguna, J), the court awarded Kshs. 500,000.00, for fractures of the tibia and fibula, and tenderness and swelling on the left leg. In *Atunga v 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. In *Munene v Mbarire* [2023] KEHC 18417 (KLR)(Njagi, J), the court awarded Kshs. 450,000.00, for fractures of the right tibia and fibula bones; and bruises on the right side of the head, both elbows, right groin and right knee.

11. The decision, the subject of the instant appeal, was rendered in 2022, and the award it made, on general damages, for a fracture 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 25TH DAY OF JUNE 2024

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Musyoki, instructed by CK Musyoki & Company, Advocates for the appellant.

Mr. Mwangi, instructed by Anne W. Kimani & Company, Advocates for the respondents.

