



REPUBLIC OF KENYA



**Mugaru v Mutua & another (Civil Appeal E759 of 2022)
[2024] KEHC 7662 (KLR) (Civ) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7662 (KLR)

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

CIVIL

CIVIL APPEAL E759 OF 2022

WM MUSYOKA, J

JUNE 24, 2024

BETWEEN

MARY WAMBUI MUGARU APPELLANT

AND

DANIEL MUTUA 1ST RESPONDENT

HAMISI JOSIA KOMBO 2ND RESPONDENT

*(An appeal arising from the judgment of Hon. M. Mutua, Resident Magistrate,
RM, delivered on 7th September 2022, in Milimani SCCC No. 357 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 16th February 2021, involving the appellant and motor vehicle registration mark and number KCA 758R, allegedly owned or controlled by the respondents at the material time. The case was that the appellant was a fare paying passenger in the said vehicle, when the same had an accident, which she alleged was negligently handled or controlled by the respondents. The respondents filed a response, in which they denied liability, and everything else pleaded in the plaint. In the alternative, they attributed negligence on the appellant .
2. A formal hearing was conducted. On the appellant testified. She largely breathed life to the averments in her claim, highlighting that she was sitting just behind the driver. Judgment was delivered on 7th September 2022, where liability was apportioned at 100% against the respondents. The appellant was awarded Kshs. 80,000.00 general damages, plus Kshs. 4,550.00 special damages, and costs.
3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 28th September 2022, revolve around the award of Kshs. 80,000.00 general damages, being



inordinately low; and by not putting sufficient weight and not considering evidence, submissions and medical documents.

4. Directions were given on 4th December 2023, for disposal of the appeal by way of written submissions. There has been compliance, by the appellant.
5. The appellant has submitted that she had suffered wound, pain and tenderness on both the right and left legs. She submits that the award of Kshs. 80,000.00 was too low for the injuries sustained, and she expected an award of Kshs. 750,000.00. She cites Francis Ochieng & another v Alice Kajimba [2015] eKLR (Majanja, J), where Kshs. 350,000.00 was awarded for multiple soft tissue injuries, without a fracture. She also relies on Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] eKLR (Riechi, J), where an award of Kshs. 350,000.00 was made for multiple soft tissue injuries, without any fractures. There is also reliance on Lucy Waruguru Gatundu v Miriam Nyambura Mwangi (Kasango, J), and a copy of the judgment in Easy Coach Limited v Emily Nyangasi [2017] eKLR (Cherere, J) is attached.
6. The appeal turns only on assessment of damages.
7. The medical record filed to guide the court is the medico-legal report by Dr. Muoki James K, dated 13th March 2021. The injuries noted were a wound, pain and tenderness on the right leg; and a wound, pain and tenderness on the left leg. The findings were that she had a large wound on the right leg. She was treated as an outpatient. The nature of the wounds is not defined or described.
8. Looking at the injuries sustained by the appellant, it would be clear that the authorities cited by the appellant would not apply here, for the authorities cited related to more serious offences. In Easy Coach Limited v Emily Nyangasi [2017] eKLR (Cherere, J), the injuries were to the face, to the chest and back; cut wound on right hand and cut wounds on the right leg. Treatment included skin grafting, and a large keloid scar. In Francis Ochieng & another v Alice Kajimba [2015] eKLR (Majanja, J), the injuries were cerebral contusion with loss of consciousness for 2 hours, massive haematoma to the right parietal head, subconjunctival haematoma of the right eye, peri-orbital haematoma, loss of 7 teeth, peri-orbital ecchymosis, nuchial stiffness, and cut wound on the right hand and the right knee. In Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] eKLR (Riechi, J), the injuries were a blunt injury to the chest, bruises of the lower abdomen, bruises on the right hip joint, bruises on the thigh and bruises on the knee.
9. I have surveyed the following decisions, where the claimants had suffered similar or comparable injuries. In FM (minor suing through mother and next friend MWM) v JNM & another [2020] eKLR (Nyakundi, J), Kshs. 100,000.00 was awarded for blunt injuries on head neck, limbs, thorax, and abdomen. The claimant was treated as an out-patient. In Makami v Obong'o [2023] KEHC 922 (KLR) (Aburili, J), it was swellings and bruises on the forehead, marked neck and chest pains, and cut wound on the right elbow joint and right knee joint. The claimant was treated as an outpatient. An award of Kshs. 80,000.00 was given. The decision, the subject of the instant appeal, was rendered in 2022, and the award it made, on general damages, for soft tissues injuries of a wound, pain and tenderness on each leg, was within range, as emerges from the decisions reviewed above.
10. 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 24TH DAY OF JUNE 2024

W MUSYOKA



JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Mutunga, instructed by Mutunga & Company, Advocates for the appellant.

Mr. Njuguna, instructed by Kimondo Gachoka & Company, Advocates for the respondents.

