



**Muiruri v Evergreen Ever Limited (Civil Appeal E092 of 2022)  
[2024] KEHC 16660 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16660 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E092 OF 2022  
GL NZIOKA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**GRACE WANGARI MUIRURI ..... APPELLANT**

**AND**

**EVERGREEN EVER LIMITED ..... RESPONDENT**

*(Being an appeal from the decision of Hon. J. Ndengeri, Senior Resident Magistrate delivered on 17th November 2022 vide Chief Magistrate's Civil Case No. 423 of 2017)*

**JUDGMENT**

1. The plaintiff (herein “the appellant”) sued the defendant (herein “the respondent”) vide a plaint dated 19<sup>th</sup> June 2017, seeking for the following orders: -
  - a. General damages
  - b. Special damages
  - c. Costs and interest of the suit
  - d. Interest on (a) (b) and (c) above at court rates
2. The appellant’s claim arose from a road accident that occurred on 13<sup>th</sup> March 2017 along Gathwariga – Magumu road. That she was a pillion passenger on motorcycle registration number KMDX 461D when a log fell off motor vehicle registration number KCJ 870X and hit her.
3. That, the subject motor vehicle is registered or beneficially owned and/or insured by the respondent and was driven by its agent or driver in a negligent manner as stated in the particulars of negligence in the plaint.
4. That as a result of the accident she sustained the following injuries:-



- a. Moderate head injuries with left epidural haematoma resulting into weakness of the right upper and lower limbs;
  - b. Severe soft tissue injuries of the neck;
  - c. Abrasions on the right elbow and forearm;
  - d. Lacerations on the knees.
5. However, the respondent denied liability and blamed the appellant for solely causing and/or substantially contributing to the occurrence of the accident.
6. Subsequently the parties recorded a consent judgment on liability in the ratio of 85:15% in favour of the appellant as against the respondent.
7. The case proceeded to full hearing on quantum, and thereafter the parties' filed their respective submissions. Subsequently the trial court entered judgment on quantum as follows: -
- a. General damages-----Kshs. 400,000
  - b. Special damages-----Kshs. 151,938
  - Total-----Kshs. 551,938
  - c. Costs awarded to the plaintiff
  - d. Special damages to attract interest from date of filing the suit while general damages to attract interest from date of judgment till payment in full
8. However, the appellant is aggrieved by the subject judgment and appeals against it on the following grounds: -
- a. That the Learned Magistrate erred in law and fact in awarding general damages that were inordinately low in total disregard of the severe injuries that the appellant suffered in the accident;
  - b. That the Learned Magistrate erred in fact and in law in disregarding the evidence tendered by the appellant during the hearing of the above suit;
  - c. That the Learned Magistrate erred and misdirected herself in law and in fact by not properly analysing the appellant's testimony and her witness in court, medical documents produced and her submissions on the severity of her injuries.
9. The appellant thus seeks for the following orders: -
- a. The appeal be allowed.
  - b. The judgment/decree of the Honourable trial Magistrate delivered on the 17<sup>th</sup> November 2022 in Naivasha CMCC No. 423 of 2017 be set aside and/or reviewed.
  - c. This Honourable court be pleased to re-assess the damages to be awarded to the appellant and enhance the same.
  - d. Costs of this appeal to be borne by the respondent.
10. The appeal was disposed of vide filing of submissions. The appellant submitted that an appellate court will only interfere with an award of damages by a trial court where it is satisfied that the trial court



applied on the wrong principles or misapprehended the evidence is some material respect and arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.

11. The appellant relied on the following cases in support of the above submissions; *Kemfro Africa Limited t/a Meru Express Services & Another vs A.M. Lubia and Another (No.2) (1982-88) KAR 727* and *Butt vs Khan [1981] KLR 349*
12. The appellant further submitted that, the trial Magistrate acted on the wrong principles of law by failing to consider the medical documents or reports produced and oral testimony of Dr. Kiamba all of which confirmed the injuries she sustained and instead relied on the medical report by Dr. Malik, which indicated she had suffered 0% permanent disability.
13. That as a result, the trial Magistrate held that she had fully recovered without any disability, and awarded Kshs. 400,000 as general damages that were inordinately low.
14. Further that the trial court treated the two medical reports by Dr. Kiamba with circumspect due to the fact that Dr. Kiamba had not awarded any permanent disability during her first examination but awarded permanent disability at 30% on a second examination.
15. However, the trial court failed to consider Dr. Kiamba's oral evidence that he did not award permanent disability at the initial examination as the appellant was still attending clinics and therefore disability could not be assessed.
16. Further, Dr. Kiamba explained that he awarded permanent disability at 30% during the second examination as the appellant was still complaining of headaches and weakness of the limbs.
17. The appellant further submitted that, both Dr. Kiamba's and Dr. Malik's medical reports were similar in terms of the injuries sustained save that Dr. Malik's report wrongly indicated that she suffered weakness on the left side which was contrary to letter from Kijabe Hospital which was the initial treatment note.
18. That in addition the respondent never called Dr. Malik to testify and support his reason for failing to award any permanent disability in his medical report, and in the circumstances Dr. Kiamba's medical report remained uncontested.
19. The appellant faulted the trial court for awarding Kshs. 400,000 as general damages without citing any comparable case law to indicate how she arrived at her decision.
20. That the appellant prayed for an award of Kshs. 3,000,000 and relied on the case of *Joseph Gichuhi Thomas vs KG (minor suing through his mother and next friend SNN [2018] eKLR* where the High Court upheld the award of Kshs. 1,800,000 as general damages where the respondent suffered loss of consciousness, cut wound on the scalp, multiple laceration wounds on the trunk and hemiparesis of the side.
21. That on the other hand, the respondent proposed an award of Kshs. 250,000 and relied on authorities with less severe injuries such as the case of *Francis Ochieng & another vs Alice Kajimba [2015] eKLR* where the High Court awarded the respondent Kshs. 350,000 as general damages where the respondent sustained soft tissue injuries with no permanent disability.
22. The respondent on its part submitted that award for bodily injuries is intended to be compensatory such that the plaintiff should receive no more or no less than the actual loss suffered and relied on the case of *West (H) Sons Ltd vs Shepard (1964) A.C. 326* where it was stated that money cannot renew a physical frame that has been battered and shattered that the award is to give reasonable compensation.



23. The respondent further submitted that assessment of damages is guided by the particulars of injuries enumerated in the plaint. That, the injuries as pleaded by the appellant did not result to any permanent disability evidenced by the medical reports by both Dr. Kiamba and Dr. Malik.
24. That, no additional evidence was adduced to suggest the appellant suffered more serious injuries than those pleaded in the plaint and in any case parties are bound by their pleadings.
25. That in addition Dr. Kiamba did not produce further medical evidence to explain why he awarded the appellant permanent disability on the second examination despite the fact that he relied on the same documents used to assess her in the initial examination. Furthermore, Dr. Kiamba conceded that his initial report dated 22<sup>nd</sup> May 2017 similar in conclusion to the medical report by Dr. Malik. Consequently, the award by the trial court was commensurate to injuries sustained and therefore not inordinately low and ought to be upheld.
26. At the conclusion of the arguments by the parties I have considered the same and I note that the appeal is purely on quantum.
27. At the close of the hearing of the case in the trial court, the parties filed their respective submissions. The appellant filed submission dated 3<sup>rd</sup> November 2022 and sought for a sum of Kshs 3,000,000 as general damages. The respondent in submissions dated 2<sup>nd</sup> November 2022 proposed a sum of Kshs 250,000 as general damages.
28. In a judgment delivered on 22<sup>nd</sup> June 2023 the trial court awarded the appellant a sum of Kshs 400,000 as general damages.
29. In evaluating the evidence in the trial court, I note that at the hearing of the case, the appellant produced the following documents in support of the injuries sustained.
  - a. Discharge summary from Kijabe A.I.C hospital
  - b. A P3 form and
  - c. Medical report prepared by Dr. Wellington K. Kiamba
30. As regard the discharge summary from Kijabe AIC Hospital at pages 10 and 11 of record of appeal I note that it does not indicate to the injuries the appellant sustained.
31. The P3 form at page 16 of the Record of Appeal details the injuries the appellant sustained as:-
  - a. Head and neck: scar on the left perital area 8cm length, swelling on the temporal frontal area of scalp, scar extending from the frontal area of the scalp, anicular area (left craniotomy & epidural hematoma evacuation), blurring vision Rt eye
  - b. Upper limbs: Healed scar on both elbows poderiorly, right sided upper arm weakness 4/5
  - c. Lower limbs: Healed scars both knee joints anteriorly, Rt sided lower limb weakness 4/5The injuries were classified as grievous harm.
32. The medical report by Dr Kiamba dated 30<sup>th</sup> May 2019 indicates injuries as pleaded. However it further show that, the appellant was admitted at Kijabe ICU Hospital from 12<sup>th</sup> to 17<sup>th</sup> March 2017. Further the head ICT scan showed left epidural hematoma. The report further show that she was followed upon physiotherapy up to April 2019.
33. The report states that due to the head injury, the appellant experiences persistent severe headaches, has weakness of the limbs and suffers from dizziness which makes her unable to walk without support.



- Doctor Kiamba classified the degree of injury as harm and assessed degree of permanent disability at 30%
34. Pursuant to the afore it is clear that the finding of weakness in the limbs is indicated in both the P3 form and Dr. Kiamba's medical report. The P3 form also indicate that the appellant suffers from blurring of vision of right eye and classifys the degree of injury as grievous harm. As a result it is evident that the appellant suffered serious injuries.
  35. The evidence in the trial court's file reveals that, the respondent closed its case without calling any witness but the report of Dr Malik was admitted by the consent of the parties.
  36. The trial court's judgment indicates that the legal authorities cited by the parties were considered but it is not evident as the same are not analysed in the judgment to indicate whether they were considered and applied. As such this court may not be able to appreciate how the trial court considered the authorities relied on.
  37. It is the considered opinion of this court that an analysis of the authorities cited by the parties in the trial court would have been of great help to appreciate how the general damages were assessed. Indeed, it is not surprising that one of the grounds of appeal is that the authorities cited in the submissions in the trial court were not considered.
  38. The question that arises is whether this court should interfere with the award of damages herein. In that regard the law is settled as held in the cases of; Mbogo & another Vs Shah (1968) EA and Mkube -vs- Nyamuro 1983 KLR 403, and Loice Wanjiku Kagunda vs. Julius Gachau Mwangi [CA 142/2003](#) (unreported) the court stated that, while assessing damages, the appellate court will not interfere with the trial court's decision on quantum unless in exercising that discretion the trial court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice.
  39. In the instant matter I find that the appellant suffered serious injuries necessitating admission in ICU for 3 days. The healing process took long with over one year on physiotherapy treatment. However, whereas the authority by the appellant indicated an award of Kshs 1,800,000, the appellant sought for Kshs 3,000,000 without justification.
  40. On the respondent's part the authorities cited relates to less severe injuries.
  41. The issue of permanent disability was contested because Dr. Kiamba gave (2) different reports, but the doctor explained the same. Even if the same was disregarded an award of Kshs 400,000 awarded herein was extremely low. The court is inclined to interfere with the same.
  42. In the case of Mungatia v Mutuma & another (Suing on Behalf of Jim Munene – Minor) (Civil Appeal E184 of 2024) [2024] KEHC 14255 (KLR) (13 November 2024) (Judgment) the minor sustained loss of consciousness due to severe head injury, left epidermal hematoma, reduced vision of the left eye, Scalp bruises and Left iliac fossa bruises. Furthermore, the minor was treated in the Intensive Care Unit for 4 days and underwent surgery to remove the hematoma. The doctor described the impact as grievous harm.
  43. The High Court set aside the trial court award of Kshs. 1,800,000 and substituted it with an award of Kshs. 750,000 as general damages.
  44. Further, in Ali Issa Ali v East African Portland Cement Company [2016] KEHC 8162 (KLR) the appellant sustained a subdural haematoma, was admitted in hospital for ten (10) days where treatment included "craniology, elevation and evacuation of the haematoma" The appellant healed but was left



with a “crescentic craniotomy scar on the right frontotemporal scalp”. The High Court awarded the appellant Kshs. 600,000 as general damages

45. In the case of Nyota Tissue Products v Charles Wanga Wanga, Board of Governors Nambale Secondary, Nambale Secondary School, Pascal Dindi Omusa & Lydia Gaturuhu [2020] KEHC 6207 (KLR) the plaintiff suffered a head injury with open depressed frontal fracture but with no permanent disability. The High Court set aside the trial court award of Kshs. 1,200,000 and substituted it with an award of Kshs. 500,000 as general damages for pain and suffering.
46. Taking into account the afore said, the time the matter has been in court inflation and economic conditions prevailing I set aside the judgment of the trial court on general damages and award the appellant a sum of Kshs 800,000 as general damages. The award takes into account the special damages of Kshs 151,938 awarded. The costs of case at trial court are awarded to the appellant plus interest on the sum awarded from the date of judgment in the trial court to payment in full.
47. It is so ordered

**DATED, DELIVERED AND SIGNED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:-

Ms Kiberenge for the appellant

Mr. Momanyi for the respondent

Doreen court assistant

