



**Kamau & another v Muhonja (Civil Appeal E858 of 2022)
[2024] KEHC 16058 (KLR) (Civ) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16058 (KLR)

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

**CIVIL
CIVIL APPEAL E858 OF 2022**

TW OUYA, J

DECEMBER 19, 2024

BETWEEN

**SAMUEL NJOROGE KAMAU & ANOTHER & ANOTHER & ANOTHER &
ANOTHER APPELLANT**

AND

JOYCE MUHONJA RESPONDENT

*(Being an appeal from the Judgement delivered by the
Honourable M.W Murage Ms. SRM on 11th April 2022)*

RULING

Background

1. This appeal was instituted by the Appellant after being dissatisfied by the Judgement and decree of the Senior Resident Magistrate delivered on 11th April 2022 in Milimani CMCC No 7618 of 2018.
2. The suit was initiated by Joyce Muhonja Plaintiff/Respondent vide plaint dated 27th August 2018 against Samuel Njoroge Kamau and Ernest Gichuhi Kiarie 1st and 2nd Defendants/ 1st and 2nd Appellants herein. The Respondent was a passenger in motor vehicle registration KBT 337E which was involved in an accident on or about 9th January 2017 along Waiyaki Way, being driven by the 2nd Appellant and owned by the 1st Appellant during which the Respondent sustained injuries.
3. The matter went for full trial and the trial court found in favor of the Respondent and awarding kshs. 1,000,000 as general damages and future medical expenses of ksh. 150,000.
4. The Appellant being dissatisfied with the above outcome filed the instant appeal based on the following grounds:



- a. That the learned magistrate erred in fact and in law in making an inordinate award of Kshs 1,000,000/= as general damages and future medical expenses of ksh. 150,000/= in which was excessively high.
 - b. That the learned magistrate erred and misdirected himself when he failed to consider the applicant's submissions on both points of law and facts.
 - c. That the learned magistrate's decision was unjust, against the weight of evidence and was based on misguided points of facts and wrong principles of law and has occasioned a miscarriage of justice.
 - d. That the learned trial magistrate erred in law and fact by failing to judiciously analyze the evidence on record and the appellant's submissions and authorities thereby arriving at a finding on quantum that was manifestly high, erroneous, untenable, unfair and unjust to the appellants.
 - e. That the learned trial magistrate failed to consider conventional awards made in respect of cases of similar injuries thereby arriving at an excessive award.
 - f. That the learned magistrate erred in fact and in law in failing to appreciate the nature of injuries sustained by the respondent and in so doing arrived at an erroneous assessment of damages.
5. The Appellants pray for orders that:
- i. The appeal be allowed.
 - ii. The judgement delivered on 11th April 2022 by Hon. Murage SRM in CMCC No. 7618 of 2018 be set aside and the award made therein be re-assessed.
 - iii. The cost of this appeal be borne by the respondent.
6. This appeal was canvassed by way of written submissions in which notably the Appellant failed to participate. The appellant had filed an incomplete record of appeal and had been given time to file a supplementary record of appeal to include the judgement appealed against and typed proceedings of the trial court. At the time of considering this Appeal the Appellant had not yet complied. This appeal was therefore not ripe for hearing.
7. The matter was brought to this court with directions from the Deputy Registrar that parties were to file submissions. There was a presumption that parties had complied with the records, the Appellant having filed a record of appeal. Upon mention on 26th June 2024, the court noted that counsel for the Respondent had filed submissions while counsel for the Appellant was absent and had not complied with filing of submissions. Being that both parties were privy of the directions by the Deputy Registrar and the mention for directions date, the court set the matter for judgement on 24th October, 2024 with an order that the Appellant was to file submissions within 21 days from the date thereof. Judgement was not ready on the appointed date whereupon it was moved to 29th November and subsequently to 19th November, 2024.
8. It is noteworthy that counsel for the Respondent proceeded to file submissions whose upshot is that the judgement on liability was properly entered and should not be disturbed. They also argue that the award of damages was reasonable considering the nature of injuries suffered by the respondent and have cited and attached authorities. This court finds no basis to delve into the Respondent's submissions as the appeal did not attain the required threshold for determination.



9. Counsel for the Appellant did not comply either with the order to file submissions but has been in attendance in court. At the time of considering this Appeal it became apparent that the Appellant had not yet filed a supplementary record of appeal. The court takes notice that the memorandum of appeal was filed on 25th October 2022 making it two years pending compliance. This court cannot make a final determination on an appeal with incomplete records. For the above reason, the court will proceed to make an order as here below:

The appellant is hereby ordered to file a supplementary record of appeal within 21 days from the 1st date of the new term (13th January 2025) failure to which this appeal will stand dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19th DAY OF DECEMBER, 2024

ROA 14 days.

HON. T. W. Ouya

JUDGE

For Appellant Njuguna

For Respondents Respondent

Court Assistant ... Martin

