



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nduati & 3 others v Mwangi (Civil Appeal 087 of 2021)  
[2023] KEHC 21026 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21026 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 087 OF 2021  
HK CHEMITEI, J  
JULY 27, 2023**

**BETWEEN**

**SAMUEL NDUATI ..... 1<sup>ST</sup> APPELLANT  
JAMES CHENGO ..... 2<sup>ND</sup> APPELLANT  
JAMES THIONGO ..... 3<sup>RD</sup> APPELLANT  
PATRICK GITHINJI ..... 4<sup>TH</sup> APPELLANT**

**AND**

**JAMES WAWERU MWANGI ..... RESPONDENT**

*(Being an Appeal from the Judgement Of Hon. K. I. Orenge (PM)  
dated 11th August, 2020 In Nakuru CMCC No 370 Of 2020)*

**JUDGMENT**

1. The appellant was involved in a road traffic accident on 14<sup>th</sup> February 202 while riding his motor cycle along Nakuru- Nairobi road and he sustained the following injuries.
  - (a) Head injury
  - (b) Laceration of the right ear lobe.
2. The respondent filed suit at the lower court for damages and he was awarded a sum of ksh 280,000 as general damages. The appellants being dissatisfied with the said judgement have appealed to this court on quantum. The appellants complain is that the same was excessive in the circumstances and was not commensurate to the injuries.



3. It is noted that the issue of liability was not contested by the parties. The court when the matter came up for directions ordered that the same be determined by way of written submissions. Both parties complied and I have perused both as well as cited authorities.
4. At this juncture this court enjoined to disturb the findings by the trial court if the award was inordinately high, or low or the court applied a wrong principle or completely misrepresented the evidence so adduced. See *Butt v Khan* (1981) KLR 349.
5. I have perused the evidence on record and it is clear that Dr. Kiamba found and classified the injuries suffered by the respondent as grievous harm and by the time he was making the report he had recovered from the injuries and he awarded him a temporary disability of a month. At the time of the trial the respondent had already healed.
6. The appellants therefore submitted that the sum awarded to the respondent was manifestly high and that a figure of ksh 60,000 would have been commensurate. He relied on the cases of *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018) eKLR and *Eva Karemi & 5 Others v Koskei Kieng & another* (2020) eKLR.
7. The respondent on the other hand submitted that the authorities relied on by the appellants were not the same ones relied on at the trial court and therefore they were estopped. In other words, this court should not consider them at this juncture. He prayed that the award ought not to be disturbed considering the nature of the injuries and the time when the award was given and that the court should take into account the question of inflation.
8. I think I respectfully disagree with the line taken by the respondent that this court ought to disregard the cited authorities by the appellants just because they were not relied upon during trial at the lower court. This is for the simple reason that authorities are mere guidelines to the parties and the court and they do not necessarily sometimes bind the court.
9. Secondly and since law evolves it may be necessary to consider an authority that came alive while the appeal was pending for instance. The only yard stick is that all the parties should be granted a chance to discuss and analyse it before the court makes any appropriate consideration if at all it is relevant to the matter at hand.
10. For now, I have perused the findings of the trial court and taking the totality of the evidence on record I do not find the injuries so severe considering the cited cases. Most of the case cited by the respondent had multiple injuries whereas those cited by the appellants had not much injuries like those of the respondent.
11. The court is alive to the inflationary trend and the continuous weakening of our currency. This however should not be a factor to award a much higher and sometimes excessive awards. Every case must be handled on its own and on its own merits and a balance struck between the two competing parties. None should enrich or cause the other suffer financially. There can never be similar injuries in any case.
12. In the premises and considering the evidence by the respondent the trial court awarded him inordinately high damages contrary to the injuries suffered which were soft tissue in nature and the healing the respondent had attained by the time of trial.
13. Taking totality of the said facts I hereby reduced the General damages from ksh 280,000 to ksh 150,000 which I find it reasonable and striking a balance between the two submissions made on behalf of the parties herein.



14. The appeal is therefore allowed as hereunder;

(a) The trials court judgement on general damages of ksh 280,000 is hereby set aside and substituted with the sum of ksh 150,000 which shall attract interest from the date of the Lower Court's judgment till payment in full.

(b) The appellants shall have half costs of this appeal.

**DATED SIGNED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF JULY 2023.**

**H K CHEMITEI**

**JUDGE**

