



**Mwangi alias Luke Wambugu Mwangi v Irungu (Civil Appeal  
72 of 2018) [2022] KEHC 14346 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14346 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL 72 OF 2018  
JN NJAGI, J  
OCTOBER 26, 2022**

**BETWEEN**

**LUKA WAMBUGU MWANGI ALIAS LUKE WAMBUGU  
MWANGI ..... APPELLANT**

**AND**

**JUSTUS NGUYO IRUNGU ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. P. Mutua,  
SPM in Nyeri CMCCC No.342 of 2015 delivered on 20/11/2017)*

**JUDGMENT**

1. The appellant herein was aggrieved by the judgment in the lower court where the court awarded the respondent general damages to the sum of Ksh 3,000, 000/= for pain and suffering being compensation for injuries sustained in a road traffic accident that had occurred along Nyeri-Mweiga road.
2. The grounds of appeal are that:
  1. The Learned Trial Magistrate erred in law and fact in failing to consider adequately, or at all the totality of the evidence that was tendered on quantum, and in so doing he arrived at an erroneous finding on quantum.
  2. The learned magistrate erred in law and fact by failing to consider or even remotely adopt and appreciate the written submissions and authorities of the Appellant on quantum and as such gave an award that was excessive and inordinately high.
  3. The learned magistrate erred in law and fact in awarding of general damages of Ksh 8 000,000/= an award that was excessive and inordinately high.
3. The appeal was canvassed by way of written submissions of the advocates for the appellant, Munene Wambugu & Kiplagat Advocates and those of the respondent, Mwangi & Partners Advocates. The



appellant through his advocates submitted that the trial court ought to have awarded reasonable amount of damages. That the trial court failed to appreciate the fundamental principle that similar injuries should attract similar awards. To support this contention the appellant relied on the case of *Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd* (2013) eKLR.

4. The appellant further submitted that the trial court fell into error by failing to consider the authorities cited and relate them to the facts of the case before him. That the magistrate did not show what similar case he applied to arrive at the award of Ksh 3 million as general damages for pain and suffering. That failure to consider the same was a misdirection that warrants the intervention of this court.
5. The appellant submitted that the respondent was examined by Dr Muleshe, Dr Muturi and Dr Maina Ruga whose reports indicated that the injuries sustained by the respondent were head injury, soft tissue injuries to the right shoulder and leg, blunt dental injury and fracture of the right humeral head and neck and left tibia-fibula. That it is worth to note that none of the doctors indicated that the respondent had sustained any permanent incapacity. That in the absence of such the injuries sustained did not pose any threat to the respondent's life.
6. The appellant appreciates that no two cases can be similar and that decided cases are only a guide to the court in the assessment of damages. That the authorities that they had cited in their submissions had comparable injuries to those sustained by the respondent. He thus contends that the amount awarded by the trial court was inordinately high. They urged the court to reduce the award to Ksh 500,000/=.
7. The respondent on the other hand submitted that the trial court duly considered and based its findings on the evidence before it. That the medical reports tendered showed that the respondent sustained severe injuries which included multiple fractures on the arm and leg and a serious head injury that saw him admitted in ICU for several days. That the injuries left him with residue effects that included a compromise on his memory, deformity on his right leg and stiffness and limitation of movement on his right shoulder joint. That the injuries caused a pre-existing metal implant on the leg to bend which Dr Muturi noted had caused some deformity and made removal of the plate difficult.
8. The respondent further submits that he had to undergo surgery to fix the fracture of the left tibia/fibula with metal plates and screws. That he will require another surgery to remove the implants. Therefore, that the award of Ksh 3 million is not inordinately high or excessive considering the evidence on record on the severity of the injuries sustained, past and future hospitalization, medical interventions, residual effects and deformities that the respondent is now exposed to.
9. The respondent submitted that the court duly considered the authorities from both sides. That the authorities cited by him were in tandem with the injuries sustained and are more comparable and applicable as opposed to those cited by the appellant. The respondent submitted that the appeal lacks merit. He prayed that the appeal be dismissed with costs.

#### **Analysis and determination-**

10. The appellant is challenging the quantum of general damages in the sum of Ksh 3 million. The issue for determination is whether the trial magistrate awarded excessive damages in view of the injuries sustained.
11. This being a first appeal, the duty of the court is to analyze and re-evaluate afresh the evidence adduced at the lower court and draw its own independent conclusions though it should always bear in mind that it neither saw nor heard the witnesses testify and should make due allowance for that – see *Selle & Another v Associated Motor Boat Company Limited & Others* (1968) 1EA 123.



12. It was also held in *Mwangi v Wambugu* (1984)KLR 453 that an appellate court will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence; or where the court has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence.
13. The general principles that are applicable in awards of general damages are that courts can only endeavour to give a reasonable compensation and to secure some uniformity in the general method of approach. That it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.
14. The grounds upon which an appellate court can interfere with an award of damages made by a lower court are well settled. The Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tele Civil Appeal No 284 of 2001 [2004] 2 KLR 55* set out the circumstances under which an Appellate court can interfere with an award of damages in the following terms: -

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

15. The same court in the case of *Sheikh Mustaq Hassan v Nathaniel Mwangi Kamau Transporters & 5 Others* (1986) KLR 457 held that: -

“The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own.”

16. The accident which gave rise to this case occurred on the February 21, 2015. The respondent was examined by three doctors whose reports did not have any significant variation. Dr Muleshe examined the respondent on April 29, 2016 and found that he had sustained the following injuries:

Severe head injury with a Glasgow coma scale (GCS) of 3/15 (normal is 15/15)

Multiple loose teeth

Comminuted fracture of the right humeral head and neck

Compound segmented fracture of the left tibia-fibula

17. The report indicates that the respondent remained unconscious in ICU for days. That he was taken to theatre for open reduction and internal fixation (ORIF) of the left tibia and fibula with plate and screws. The right shoulder was splinted in a U-slab. That at the time of examination the fracture of the



- right humerus and left lower limb had healed though he required to walk with the support of a walking stick. The doctor opined that the respondent had sustained severe skeletal and soft tissue injuries.
18. Doctor Ruga Maina had examined the respondent on the April 18, 2016 and had made similar conclusions as those of Dr Muleshe. Dr Muturi examined the respondent on the September 13, 2016 and had similar findings as the other two doctors save that he differed with D Muleshe on the cost of removing the implants.
  19. In his submissions at the lower court the appellant had urged the court to award Ksh 500,000/= in general damages and relied on the case of *Florence Njoki Mwangi v Peter Chege Mbitiru* [2014] eKLR where the plaintiff sustained the fractures of the right and left mid shaft femurs, degloving wound on the right tibia fibula necessitating skin grafting, amputation of the right foot behind the ankle joint and multiple cuts on the forehead. The court on appeal affirmed the award of Ksh 700,000/-.
  20. The appellant had also relied on the case of *Agnes Wakaria Njoka v Josphat Wambugu Gakungi* (2015) eKLR where the plaintiff sustained two deep cut wounds on her hand, fracture of the skull at occipital, deep compound fracture on the right forearm and loss of the left hand at wrist which was cut off completely. The court awarded the plaintiff Kshs 650,000/-.
  21. The appellant relied on the same authorities in this appeal and urged the court to also consider the award in the case of *Alphonza Wothaya Warutu & Another v Joseph Muema* (2017) eKLR where the Court of Appeal upheld the trial court's award of Ksh 800,000/= where the respondent had sustained a deep cut wound on the forehead, compound fracture on mid shaft of the right humerus, compound fracture of the right tibia and deep cut wound on the right lower leg. He was hospitalized for more than 8 months and was at the time of examination walking with the aid of clutches. The Court of Appeal upheld the lower court's award of Kshs 800,000/= in general damages.
  22. The respondent had asked the trial court to award general damages to the sum of Ksh 4,500,000/= while relying on the following authorities:
  23. *Sabina Nyakenya Mwangi v Patrick Kigro & another*, Embu HCCC No 9 of 2012, where the plaintiff sustained injuries which included fracture of the right upper arm (humerus), fracture of the distal femur, fracture of right knee, fracture of the pelvis and fracture of distal radial-wrist. General damages for pain, suffering and loss of amenities were assessed at Kshs3,000,000/=.
  24. *James Njau Kariuki v Mary Goreti Wakwibubi & Joseph Wafula Ndiyira*, Eldoret HCCC No 2 of 2005, the plaintiff sustained a dislocation of the left hip involving fracture of the femur, fracture of the femoral head, total replacement of the hip, laceration on the forehead of 7cm, cut wound over the right nostril, deep cut wound on the left knee, soft tissue injuries on the chest and loss of libido and inability to perform conjugal rights. The court awarded Kshs3,000,000/= as general damages for pain, suffering and loss of amenities.
  25. *Irene Wambugi Nthiga v Stage Coach Bus Company Ltd*, Embu HCCC No 1 of 2002, where the plaintiff sustained injuries on her right leg toe, fractured pelvis, right hand, fracture at the right elbow, abdomen. The plaintiff was predisposed to post-traumatic arthritis which has already set in and also required a limb replacement of the knee. The court awarded Kshs 2,500,000/= in general damages for pain suffering and loss of amenities.
  26. *Joseph Kabinda Maina v Evans Kamau Mwaura & 2 others*, Nairobi HCCC No 635 of 2009, where the plaintiff sustained head injury (cerebral concussion), fracture of 6 teeth, injury to the right chest wall, fracture of the pelvis (displaced fracture of the right acetabulum (hip joint) and injury to the right knee. The court awarded Kshs 2,400,000/= as general damages for pain and suffering.



27. *Mashru Limited v Omar Mwakoro Makenge alias Omar Masoud v PN Mashru Limited*, Voi HCCC No 9 of 2017, where the High Court on appeal upheld an award of Kshs 1,200,000/= for the plaintiff who had suffered injuries including loss of consciousness, fracture of the femur distal third, fracture of the temporal bone with haematoma, head injury to the right frontal parietal bone with brain oedema and left subdural haematoma.
28. The respondent submitted that the injuries in the cited authorities were almost similar to those suffered by the respondent and considering that the authorities were decided several years ago inflation rate should be factored in. Therefore, that the sum of Ksh 4,500,000/= would be a reasonable figure.
29. I have examined the judgment of the trial court in this matter. In awarding the sum of Ksh 800,000/ the magistrate stated as follows:
- I have considered the injuries and their extent and nature, the submissions and the authorities cited. I am of the view that an amount of Kshs 800,000 would suffice to compensate the plaintiff for the injuries.
30. As submitted by the appellant, the trial magistrate did not show the authorities that he considered in arriving at a figure of 3 million. The magistrate only made a general statement that he had considered the authorities cited without specifics as to which authorities he had considered. He did not state why he preferred the authorities of the respondent to those of the appellant.
31. On my own review of the evidence and the authorities cited by both sides, I find the authorities cited by the counsel for the appellant to have involved far more serious injuries than those sustained by the respondent in the instant case. The authorities cited by the counsel for the appellant were far more relevant.
32. I have considered other relevant authorities. In *Daneva Heavy Trucks & another v Chrispine Otiemo* (2022) eKLR, the respondent sustained fractures of the pelvis and left tibia and fibula. Upon examination almost 5 months after the accident occurred, the respondent walked with a limping gait supporting himself on crutches and was still in the process of recovery but was expected to recover fully within a year from the date of examination. On appeal the award was reduced to Ksh 800,000/=.
33. In *Godfrey Wamalwa Wamba & another v Kyalo Wambua* (2018) eKLR, the appellant sustained a compound fracture of the right distal tibia/fibula, cut wounds on the scalp and chest and a cut on the lower lip, he was in hospital for three weeks, he underwent surgery for repair of the fibula. The doctor testified that his leg had shortened and needed corrective surgery. An award of Ksh 700,000/= was upheld by the appellate court.
34. In *Joseph Mwangi Thuita v Joyce Mwole* (2018) eKLR the plaintiff suffered injuries of fractured right femur, compound fracture of right tibia and fibula, shortening of the right leg and episodic pain on the right thigh with inability to walk without support. The court awarded Ksh 700,000/= in general damages.
35. In the case of *David Mutembei v Maurice Ochieng Odoyo* (2019) eKLR, the respondent suffered injuries of a fracture of the right femur and a proximal fracture of the left tibia. An award of Ksh 1,600,000/= was reduced on appeal to Ksh 800,000/=.
36. In *Reuben Mongare Keba v LPN* (2016) eKLR the respondent suffered fracture of the tibia-fibula bones of right leg, dislocation of the right hip joint, bruises on the chin, fracture of the right femur and degloving injury of the right leg. An award of Ksh 800,000/= was made in general damages.



37. In *Mary Pamela Oyioma v Yess Holdings Limited* (2011) eKLR the court awarded Kshs 900,000/= in general damages for comminuted fracture of the right femur, compound fracture of the left tibia, soft tissue injuries of the right shoulder and multiple cut wounds all over the body.
38. In the case of *James Gathirwa Ngungi v Multiple Hauliers (EA) Limited & another* (2015) eKLR, the Plaintiff therein suffered a compound comminuted fracture of the right tibia, compound comminuted fracture of the right fibula, fracture of the left proximal radius, fracture of the left ulna, head injury, deep cut wound of the parietal region about 4 cm, soft tissue injury and bruises of both hands, multiple facial cuts and lacerations and pathological fracturing of the right leg. Ougo J assessed damages at Ksh 1,500,000/=. It is to be noted that the claimant in that case had sustained 5 fractures. The injuries thereof were therefore far more serious than the injuries sustained by the respondent in the case before me yet the award was lower than the one awarded to the respondent in the instant case.
39. Having considered the above authorities as well as those submitted by the advocates for the appellant, I am of the finding that the award of Ksh 3 million in the instant case was excessively high. There was no indication that the respondent had suffered any permanent incapacity and therefore such a high award was unwarranted. The respondent did however suffer serious skeletal injuries. He was due to undergo an operation to remove the metal implants on the left leg. I am of the view that an award of Ksh 800,000/= would be adequate compensation for the injuries sustained.
40. The upshot is that the award of Ksh 3 million in general damages is set aside and substituted with an award of Ksh 800,000/=.
41. Orders accordingly. Each party to bear its own costs to the appeal.

**SIGNED THIS 14<sup>TH</sup> SEPTEMBER 2022.**

**J.N. NJAGI**

**JUDGE**

**DELIVERED, DATED AND SIGNED AT NYERI THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.**

By:

**HON. JUSTICE M. MUYA**

**JUDGE**

**In the presence of:**

Nderi hold brief for Kiplagat: for Appellant

Mrs Mwangi:for Respondent

**Court Assistant: Kinyua**

30 days R/A.

