



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 463 OF 2015**  
**ROBERT GITONGA MUIRURI & ANOTHER.....APPELLANTS**  
**- V E R S U S -**  
**ELIUD KARANJA GATUOTA.....RESPONDENT**  
*(Being an appeal from the judgement delivered by the Hon. M. Chepseba*  
*(Mrs) SPM on the 3<sup>rd</sup> day of September 2015 in Nairobi Milimani*  
*Commercial Courts CMCC No. 2367 of 2011)*

**JUDGEMENT**

1. Eliud Karanja Gatuota, the respondent herein, sued Robert Gitonga Muiruri and Nuclear Investments Limited in his amended plaint for general damages for pain and suffering and loss of amenities.
2. The respondent's claim arose from a road traffic accident that occurred on 31<sup>st</sup> August 2010 while the respondent was lawfully pushing a motor vehicle along Waiyaki Way at Muthaiga, when the 1<sup>st</sup> appellant's motor vehicle registration no. KBK 714U lost control and violently knocked down the respondent as a result of which he sustained severe bodily injuries, loss and damage.
3. The parties entered into a consent on liability at a ratio of 85% : 15% in favour of the respondent and against the appellants on 26.6.2016 which was adopted by court on the same day.
4. In the end, the learned trial magistrate, Hon. M. C. Chepseba (Mrs) learned Senior Principal Magistrate in her judgement awarded in total ksh.3,449,105/= in favour of the respondent and against the appellants.
5. Aggrieved by the judgement, the appellants preferred this appeal against the decision on quantum and they raised the following grounds in their memorandum:

- 1. The learned trial magistrate erred in law and misdirected herself when she failed to consider the appellants submissions on both points of law and facts.*
- 2. The learned trial 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.*
- 3. The learned trial magistrate erred in law and fact in awarding the respondent/respondent*

**ksh.3,449,000/= as general and special damages in view of the injuries sustained and the evidence produced before the trial court.**

**4. The learned trial magistrate erred in assessing an award hereunder which was inordinately high and wholly erroneous estimate of the loss and damages suffered by the respondent.**

<b>General damages</b>	<b>ksh.2,000,000/=</b>
<b>Loss of earnings</b>	<b>ksh. 480,000/=</b>
<b>Less 15% contribution</b>	<b>ksh. 372,000/=</b>
<b>Balance</b>	<b>ksh.2,108,000/=</b>
<b>Add future medical expenses</b>	<b>ksh. 950,000/=</b>
<b>Special damages</b>	<b>ksh. 391,000/=</b>
<b>Net award</b>	<b>ksh.3,449,000/=</b>

**5. The learned trial magistrate erred in awarding an excessive sum for injuries suffered in the face of the evidence adduced and submissions made by defence counsel on both liability and quantum.**

**6. The learned trial magistrate erred in awarding costs of the suit and interest to the respondent.**

6. When this appeal came up for hearing, learned counsels appearing in this matter recorded a consent order to have the appeal disposed of by written submission. I have re-evaluated the case that was before the trial court and also considered the respondent's skeleton submissions. The appellants had not filed their written submissions at the time of writing this judgement.

7. I have already enumerated the 6 grounds of appeal the appellants had put forward in their memorandum. Though the appellants put forward 6 grounds of appeal, I am satisfied that those grounds can be summarised to 3 grounds namely:

*i. Whether the learned magistrate erred in law and fact in his award on damages (grounds 1, 2, 3, 4 and 5)*

*ii. Whether the learned magistrate erred in law and fact in apportioning liability (ground 3)*

*iii. Whether the learned magistrate erred in awarding costs of the suit and interests to the respondent(ground 6)*

8. The 1<sup>st</sup> ground of appeal is to whether or not the learned trial magistrate erred in law and fact in her award on damages. The trial magistrate upon hearing the case delivered judgement in favour of the respondent as follows:

<b>General damages</b>	<b>ksh.2,000,000/=</b>
<b>Loss of earnings</b>	<b>ksh. 480,000/=</b>
<b>Less 15% contribution</b>	<b>ksh. 372,000/=</b>
<b>Net total</b>	<b>ksh.2,108,000/=</b>
<b>Future medical expenses</b>	<b>ksh. 950,000/=</b>

**Special damages**

**ksh. 391,000/=**

**Net award**

**ksh.3,449,000/=**

9. The appellants were aggrieved by the award. They claimed that the award was inordinately high amounting to a wholly erroneous estimate of damages contrary to the laid down principles in awarding damages in such claim.

10. The respondent on the other hand have submitted that the trial magistrate exercised her judicial discretion based on the evidence and guiding principles.

11. The respondent submits that the appellants have failed to show that the trial magistrate erred in arriving at her decision to award the respondent damages..

12. In the case of **Paul Kipsang Koech & Another =vs= Titus Osle (2013) eKLR** it was held inter alia that:

**“It is trite law that an award of general damages is an exercise of discretion by a trial court and the award depends on the peculiar facts of each case. The award must however be reasonable and neither extravagant or oppressive. The trial court has to be guided by such factors as previous awards for similar injuries and such other relevant factors.”**

13. I have carefully considered the respondents arguments and further re-evaluated the evidence and I find no fault in the manner quantum was assessed. I am satisfied that the trial magistrate applied the correct principles in arriving at the award of ksh.2,000,000/= for general damages for pain and suffering.

14. The second ground of appeal relates to the question as to whether or not the trial magistrate erred in law and fact in apportioning liability. It should be noted that a consent judgment on liability was recorded before the trial court on 26<sup>th</sup> June 2014 at a ratio of 85%:15% in favour of the respondent and against the appellants hence the question on liability was settled.

15. The third ground of appeal relates to the question as whether or not the learned trial magistrate erred in awarding costs of the suit and interest to the respondent. The general principle is that costs follows the event and a successful party should have costs unless the court has good reasons to order otherwise.

16. With respect, I agree with respondent’s submissions that the appeal lacks merit. It is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 19<sup>th</sup> day of October, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent