



**Miriti v Muriuki (Civil Appeal E030 of 2023)  
[2025] KEHC 1736 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1736 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E030 OF 2023**

**LW GITARI, J**

**FEBRUARY 7, 2025**

**BETWEEN**

**KELVIN NJUE MIRITI ..... APPELLANT**

**AND**

**NEWTON MURIUKI ..... RESPONDENT**

**JUDGMENT**

1. The appeal arises from a decision by the Chief Magistrate’s Court Chuka in Civil Case No. E135 A of 2022 which was a personal injury claim involving the respondent who was a pillion rider of a motor cycle and motor vehicle registration number KCM 627 Z driven and owned by the appellant.
2. The respondent was ran over by the motor vehicle KCM 627 Z causing a road traffic accident. The respondent sustained serious injury claim by way of a plaint dated 27/6/2022 claiming both general and special damages. He claimed that the appellant was to blame for the occurrence of the accident and should be held liable and should be ordered to compensate him for damages for pain, suffering, loss of amenities as well as special damages in the sum of Ksh.43,100/-. He also claimed costs of the suit and interests. When the matter came up for hearing on 23/1/2023 the parties recorded a consent as follows:-
  - a. Judgment on liability be entered in the ratio of 80:20 in favour of the respondent.
  - b. All documents filed by the parties be adopted without calling their maker.
  - c. Parties to file submissions on q uantum.
3. The learned trial magistrate in his Judgment dated 15/5/2023 assessed the quantum of damages as follows:
  - a. General Damages - 2,000,000/-



Less 20% - 400,000/-

- b. Special Damages - 33, 100/-
  - c. Interests from date of Judgment on General and special damages
  - d. Costs of the suit with interest from date of Judgment
4. The appellant was dissatisfied with Judgment and filed this appeal vide a memorandum of appeal dated 10/11/2023 based on the following grounds:
1. The learned magistrate misdirected himself as to the facts of the case, thus arriving at an erroneous (sic).
  2. The learned magistrate erred in fact and law by awarding Ksh.2,000,000/-
  3. The learned magistrate erred in fact and in law by awarding Ksh.33,100/- in special damages that were not pleaded nor proved so as to constitute a miscarriage of justice.
  4. That the learned trial magistrate erred in fact and law by failing to consider the appellants documents that were filed and produced in court.
  5. That the learned magistrate failed to consider the appellant's submissions and authorities on quantum and hence arriving at an erroneous decision.
  6. That the Honourable trial magistrate's Judgment as a whole is not supported by the evidence that was tendered in court by the parties.
5. The appellant prays that the appeal be allowed, the judgment, decree and all the consequential orders be set aside. This court to proceed and assess the quantum or damages and award the appellant's costs of the appeal and costs in the lower court.
6. The appeal was canvassed by way of written submissions.

#### **Appellant's Submissions:-**

7. He submits that the grounds of appeal wholly concern the quantum of damages which he submits that they were inordinately high and unsupported by the evidence on record. The appellant relies on the Court of Appeal decision in the case of Abok James Odera T/A Machira & Co. Advocates (2013) eKLR, where the court stated:

“This being a first appeal we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority –v- Kuston (Kenya) Limited (2009) 2 E.A 212 where in the Court of Appeal held inter alia that:-
8. On a first Appeal from the High Court, the Court of Appeal should re-consider the evidence, evaluate itself and draw its own conclusions. Though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
9. The appellant submits that the only issues for determination are, whether:-



- a. The award of special damages was pleaded and strictly proved.
  - b. Whether the award of general damages were inordinately high.
  - c. Costs.
10. The appellant submits that it is trite law that the special damages must be strictly pleaded and proved. He relies on David Bagine –v- Martin Bundi (1997) eKLR where the Court of Appeal held that-
- “It has been held true and again by this court in the case of Mariam Maghema Ali-v- Jackson M’Nyambu trading as Sisira Store, Civil Appeal No.5/1990 unreported) and Idi Ayub Sahbani-v- City Council of Nairobi (1982-88) 1 KAR 681 at page 684,
- “Special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard C.J in Bonham Carter –v- Hyde Park Hotel Limited (1948) 64 TLR 177 thus:
- “Plaintiff must understand that, they bring actions for damages it is for them to prove damages, it is not enough to write down the particulars and, so to speak, throw them at the head of the court saying, this is what I have lost. I ask you to give this damage. They have to prove it.”
11. The appellant submits that the respondent pleaded special damages Kshs.43,100/- comprised of Kshs.550/-, motor vehicle records, Ksh2550/- for medical expenses, Ksh.20,000/- medical examination and report Ksh.5,000/- for transport costs for second medical examination, Kshs.5000/- for expert evidence and Ksh.10,000/- for costs of demand notice. That they object as no receipts were produced, some receipts were not legible and the medical receipts lack the requisite revenue stamps and are therefore statutorily inadmissible and unrecoverable. He relies on Leonard Nyongesa –v- Derrick Ngula Righa (2013) eKLR. The court held that a receipt for which stamp is required under the Stamp Duty Act and no Stamp Duty has been assessed and paid, no damages can be awarded by the court based on such a receipt. The appellant further submits that Kshs.10,000/- plead for demand fees is not recoverable as special damages but can be claimed as costs. On doctors attendance the counsel submits that it is a witness expense which is recoverable as costs. He further submits that the doctor was not called to testify. On the claims for Ksh.5000/- transport, 2,550 no receipts were produced while the prayer for medical report should be capped at Ksh.12,000/-. He relies on Great Lakes Transport Co. (U) Limited-v- Kenya Revenue Authority (2009) eKLR. The court held that although the amount claimed, was pleaded, no receipt was produced to show that actual cash was paid. The appellant submits that only Kshs.550 should be awarded as special damages which were pleaded and proved. The appellant has urged the court to set aside the award of Ksh.33,100 special damages as they were not awarded or strictly proved.
12. On General Damages for pain and suffering and loss of amenities, the appellant submits that they are discretionary and awarded on a case to case basis observing the principle that comparable injuries in past cases should be awarded comparable compensation. He relies on Nancy Oseko –v- Boar of Governors Masai Girls High School (2011) eKLR where the court stated that;
- “this court has to bear in mind the principle that guide assessment of damages as expoused in West (HI) and Sons Limited –v- Shepherd 1964 A.C 326 which was adopted in the case of Cecilia Mwangi –v- Ruth Mwangi . C.A 252/1996 Lord Morris where the court stated that “But money cannot renew a physical frame that has been battered and shuttered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the



general method of approach. By common consent, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by a comparable awards when all this is said it still must be that amounts which are awarded are to a considerable extent conventional.”

“ I am also guided by Lord, Denning’s decision in *Kim Phuo Choo-v- Camden & Inshlington Area Health Authority* (1979) 1 ALL ER 332. The court said that in assessing damages the injured person is only entitled to what in the circumstances, a fair compensation for both the plaintiff and the defendant. Guided by the above principles, the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process not punish the defendant,”

13. The appellant submits that based on the injuries suffered by the respondent, i.e, traumatic bladder injury, fracture of the pelvis, soft tissue injuries, an award of Ksh.300,000-500,000/- would be sufficient. He relies on *Lilian Wanja –v- Cyprian Mugendi Igonga & 2 Others* 2016 (2019) eKLR where Ksh.500,000/- was awarded for fracture of the pelvis, dislocation of the hip and multiple soft tissue injuries of the face, chest, right wrist and elbows. *Civicon Ltd-v- Richard Jomo Omwancha* (2019) eKLR where Kshs.450,000/- was awarded for swollen lacerated diac region, bruises on the left knee joint, bruised and tender left ankle joint, bruises on the left foot and pelvic fractures.
14. *Jane Muthoni Nyaga –v- Nicholas Wanjohi Thua & Another* (2010) eKLR where Ksh.300,000/- was awarded for fracture of right superior and inferior pubic Rami of the pelvis, a cut on the right leg and central dislocation of the hip. The appellant also relies on *Eldoret Steel Mills Limited –v- Elphas Victor Esipila* (2013) eKLR where Ksh.300,000/- was awarded for pelvic fracture and soft tissue injuries *Peter Ndirangu –v- Sarah Wangari Maina* (2021) eKLR Ksh.500,000 awarded for pelvic fracture, soft tissue injury to the right thigh and chest. Based on this authorities the appellant submits that the respondent be awarded not more than Ksh.500,000/-.

#### **Respondent’s Submissions:**

15. The respondent submits that the issue for determination is whether the award of general damages was in-ordinately high. The respondent submits that the court has a duty to subject the evidence to afresh and exhaustive examination with a view to reaching its own conclusion as provided under Section 78 of the *Civil Procedure Act* (Cap 21 Laws of Kenya).
16. The respondent submits that he sustained injuries in the accident which are-Urinary bladder rapturePublic symphysis diastasisSactum bone middle and left pasteur longitudinal fracturePelvic fracture
17. That he was admitted at Chuka Referral Hospital for five days and later transferred to Kenyatta National Hospital for specialized treatment where he was admitted for 54 days and underwent various surgeries as entail in the discharge summary from Kenyatta National Hospital. That the respondent suffers, chronic pain,Impared mobility,Urethral structurePost traumatic stress disorderWill require internal fixation- plating of posterior fracture.
18. It is submitted that the respondent sustained fractures which resulted in permanent incapacitation. The respondent submits that he suffered serious injuries that will affect him for the rest of his life and an appropriate award is required to consider the value of the shilling, state of economy. He has urged the court to consider the guiding principle in assessment of damages which is that an award must reflect the trend of previous recent and comparable awards. He relies on the High Court decision in *Miganiko –v- Hakika Transporters*, Case No. 292/1993 where an award of Ksh500,000/- was made for multiple fracture of the pelvis, rapture of urinary bladder and intra abdominal injury.



19. He also relies on Penina Waithera Kaburu –v- L.P (2019) eKLR where the respondent had suffered bruises on his legs and fractures on the pelvic and injuries to urethra and was awarded 2,000,000/-. He pray that the award of the lower court be upheld.

**Analysis and determination:**

20. I have considered the appeal and the submissions.
21. The parties as I have stated above in this Judgment had entered a consent on liability at the ratio of 80:20 in favour of the respondent against the appellant. The issues which arise for determination is whether the court should interfere with the award of general damages and the special damages. This is a first appeal and as has been well submitted by the parties, the duty of the 1<sup>st</sup> appellate court is to re-evaluate the evidence of the trial court as well as the judgment and arrived at its own independent finding. The court is empowered to subject the whole evidence to a fresh and exhaustive scrutiny and make its own conclusions but to bear in mind that it did not have an opportunity to see and hear witnesses and give due allowance for that. See *Selle & Another –v- Associated Motor Boat Co. Lt & Others* (1968) E.A 123 and *Pelars-v- Sunday Post Limited* (1958) E.A
22. In this matter the parties settled the issue of liability by consent and therefore no oral evidence was tendered in court. I will therefore consider the injuries sustained as contained in the medical records to determine whether to sustain the award of damages or to set it aside and assess the damages. The guiding principle in awarding general damages for pain and suffering have been laid down in various decisions of the Court of Appeal and the High Court.
23. The Court of Appeal in the case of *Stanley Maore –v- Geoffrey Mwenda C.A Nyeri Civil Appeal No.147/2002* (2004) eKLR, State as follows:-
- “Having so said, we must consider the award of damages in the right of the injuries sustained. I has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”
24. The Court of Appeal in *Bashir Ahamed Butt –v- Uwais Ahamed Khan* (1982)- 1988) KAR, set out the parameters within which an appellate court will interfere with an award of general damages. The court stated:-
- “An appellate court will not disturb an award of general damages unless it is so inordinately high of low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended he evidence in some material respect and so arrived at a figure which was either inordinately high or low.”
25. A similar holding was made *Loice Wanjiku Kagunda –v- Julius Gachau Mwangi C.A 142/2003* where the Court of Appeal state that-
- “We appreciate that the assessment of damages in more of an exercise of Judicial Discretion and hence an appellate court will not interfere with an award of damages unless----- the question is not what the appellate court would award but whether the lower court acted on wrong principles (see *Manga –v- Musila* (1984) KLR 257.”
26. The principles for assessment of damages for personal injuries can be categorized as follows:-



- i. Compensation must be for injuries suffered see Lord Denning in Admiralty Commissioners –v- Valeria (Owners) (1922) 2 A.C, 242 @ 248. The injured person is only entitled to what is fair for the plaintiff and for the defendant
- ii) Comparative awards for comparative injuries, Kigaragari –v- Aya (1985) KLR 273. Where it was held:-

“I awarding damages for personal injuries, the courts should consider that there is need to develop consistency in the awards and that the awards should be within the limits of decided cases and avoid the effect of making insurance cover and fees unaffordable for the public.”

- (iii) Compensation figures should not be so high as to threaten the economy. See Sheikh Mushtaq Hassan-v- Nathan Mwangi Kamau Transporter & 5 Others (1986) eKLR.

27. I am well guided by the above decisions. I now turn to consider the injuries sustained and the award of damages. The respondent relied on treatment notes and the medical reports. At paragraph 5 of the plaint the plaintiff pleaded the following injuries;

1. Traumatic Bladder injury
2. Fracture of the pelvis
3. Soft tissue injuries

28. The medical report by Doctor Nicholas Nkonge states that the respondent sustained soft tissue injuries, Fracture Pelvis, Bladder injury. The P3 form indicates that were grievous harm. The medical report by doctor Nkonge states that the respondent complained of chronic pain, impaired mobility and would require internal fixation- plating of posterior fracture. The discharge summary from Kenyatta National Hospital shows that the bladder was repaired, Pelvic Exofix.

29. These medical reported and the discharge summary from Kenyatta Hospital confirms the injuries sustained. In awarding general damages, the learned magistrate relied on the case of Penina Waithira Kaburu- v- LP (2019) eKLR. Where Justice Jairus Ngaah upheld the decision of the trial magistrate who had awarded the plaintiff who was the respondent in the appeal Ksh.2,000,000/- as general damages. In the case, the Plaintiff/Respondent had suffered bruises on his legs. He also sustained fractures on the pelvic and injuries on the urethra. He was admitted in hospital for one month and underwent surgeries the first of which involved insertion of a catheter to the bladder to help him pass urine.

30. The catheter remained inserted in his bladder for six months. He was admitted in two different hospitals for a total of 48 days. At the time of his testimony he could not hold urine in his bladder for long. He could not control urine for a long and he was supposed to take four litres of water everyday in order to prevent re-currence of urethra stricture. He could not sit down for long due to back pain. He suffered erectile dysfunction and pain in the urethra areas. He visited hospital occasionally for follow up. Medical report by Doctor Kanina indicated that he sustained fractures of the pelvis including bilateral superior and inferior pubic rami and rapture of the urethra. The fracture of the pelvis clinically healed. He had recurring urethra stricture which would require surgery at Ksh.400,000/ He was exposed to dangers of difficulties in sexual activity and inability to sire children. The Judge upheld the trial magistrate’s award of Ksh.2,000,000/- in general damages. The respondent in this case sustained similar injuries to those sustained by the respondent in this case. The learned magistrate held that the



injuries sustained by the respondent were comparable to those sustained by the appellant in the case of Penina Waithira Kaburu-v- LP.

31. The learned magistrate gave a similar award of Ksh.2,000,000/- in general damages. The plaintiff in his submissions had relied on authorities where courts had awarded between Ksh.3,000,000/- and 5,000,000/- as general damages. The plaintiff was claiming Ksh.5,000,000/-. The learned magistrate chose to rely on the case of Penina Waithira Kaburu –v- LP (supra) on the basis that the injuries were the same and awarded the same amount. The principles in awarding damages which were enumerated by the parties, that is Rashir Ahmed Butt-v- Uwais Ahmed Khan supra, are that an appellate court will not normally interfere with the exercise of discretion by the learned magistrate unless the award is so inordinately high or low as to represent an entirely erroneous estimate. It must also be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and arrived at a figure which inordinately high or low. The appellate court will also interfere if it is shown that the magistrate took into account irrelevant factor or left out account a relevant one, see *Kemfro Africa Ltd T/A Meru Express service –v- A.M. Lubia & Olive Lubia (1982-1988) 1 KAR 728*.
32. The learned magistrate stated that he had perused the evidence and the medical reports which showed that the respondent suffered pelvic fracture, urinary bladder injury which was treated through bladder repair suprapubic catheter insertion and pelvic exofic. Further that the respondent was admitted in hospital from 1/1/2022 until 1/3/2022. This was as stated by the medical Report by Dr. Nicholas Nkonge, Dr. Wambugu and the discharge summary from Kenyatta National Hospital.
33. From the foregoing, and considering that the award of damages is an exercise of discretion by the trial court, I find no reason to interfere with award by the learned magistrate. The cases cited by the appellant in the trial court were too low while those by the respondent were too high. The learned magistrate properly relied on the principle that comparable injuries should attract comparable awards and such awards should not be inordinately high or low. I therefore find no reason to interfere with the award of general damages by the learned magistrate.
34. Turning to special damages, it is trite law that they must be specifically pleaded and strictly proved. The learned magistrate found that special damages pleaded and proved amounted to Ksh.33,100/- The consent which the parties entered on 23/1/2023, paragraph (2) stated that the documents filed by the plaintiff be and the defendant be adopted without calling their makers. The learned magistrate found that a receipt of Ksh.20,000/- issued by Doctor Nkonge, Ksh.10,000/- for demand letter, issued by Ms. Muthomi Gitari, Ksh.2,5550 from Chuka Referral Hospital Ksh.550/- for obtaining copy of the record. The receipts were produced without any objection and the receipts proved the amounts pleaded and proved. The objection that they did not bear a stamp was raised too late in the day after the consent was entered to admit the documents. The learned magistrate was guided by the case of *Swalle C. Kariuki & Another –v- Violet Owiso Okuyu* where it was held that it was the duty of the receiver of monies who has a duty to affix revenue stamps and not the payee who can be penalized for the omissions of the receiver. I find the special damages of Ksh.33,100/- was specifically pleaded and proved.
35. The respondent submitted that the appeal is defective as the reply to the defence at page 37-38 of the record does not relate to this matter and the correct record was not filed. I have considered the submission. I note from the record of the lower court that there was no reply to the defence which was filed. The reply to the defence is misfiled. It is a technicality which has not affected the appeal. I disregard the submission under Article 159 (2) (d) of *the Constitution* which gives the court authority to determine matters on merits and not on procedural technicalities.



**Conclusion:**

36. For the reasons I have given in this Judgment, I come to the conclusion that the appeal has no merits. I therefore order as follows:-

1. The appeal is dismissed.
2. Costs to the respondents.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025.**

**L.W. GITARI**

**JUDGE**

