



REPUBLIC OF KENYA



KENYA LAW
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**Nduruhu & another v TNM (Minor suing through next of friend Ester Njeri Waweru)
(Civil Appeal E018 of 2023) [2025] KEHC 3120 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E018 OF 2023
AN ONGERI, J
FEBRUARY 24, 2025**

BETWEEN

FREDRICK MWENDA NDURUHU 1ST APPELLANT

SAMUEL MWANGI NJOROGE 2ND APPELLANT

AND

**TNM (MINOR SUING THROUGH NEXT OF FRIEND ESTER NJERI
WAWERU) RESPONDENT**

*(Being an appeal from the Judgment of Hon. T. N. Sinkiyain
(PM) in Voi CMCC No. E046 of 2020 delivered on 5th May 2023)*

JUDGMENT

1. The Respondent a minor filed Voi CMCC No. E046 of 2020 through his next friend and mother Esther Njeri against the Appellant seeking general damages and special damages for injuries incurred by the Respondent on 23rd October 2020 at 1230p.m while the Respondent was travelling in motor vehicle registration No. KCK xxxC.
2. The driver of motor vehicle KCK xxxC owned by the Appellant was travelling along Mombasa Road at Manyani and it was overtaking another motor vehicle when he saw an oncoming vehicle and he tried to return to the left lane but lost control and the motor vehicle veered off the road and violently overturned causing the Respondent grievous harm.
3. Judgment entered in Voi CMCC No. E052 of 2020 which was a test suit which applied to this case.
4. The trial court assessed quantum of damages as follows:-

Special damages Kshs. 3,000/=

Motor vehicle search Kshs. 550/=



General damages Kshs. 300,000/=

Total Kshs. 303,550/=

5. The Appellant has appealed against the quantum on the following grounds:-
 - i. The Learned trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the Respondent.
 - ii. The Learned trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.
 - iii. The Learned trial Magistrate erred and misdirected herself in awarding a sum in respect of damages which was inordinately high in the circumstance which was excessive in the circumstances occasioning a miscarriage of justice.
 - iv. The Learned trial Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 - v. The Learned trial Magistrate erred and misdirected herself by ignoring the Defendant's submissions on record hence arriving a wrong decision in awarding damages.
 - vi. The Learned trial Magistrate erred and misdirected herself by ignoring the evidence of witnesses on record especially the police officer hence arriving a wrong decision in awarding damages.
6. The parties filed written submissions which I have duly considered.
7. The sole issue for determination in this appeal is whether the award of damages was excessive.
8. I have considered the submissions by both parties.
9. The Respondent sustained the following injuries
 - i. Bruises on the left hand.
 - ii. Bruises on the leg/shoulder.
 - iii. Knee joints trauma.
 - iv. Blunt injury to the head.
 - v. Blunt injury to the chest.
10. The trial court relied on the following cases:-
 - i. *Catherine Wanjiru Kinuuri & 3 Others v Gibson Theuri Gichubi* (2005) eKLR where Kshs. 380,000/= was awarded for multiple soft tissue injuries.
 - ii. *Kamendu Charles v Gideon Muia Mutisya* (2014) eKLR where Kshs. 170,000/= was awarded for similar injuries on 29th September 2014.
11. The court finds that the award is reasonable in the circumstances of this case.
12. The only time an appellate court can interfere with the exercise of the trial court's discretion is when the court applied wrong principles or where the same is so excessive or so low as to warrant interference.



13. In *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR, the Court of Appeal held that –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v Khan* [1981] KLR 349 when it held as per Law, JA that:

‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.’

14. The appeal herein lacks in merit and the same is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF FEBRUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

Miss Otieno holding brief for Mr. Ndolo for the Appellant

Mr. Okumu for the Respondent

