



REPUBLIC OF KENYA



KENYA LAW
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**Nduruhu & another v Maina (Civil Appeal E016 of 2023)
[2025] KEHC 8895 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 8895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E016 OF 2023
AN ONGERI, J
FEBRUARY 4, 2025**

BETWEEN

FREDRICK MWENDA NDURUHU 1ST APPELLANT

SAMUEL MWANGI NJOROGE 2ND APPELLANT

AND

JOHN WAWERU MAINA RESPONDENT

*(Being an appeal from the Judgment of Hon. T. N. Sinkiyian
(PM) in Voi CMCC No. E049 of 2020 delivered on 5th May 2023)*

JUDGMENT

1. The Respondent sued the Appellants seeking general damages for pain and suffering and special damages arising out of a Road Traffic Accident (RTA) which occurred on 23rd October 2020 involving motor vehicle registration number KCK 031C.
2. The court entered into judgment on liability in a test suit being Voi SPMCC No. 52 of 2020 and the same was applied in SPMCC No. 44, 45, 46, 47, 48, 49, 50, 51, 52 OF 2020.
3. The trial court assessed general damages for pain and suffering at Kshs. 300,000/= and special damages at Kshs. 3,550/= making a total of 303,550/=
4. The Appellant has appealed against the said award 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 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 at 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 at a wrong decision in awarding damages.
5. The parties filed written submissions as follows:- the appellant submitted that the respondent suffered; swollen tender left distal forearm, bruises on right and left elbow, bruises on the right and left knee, bruises on both knees and blunt injury to the head. The report by Dr. Wisdom Njumwza dated 26/10/2020 concluded that the injuries sustained were soft tissue injuries and were expected to heal without permanent disability.
6. The appellant argued that the Kshs 300,000 awarded by the trial court was inordinately high considering the injuries. The appellant proposed an award of Kshs 80,000 and in support cited the following cases;
- a. HB (Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another [2021] eKLR where the claimant sustained blunt object injury to the head and neck, thorax, abdomen and limbs. On routine examination Dr. Adede opined that the injuries suffered were soft tissue in terms of gravity. The lower court awarded Kshs. 60,000.00. The same was upheld on appeal to the High Court.
 - b. Homabay Civil Appeal E113 of 2021 - James Kwanya Rege vs. Loice Mbone Cweya where the Respondent herein sustained blunt trauma to the neck, blunt trauma to the chest & blunt trauma to the abdomen. On 20/12/2022 Kiarie. J set aside the lower court judgment of Kshs. 300,000/= and awarded Kshs. 80,000/=.
7. The respondent alternatively submitted that the award of Kshs. 300,000 was commensurate with the injuries he suffered. In support the respondent submitted the following cases;
- a. Catherine Wanjiru Kingori & 3 Others -vs- Gibson Theuri Gichubi [2005] eKLR where the 3rd Plaintiff suffered multiple soft tissue injuries, injury on the left elbow joint, and injuries on both ankles. The Court awarded her Kshs. 350, 000/= as general damages for pain, suffering and loss of amenities on 01/07/2005.
 - b. Lucy Ntibuka-v- Bernard Mutwiri Others [1983] eKLR. where the plaintiff sustained the following injuries, classified as soft tissues; head injuries, lacerations on the lateral side of the right eye, lacerations and cut wound on the left arm (elbow). The court awarded her Kshs. 500,000/- as general damages for pain, suffering and loss of amenities on 08/02/2007
8. This being the first appeal, the duty of the first appellate court is as stated in the case of Selle -vs- Associated Motor Boat Co. [1968] EA 123 where the Court held as follows;

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of



particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it 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 this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

9. The only issue for determination is whether the award of general damages is excessive.
10. I have considered the submissions filed herein together with the authorities relied on by the trial court.
11. The Respondent sustained the following injuries:-
 - i. Swollen tender leg, distal forearm.
 - ii. Bruises on both shoulders.
 - iii. Bruises on both knees.
 - iv. Blunt injury to the chest.
 - v. Blunt injury to the head.
12. I find that the Respondent sustained soft tissue injuries.
13. The trial court relied on the case of Catherine Wanjiru Kingori & 3 Others =Versus= Gibson Theuri Gichubi (2005) eKLR where the Plaintiff was awarded Kshs. 350,000/= for multiple soft tissue injuries.
14. I find that the trial court award is reasonable in the circumstances of this case.
15. The only time an appellate court can interfere with the discretion of the trial court in assessment of damages is when the same is so low or so high as to warrant interference or when the court applied wrong principles or relied on erroneous factors.
16. I find that the appeal herein lacks in merit and I accordingly dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 4TH DAY OF FEBRUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

