



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Waguchu v Ndege (Civil Appeal E080 of 2022)  
[2025] KEHC 12151 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 12151 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E080 OF 2022  
F WANGARI, J  
FEBRUARY 20, 2025**

**BETWEEN**

**STANLEY MUCHERU WAGUCHU ..... APPELLANT**

**AND**

**TOM MULAA NDEGE ..... RESPONDENT**

*(Being an Appeal arising out of the Judgment and Decree of Hon.  
E. Muchoki, Resident Magistrate in Mombasa Chief Magistrate's  
Court, Civil Suit No. 438 of 2020 delivered on 10th May 2022)*

**JUDGMENT**

1. The Appellant who was the Defendant in the lower court filed this appeal against the above mentioned judgment. The lower court entered judgment in favour of the Respondent for general and special damages as a result of injuries sustained on 25/10/2020. The appeal is on quantum only. The Memorandum of Appeal dated 02/06/2022 is based on the following grounds of appeal:
  - i. The Learned Trial Magistrate erred and misdirected himself by relying on wrong principles
  - ii. The Learned Trial Magistrate erred and misdirected himself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.
  - iii. The Learned Trial Magistrate erred and misdirected himself by 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 fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
  - v. The Learned Magistrate erred and misdirected himself by ignoring the defendant's submissions on record hence arriving a wrong decision in awarding damages.



2. The Appellant prayed that the appeal to be allowed with costs, judgment delivered on 10<sup>th</sup> May 2022 be set aside, the award made therein be reassessed and costs of the appeal be borne by the Respondent.
3. In the case of *Selle vs Associated Motor Boat Co. Ltd & Others* [1968] EA 123, the Court of Appeal spelt out the jurisdiction of the first appellate court. It is to reassess and re-evaluate the evidence and to come up with its own conclusions. It is therefore the duty of this court to consider such evidence as was produced before the trial court and for this court to come up with its conclusion and determination of the same.
4. Based on the proceedings on record, the Plaintiff sustained a fracture of the right foot 5<sup>th</sup> metatarsal bone where closed reduction and application of plaster of Paris case was done leading to stiffness of the right foot 5<sup>th</sup> metatarsal – tarsal joint. He was treated and he produced the relevant exhibits including the medical report, the P3 form, the police abstract and the medical card. The defendant, on the other hand, closed his case without calling any witness and without producing any medical documents to the contrary.
5. It was directed that the appeal be canvassed by way of written submissions. The Appellant submitted that the General damages awarded was inordinately high considering the injuries sustained by the Respondent. Relying on the case of *Power Lighting Company Limited & Another vs Zakayo Saitoti Naingola & Another* [2008] eKLR. It was proposed that Kshs. 300,000 would be reasonable and sufficient compensation.
6. The Respondent submitted that for this court to interfere with the said award, the appellant must demonstrate that the learned trial magistrate considered irrelevant factors or left out relevant factors or the amount was so inordinately high that it must be wholly erroneously estimate of the damages to the court applied the wrong principles as was held in the case of *Catholic Diocese of Kisumu vs Tete* [2004] eKLR.
7. The test for General damages is settled; In the case of *Butt v Khan* [1981] KLR 470 and *Kitavi v Coastal Bottlers Ltd* [1985] KLR 470, it was held as follows;
 

“Although one would expect that in the normal course of things, the claimant to the accident might get well and restored to his or her original health status prior to the accident sometimes that is not the case in most instances. It is necessary to find the correct bearing which seldom alludes the Judges with expertise and knowledge on this areas of specialization. An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirety 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 a figure which was either inordinately high or low.”
8. Further, in *Kilda Osbourne v George Bared and Metropolitan Management Transport Holdings Ltd & another* Claim No. 2005 HCV 294, being guided by the principles enunciated by both Lord Morris and Lord Devlin in *H. West & Sons Ltd v Shephard* [1963] 2 All ER 625 Sykes J stated as follows:
 

“The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite some time is part of the subjective portion of the assessment. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant.”



9. The court used the correct principles. Therefore, the only question is whether, in awarding for the injuries, the court was plainly wrong. Therefore, this court can only determine whether or not the award by the trial court was excessive by looking at the awards made to comparable injuries in the most recent decided cases that were placed before the trial court.
10. The Respondent had supplied the most recent and comparable authority having taken into account the inflationary trends in the country. The award by the learned trial magistrate was fair, reasonable and the same ought to be upheld. Therefore, the Trial Magistrate considered the issue of inflation when it awarded him Kshs.650,000/-.
11. I have considered the impugned judgment of the trial court and it is clear from the same that in arriving at the award, the trial court relied on the same case as the plaintiff, that is, *Njora Samuel vs Richard Nyangau Orechi* [2018] eKLR and considered the lapse of time and inflation as he awarded the Respondent general damages of Kshs.650,000/-.
12. I thus find no fault in neither the considerations that the trial court in making the award nor in the quantum of damages awarded.

### **Determination**

13. The upshot of the foregoing, the court orders as hereunder;
  - a. The appeal has got no merits and is hereby dismissed.
  - b. Costs awarded to the Respondent.Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of: -

Mr. Njuguna Advocate for the Appellant

Mr. Kazungu Advocate for the Respondent

Ms. Salwa, Court Assistant

