



REPUBLIC OF KENYA



KENYA LAW
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**Wamoto & another v Mumo (Civil Appeal E400 of 2022)
[2025] KEHC 1704 (KLR) (Civ) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1704 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E400 OF 2022

JM NANG'EA, J

FEBRUARY 5, 2025

BETWEEN

CHRISTINE NAFULA WAMOTO 1ST APPELLANT

ANDREW WANYONYI KHAEMBA 2ND APPELLANT

AND

MICHAEL JOEL MUMO RESPONDENT

*(Being an appeal from the judgement and decree of the Chief Magistrate's
Court at Milimani, Milimani Commercial Courts, (Hon. Lesootia
Saitabau (PM) delivered on 17/5/2022 in CMCC No. E7490 of 2020)*

JUDGMENT

Grounds of Appeal and Reliefs Sought

1. By a Memorandum of Appeal dated 26/5/2022, the appellants fault the above trial court's judgment in respect of assessment of general damages on grounds that may be summarized into two as hereunder:
 1. That Learned Trial Magistrate erred in law and fact in making an award of general damages against the weight of evidence.
and
 2. That the learned trial magistrate erred in law and fact by failing to consider and apply comparable case law guiding assessment of damages.
2. The appellants therefore seeks the following orders:
 - a. That the appeal be allowed.



- b. That the judgement and decree of the trial court as against be set aside.
- c. That alternatively, this court does evaluate the evidence and make a correct assessment of damages.
- d. That the costs of the appeal and interest thereon be borne by the respondent.
- e. That the court does grant any other relief deemed fit.

Analysis and Determination

3. Learned Counsel for the parties filed submissions which I have perused together with the trial court's record. In the impugned judgment, the trial magistrate awarded the respondent Ksh. 1,200,000 in general damages for pain and suffering for a fracture of the right distal tibia/fibular and a deep cut wound and swelling on the left leg, according to a medico-legal report by Dr G.K. Mwaura dated 15/11/2020. A residual scar was left on the affected leg. At the time of the examination the respondent's resultant permanent diasability was assessed at 10% on the right lower limb..
4. The appellants' advocates submit that an award of Ksh. 400,000 is reasonable in the circumstances, placing reliance on various decisions which include; *Kibue & Another v. Ngige* (2022) KEHC; *Jackson Mbaluka Mwangangi v. Onesmus Nzioka & Another* (2021) eKLR; *John Mwangi Munyiri & Another v. Paul Wachira Njuguna* (2020) eKLR; *Joseph Mwangi Thuita v. Joyce Mwole* (2018) eKLR and *Daneva Heavy Trucks & Another v. Chrispine Otieno* (2022) eKLR. for various injuries that include fractures and various other injuries the claimants therein were granted between Ksh. 500, 000 and Ksh. 1,000,000 in general damages for pain, suffering and loss of amenities.
5. The respondent's advocates support the trial court's decision. It is submitted that there can be no question of contributory negligence by the respondent as the appellant did not offer evidence in proof of the claim.
6. Concerning the quantum of damages awarded by the trial court, the respondent thinks that the award is reasonable .Reliance is placed on judicial determinations in *Patrick Kinyanjui v. Evans Juma Mukweyi* (2017) eKLR and Kimathi Muturi *Donald v. Kevin Ochieng Aseso* eKLR said to relate to comparable injuries and in which Ksh. 1,000,000 and Ksh. 1, 200,000 general damages were assessed and awarded respectively. In the former case the claimant suffered a segmental fracture of the right femur midshaft ; segmental fracture of the right tibia shaft(open); fracture of the right fibula and fracture of the left 3rd metatarsal bone. The latter case refers to a fracture of the upper right tibia and a further fracture of the floor of the socket of the left hip joint (acetabulum). A metal implant was inserted in one of the fracture sites. Permanent disability was assessed at 20% on both legs.

Guiding Principles

7. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle v. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd v. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:

- “i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;



- ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
8. In awarding general damages in the sum of Ksh. 1,200, 000 the court was guided by the judicial determination in Jacinta Kendi & Another v. Rose Kimonda Cheboi (2020) eKLR. In that case the claimant suffered a compound fracture of the left tibia/fibula-distal end; multiple soft tissue injuries and blood loss. The injuries resulted in permanent weakness of the left leg and functional disability was estimated at 50%. Surgical devices were still in place at the time of the examination, the doctor noting that their removal would lead to more pain and scar formation.
 9. This appeal is on quantum of general damages only. It must be noted that general damages are damages at large and no case is exactly the same as the other. The general method of approach in assessing general damages ought to 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 (see the often cited case of Kemro Africa Ltd & Another v. Lubia & Another (1982-88) KLR).
 10. Among the cases relied upon by the appellants, the decisions in Jackson Mbaluka Mwangangi, John Mwangi & Another and Daneva Heavy Trucks & Another (*supra*) are perhaps the most comparable to the instant matter. Like in this case, the claimants sustained more or less similar fractures and soft tissue injuries. The case of Jacinta Kendi *supra* that guided the trial court is not quite comparable to this case seeing that a much higher degree of functional disability at 50% resulted therein. Even the decisions relied upon by the respondent are not quiet comparable to the instant case as the injuries therein are relatively more severe.

Determination

11. For the foregoing reasons, I will disturb the trial court’s award and instead grant the respondent Ksh. 800, 000 general damages for pain and suffering. The grounds of the appeal thus largely succeed.
12. The appeal therefore succeeds to the extent that the trial court’s judgement on quantum of general damages in the said sum of Ksh. 1,200,000 is set aside and substituted with the sum of Ksh. 800,000.
13. The parties will bear their own costs of the appeal while the costs in the court below will remain as directed in the trial court’s judgement.
14. Judgement accordingly.

J. M NANG’EA , JUDGE

JUDGEMENT DELIVERED VIRTUALLY THIS 5TH DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:

Ms Maina Advocate for the Appellants

Rspondent’s Advocate, Absent

J.M NANG’EA , JUDGE.

