



**Mbithi & another v Kimutai (Civil Appeal E296 of 2024)  
[2025] KEHC 1093 (KLR) (Civ) (3 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 1093 (KLR)

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

**CIVIL**

**CIVIL APPEAL E296 OF 2024**

**LP KASSAN, J**

**MARCH 3, 2025**

**BETWEEN**

**PATRICK MBITHI ..... 1<sup>ST</sup> APPELLANT**

**CHINA JIANGXI INTERNATIONAL KENYA LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SHARON JEPKOECH KIMUTAI ..... RESPONDENT**

*(Being an appeal from the judgment of the Honourable Magistrate Wendy Micheni (CM) delivered on 31.01.2024 from Nairobi CMCC No 3711 of 2020)*

**JUDGMENT**

1. The trial magistrate, following the plaint filed by the Respondent and the subsequent defence and a full hearing, entered the following judgment in favour of the Respondent:
  - a. Liability is entered at a ratio of 90:10% in favour of the Plaintiff; To clarify the Defendants' liability is apportioned at 90%.
  - b. The Plaintiff is entitled to Special damages of Kshs 3,705,343.2/= for hospital expenses.
  - c. The Plaintiff is awarded Kshs 3,600,000/= as General damages for pain, suffering and loss of amenities.
  - d. The Plaintiff is entitled to interests on (b) above from the date of filing of the suit and on (d) from the date of this judgment.
  - e. The Plaintiff is entitled to the costs of this suit prorated to the liability determination.



2. A brief background of this matter is that on 13.03.2019 the Respondent was a pillion passenger on motor cycle registration number KMDA 952P being ridden along the Eastern Bypass near Embakassi Garison roundabout, Nairobi when the 1<sup>st</sup> Appellant who was driving motor vehicle registration KCD 908Y knocked the motorcycle. The Respondent sustained a grievous degloving injuries to her left thigh occasioning massive loss of muscle tissues and skin and double fractures on both ends of her pelvic bone.
3. The appellant has now appealed against the decision of the subordinate court on the following grounds:
4. That the Learned Trial Magistrate's award of Kshs 4,000,000/= to the Respondent by way of general damages for pain and suffering is so excessive in the circumstances as to amount to an erroneous estimate of the damages payable under this head.
5. That the Learned Trial Magistrate erred in law and in fact in awarding a sum of Kshs 4,111,048.80/= to the Respondent in Special damages since the documents availed by the Respondent did not support this amount.
6. The appellant seeks that the judgment of the trial magistrate on general damages be assessed to a reasonable amount and special damages award be set aside and substituted with such an amount as will be supported by the documents.

### **Analysis and Determination**

7. This appeal being solely against the decision on damages, I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held 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”
8. The Appellants submit that the Respondent sustained degloving fractures of the superior and inferior right pubic ramii, fracture left superior pubic ramii and degloving injury of the left leg involving 2/3 of the thigh and upper 2/3 of the lower limb. She was examined by both Dr. Kinuthia and Dr Wokabi who opined that the injuries had healed but the Respondent had suffered permanent disability which they assessed at 40% and 20% respectively.
9. The Respondent in her submissions argues that Dr Kinuthia in his medical report dated 11.05.2022 confirmed that the Respondent suffered grievous bodily harm resulting in permanent incapacity score at 40% due to massive tissue loss and ankylosing of the left knee joint.
10. The discharge summary from Kenyatta National Hospital though listed in the Respondent's list of documents in the lower court was not attached in the record of appeal. I have looked at the medical report by Dr. M. Kinuthia dated 11.05.2022 in which he noted that the Respondent sustained multiple fractures of the pubic ramii bilaterally and severe degloving injury of the left lower limb. She had been admitted for 7 months at the Kenyatta National Hospital where she had undergone various modes of treatment. He opined:
 

“The injuries Sharon sustained in this accident were grievous harm and they caused her pain, suffering and blood loss. The injuries sustained are valid and consistent with the mode of injury. It is about 3 years since the accident and the initial degloving injuries have resolved.



However, the injuries resolved with gross deformity of the left lower limb, permanent extensive and ugly scars that are of immense cosmetic significance to this young unmarried lady. The left knee has reduced flexion movement and for this she will require several sessions of physio and occupational therapy. As she is total permanent incapacity is assessed at about 40% as a result of massive tissue loss and ankylosing left knee joint.”

11. The medical report by Dr. W. M. Wokabi is dated 23.03.2022 he noted the Respondent sustained extensive skin and muscle loss on the left leg from upper thigh all way down to the foot (degloving injuries). She had been treated by doing surgical toilet and many debriments and that skin grafting of the wounds was carried out. On her pelvis she had sustained fractures of the right superior and inferior pubic ramii which fractures were allowed to unite on their own. He opined:

“I can confirm that she had sustained very major degloving injury of the left leg. The degloving consisted of extensive skin and muscle loss. The condition of the left leg is one that is extensively scarred and disfigured. There is room to improve her appearance by trimming the overhanging skin on the upper thigh to reduce disfigurement. Due to extensive distribution of the skin grafting and due to extensive muscle loss cosmetic procedures or fat transplant would not work in her case. The partial loss of muscles together with a stiff left knee is contributing to permanent disability of 20%. The fractures of the pelvis must have united fully by now. They will not contribute to any functional disability.”
12. The appellant further submits that a sum of Kshs 2,000,000 would reasonably compensate the Respondent in general damages, the same when 10% liability is discounted net sum would be Kshs 1,800,000/=. He cited the cases of Millicent Atieno Ochuonyo-vs-Katola Richard [2015] eKLR, and Kiru Tea Factory & Ano.-vs-Peterson Watheka Wanjohi [2008] eKLR where the courts awarded the plaintiffs therein one sustained pelvic injuries with fracture of right pubic ramii and diastis of the symphysis pubis with a small abdominal wall hematoma and minimal hemoperitoneum Kshs 2,000,000/-, and the other sustained degloving injury on the right hand with extensive skin and muscle loss on the forearm, x-ray revealed fractures of the radius and ulna bones which were fixed by plating, fracture of the right iliac bone in the pelvis and generalized pains over most of the chest without fractures indicating soft tissue injuries Kshs 800,000/- respectively.
13. The Respondent submits that the award by the trial court was both reasonable and sufficient and should be upheld as the Appellants have not demonstrated just cause for the court to interfere with the finding of the trial court.
14. The court in Mutisya-vs-Demamoe (Civil Appeal E033 of 2021) [2023] KEHC 24470 (KLR) (30 October 2023) (Judgment) set aside the trial court’s award of Kshs 500,000/= as general damages for a sustained displaced fracture of the right femur, a tear of extensor tendon of the right hand, tear of the extensor on the left hand and degloving injury on the right leg. The award was substituted with Kshs 1,500,000/=.
15. The court in Kakuzi Limited-vs-Stephen Njoroge Mungai & Ano. [2020] KEHC 9838 (KLR) affirmed the trial court’s award of Kshs 1,000,000/= as general damages for a sustained fracture of the left radius/ulna, degloving injury left forearm, degloving injury right wrist joint, degloving injury right knee and deep cut wound left thigh.
16. The court in Damaris Wamucii Kagechu-vs-Joseph Kirui & Ano. [2019] KEHC 1837 (KLR) awarded of Kshs 1,500,000/= as general damages where the Plaintiff could not walk, and was using a wheelchair. She had scars on her right leg but was not deformed, left leg had a slight valgus deformity, and fractures



- had healed although the injuries would lead to abnormal stresses on the ankle joint with resultant early onset osteoarthritis.
17. The trial court noted a more comparative case cited by the Respondent in Millicent Atieno Ochuonyo-vs-Katola Riachard [2015] KEHC 7305 (KLR) the Plaintiff therein sustained pelvic injuries with fracture of pubic ramus and diastasis of the symphysis pubis. She also had a small abdominal wall haematoma and minimal haemoperitoneum. Permanent disability was assessed at 20%-40%. The court awarded Kshs 2,000,000/= general damages.
  18. I have considered the injuries sustained by the Respondent and the after effects thereto. The course of treatment was long with an extended admission period at the hospital. Also considered is the Respondent was left with a permanent disability. I fell the award of Kshs 4,000,000/= in general damages was excessive and that an award of Kshs 2,500,000/= is adequate in the circumstances.
  19. On the Special damages award, a party must produce receipts in order to meet the requirement of specifically proving special damages. The trial court looked at the statements from Kenyatta National Hospital dated 08.10.2019, 18.03.2019 & 23.03.2019, bundle of payment receipts and clearance certificate from Kenyatta National Hospital dated 08.10.2019 before making an award of KShs 4,111,048.80/=. The Respondent produced a clearance certificate from Kenyatta National Hospital dated 08.10.2019 for the said amount and having paid the same of which Kshs 568,000/= was footed by NHIF.
  20. In the case of Stanley Karanja Wainaina & Thermopak Limited-vs-Ridon Anyangu Mutubwa (Civil Appeal 427 of 2015) [2019] KEHC 11005 (KLR) (Civ) (12 February 2019) (Judgment) the court held at par.54-55:
    - “ 54. The Respondent was emphatic that the said sum of Kshs 99,796/= was paid and that proof of special damages depends on their character and nature and receipts cannot be insisted at all times. It was his contention that he was issued with a clearance certificate meant that the monies had been paid.
    55. The Respondent could not have been further from the truth. As was correctly pointed out by the Appellant, special damages must be strictly proven. Perusal of the hospital clearance showed that the sum of Kshs 99,796/= was paid through NHIF. Awarding the Respondent the said sum of Kshs 99,796/= would amount to unjust enrichment as he did not go out of pocket.”
  21. I agree with the Appellants, NHIF rebates should be taken into account in calculating the special damages. The Respondent received NHIF rebate of KShs 568,000/= which should not have been added to the special damages. Add medical report expense of KShs 6,000/=.
  22. The upshot of the above is that:
    - i. The appeal has merit and is allowed. The trial court general damages award of Kshs 4,000,000/= is set aside and substituted with of Kshs 2,500,000/=
    - ii. Special damages at Kshs 3,549,084.48/=.
    - iii. The general damages and special damages are subject to the trial court’s liability ratio.
  23. As none of the parties has been fully successful, there will be no order as to the costs of this appeal but the Respondent will get the costs in the court below.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF MARCH 2025.**



**L. KASSAN**

**JUDGE**

In the presence of: -

Kalama for the Appellant

No appearance for Respondent

Carol – Court Assistant

