



Nduruhu & another v Mukusia alias John Waweru Mukeri (Civil Appeal E012 of 2024) [2025] KEHC 5211 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 5211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E012 OF 2024
AN ONGERI, J
MARCH 20, 2025**

BETWEEN

FREDRICK MWENDA NDURUHU 1ST APPELLANT

SAMUEL MWANGI NJOROGE 2ND APPELLANT

AND

JOHN WAWERU MUKUSIA ALIAS JOHN WAWERU MUKERI RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. T. N. Sinkiyian (PM) in Voi CMCC No. E045 of 2020 delivered on 5th May 2023)

JUDGMENT

1. The Respondent filed Voi CMCC No. E45 of 2020 through his mother and next of kin against the Appellants seeking general damages for pain and suffering and special damages for injuries the Respondent suffered on 23rd October 2020 when involved in a road traffic accident involving motor vehicle registration number KCC 031C.
2. The issue of liability was determined in a test suit involving Voi SPMCC No. 50 of 2020, 51 of 2020, 49 of 2020, 48 of 2020, 47 of 2020, 46 of 2020, 45 of 2020 and 44 of 2020.
3. The trial court assessed damages as follows:-

General damages for pain and suffering 300,000/=

Special damages 3,550/=

Medical report 2,500/=

Vehicle search 550/=

Total 306,600/=



4. The Appellant has appealed to this court on the following grounds:-
 - i. The learned trial Magistrate erred and misdirected herself 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 by 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 at a wrong decision in awarding damages.
5. The parties filed written submissions as follows:-
6. That the appellants, Fredrick Mwenda Ndurihu and Samuel Mwangi Njoroge, are appealing against a judgment delivered on 5th May 2023 in Voi CMCC No. E045 of 2020, where they were held liable and ordered to pay Kshs. 300,000.00 as general damages to the respondent, John Waweru Mukuria (alias John Waweru Muker).
7. That the appeal is based on the quantum of damages awarded by the lower court.
9. The appellants argued that the Kshs. 300,000.00 awarded for general damages was excessive given the nature of the injuries sustained by the respondent.
10. That the respondent sustained soft tissue injuries, including a cut wound on the right lower lip and a cut wound on the right iliac region.
11. That the medical report by Dr. Darius Wambua Kiema confirmed that the injuries were soft tissue injuries with no permanent disability or incapacity.
12. The appellants contend that the damages awarded were inordinately high and propose that Kshs. 50,000.00 would be sufficient compensation.
13. The appellants refer to several cases to support their argument for a lower quantum such as:
 - i. HB (Minor) v Jasper Nchonga Magari & another [2021] eKLR where Kshs. 60,000.00 awarded for soft tissue injuries.
 - ii. Eva Karemi & 5 others v Koskei Kieng & another [2020] eKLR where Awards ranging from Kshs. 40,000.00 to Kshs. 70,000.00 for various soft tissue injuries.
 - iii. James Kwanya Rege v Lizzy Awuor [2021] eKLR where Kshs. 80,000.00 awarded for similar injuries.
14. The appellants urged the court to set aside the lower court's judgment and reassess the quantum, proposing Kshs. 80,000.00 as adequate compensation.
15. The Respondent, John Waweru Mukuria, in response to the appeal filed by the Appellants, Fredrick Mwenda Ndurihu and Samuel Mwangi Njoroge, in the High Court of Kenya at Voi (Civil Appeal No. E12 of 2024) submitted that the appeal concerns a road traffic accident that occurred on 23.10.2020,



- where the Respondent sustained severe injuries while traveling as a passenger in a vehicle driven by the 2nd Appellant.
16. That the Respondent filed a suit in the lower court, and the Appellants denied liability, blaming the Respondent for the accident. The lower court adopted judgment on liability from a related case and proceeded to assess damages.
 17. That the Respondent was injured in a road accident caused by the 2nd Appellant's negligent driving.
 18. That the Appellants raised six grounds of appeal, primarily challenging the award of general damages for pain, suffering, and loss of amenities, as well as special damages.
 19. The Respondent argued that the trial court correctly assessed the damages and that the Appellants have not demonstrated any misapprehension of facts or evidence by the trial court.
 20. The Respondent emphasizes that this being a first appeal, the court's role is to re-evaluate the evidence and determine if the trial court's conclusions should stand.
 21. That the court can only interfere with the trial court's verdict if it is shown that the trial court acted on wrong principles or misapprehended the evidence.
 22. The Respondent cited comparable cases where similar or more severe injuries were awarded higher damages, arguing that the trial court's award was fair.
 23. The Respondent prays that the court upholds the trial court's award of damages and dismisses the appeal with costs.
 24. In summary, the Respondent defended the trial court's award of damages, arguing that it was fair and based on correct principles, and requested that the appeal be dismissed.
 25. This being a first appeal, the duty of the first appellate court is as stated in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 where the Court of Appeal held that:

“The first appellate court has a duty to re-evaluate the evidence presented before the trial court and arrive at its own independent conclusion. The appellate court must subject the entire evidence to a fresh scrutiny and draw its own inferences. While the appellate court should consider the trial court's findings, it is not bound by them and must form its own independent judgment”.
 26. The sole issue for determination in this appeal is whether the trial court was right in awarding general damages of Kshs. 300,000/=.
 27. The Respondent suffered the following injuries:-
 - i. Cut wound on the right lip 3mm length and 5mm deep.
 - ii. Cut wound on the right iliac region 6cm long and 1cm deep.
 28. The trial court relied on the case of *Kamenju Charles =Versus= Gideon Mula Mutisya* (2014) eKLR where Kshs. 170,000/= was awarded for cut wounds.
 29. I find that the award of Ksh. 300,000 is excessive in view of the injuries the respondent sustained.
 30. Considering the inflationary trends, I reduce the award to Ksh. 200,000.



31. Special damages of Ksh. 3,050 were awarded and the full award is as follows;

General damages for pain and suffering 200,000/=

Special damages 3,550/=

Vehicle search 550/=

Medical report 2,500/=

Total 206,050/=

32. The appeal partially succeeds and for that reason, each party to bear their own costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF MARCH 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

