



REPUBLIC OF KENYA



**Nduruhu & another v SCM alias SKM alias SKM alias SK (A minor Suing Through Next Friend One CSM) (Civil Appeal E010 of 2024) [2025] KEHC 5210 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5210 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E010 OF 2024  
AN ONGERI, J  
MARCH 20, 2025**

**BETWEEN**

**FREDRICK MWENDA NDURUHU ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL MWANGI NJOROGE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SCM ALIAS SKM ALIAS SKM ALIAS SK (A MINOR SUING THROUGH NEXT FRIEND ONE CSM) ..... 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. E43 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 23<sup>rd</sup> 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 200,000/=
  - Special damages 2,500/=
  - Vehicle search 550/=
  - Total 203,050/=



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. The Appellant is contesting the quantum of damages awarded, arguing that it is excessively high given the nature of the injuries sustained by the Respondent.
7. The appeal is based on a Memorandum of Appeal dated 14/02/2024, focusing on the issue of quantum (the amount of damages awarded).
8. The Appellant relies on written submissions from the trial court and invites the court to consider them.
9. The appellant submitted that the Respondent's injuries, as per the medical report by Dr. Wisdom Njumwa, were soft tissue injuries (bruised forehead and lip) with no permanent disability expected.
10. The Appellant argued that the award of Ksh. 300,000.00 is too high and suggests that Ksh. 80,000.00 would be adequate compensation.
11. The Appellant cites several legal precedents to support their argument, including cases where similar soft tissue injuries resulted in lower damages (e.g., Ksh. 60,000.00 to Ksh. 80,000.00).
12. The Appellant references the case of *Power Lighting Company Limited & another v. Zakayo Saitoti Naingola & another* (2008) which outlines principles for assessing damages as follows:
  - i. That damages should not be excessively high or low.
  - ii. They should compensate, not enrich, the injured party.
  - iii. That past decisions should be used as guides, with consideration for inflation and the purchasing power of the currency.
13. The Appellant requests the court to set aside the trial court's judgment and reassess the quantum to Ksh. 80,000.00, arguing that this amount is proportionate to the injuries sustained.
14. The Appellant also seeks costs for the appeal, citing Section 27(1) of the *Civil Procedure Act*, which states that costs should follow the event (i.e., the losing party pays the costs).
15. The Respondent submitted that he filed the suit against the Appellants in the lower court, and judgment on liability was adopted from a related case, Voi CMCC E052 of 2020. The Appellants, dissatisfied with the lower court's award on general damages, lodged this appeal.



16. That the Respondent was injured in a road traffic accident caused by the 2nd Appellant's negligent driving.
17. The Appellants denied liability and ownership of the vehicle.
18. The lower court adopted liability from a related case and proceeded to assess damages.
19. The Appellants raised six grounds of appeal, primarily challenging the award of general damages for pain, suffering, and loss of amenities.
20. The Respondent argues 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.
21. The respondent submitted that as a first appeal, the court's role is to re-evaluate the evidence and determine if the trial court's conclusions should stand.
22. That the appellate court can interfere with the trial court's verdict if it is shown that the trial court acted on wrong principles or misapprehended the evidence.
23. The Respondent contends that the award was fair, citing comparable cases where similar or more severe injuries were compensated with higher awards.
24. The Respondent also highlights that the trial court considered all authorities cited and that the Appellants' cited cases are not comparable.
25. The Respondent prays that the court upholds the trial court's award on general damages and dismisses the appeal with costs.
26. 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”.
27. The sole issue for determination is whether the trial court was right in awarding general damages of Kshs. 200,000/=.
28. I have considered the submissions by both parties on the issue of quantum of damages.
29. The Respondent suffered the following injuries:-
  - i. Bruised forehead.
  - ii. Bruised upper lip.
30. The trial court relied on the following cases:-
  - i. *Mulo Holdings & 3 Others =Versus= Martin Ogachi Mutundura* (2019) eKLR where Kshs. 150,000/= was awarded for soft tissue injuries.
  - ii. *Eldoret E045 of 2021 Joseph Wahinya =Versus= Benson Lucheveleli* (2022) eKLR where Kshs. 100,000/= was awarded for blunt injuries.
31. I find that the award of Ksh. 200,000 is excessive in view of the injuries the respondent sustained.



32. Taking into account the inflationary trends, I reduce the award to Ksh. 120,000.

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

General damages for pain and suffering 120,000/=

Special damages 2,500/=

Vehicle search 550/=

Total 123,050/=

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

**DATED, SIGNED AND DELIVERED THIS 20<sup>TH</sup> DAY OF MARCH 2025 IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Maina/Millicent

