



REPUBLIC OF KENYA



KENYA LAW
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**Njoroge v Gichuki (Civil Appeal E106 of 2023)
[2025] KEHC 9458 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 9458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E106 OF 2023
GL NZIOKA, J
MARCH 19, 2025**

BETWEEN

JOSHUA NJOROGE APPELLANT

AND

FRANCIS KARIUKI GICHUKI RESPONDENT

(Being an appeal from the decision of Honourable Eunice Kelly Principal Magistrate delivered on 7th November 2023 vide Naivasha CMCC No. E311 of 2021)

JUDGMENT

1. By a plaint dated 1st May 2021 the plaintiff (herein “the appellant”) sued the defendant (herein “the respondent”) seeking for judgment against the appellant for: -
 - a. General damages
 - b. Kshs 84,680;
 - c. Kshs. 200,000, future medical expenses;
 - d. Costs of the suit;
 - e. Interest on above at courts rate from date of judgment until payment in full.
2. The appellant’s claim arose out of personal injuries sustained in a road traffic accident that occurred on 10th February 2021 while he was lawfully riding his motorcycle registration No. KMET 082R along the Gilgil – Nakuru.
3. He avers that a motor vehicle KAL 609Q, Isuzu Bus, registered in the name of the respondent, rammed into his motorcycle from the rear causing the accident and the respondent and/or his servant for driving the motor vehicle negligently as per the particulars of negligence at paragraph 3 of the plaint.



4. The appellant avers that as a result of the accident he suffered the following injuries: -
 - a. Closed mid shaft right tibia and fibula fracture;
 - b. Severe soft tissue injuries of the right leg.
5. However, the appellant's claim was denied by the respondent vide a statement of defence dated 17th June 2021. The respondent denied being the registered owner of the subject vehicle, the occurrence of the accident, and the particulars of negligence attributed to him and/or his agent or driver.
6. He pleaded that in the alternative and without prejudice to the afore, the appellant solely caused and/or substantially contributed to the accident as per the particulars of negligence set out at paragraph 6 of the statement of defence respectively.
7. The matter proceeded to full hearing. (PW1) No. 90678 PC Ngugi Maina testified on behalf of the appellant to the effect that an accident occurred and the driver of the motor vehicle was held to blame. He produced the police abstract as plaintiff exhibit (1) and the P3 form as plaintiff exhibit (2).
8. The plaintiff (PW2) Joshua Njoroge Njuguna adopted his statement dated 1st May 2021 as evidence in chief and stated that, he was lawfully riding his motorcycle registration No KMET 082R when he stopped at the junction at Gilgil before joining the Nakuru – Nairobi road. That the respondent's vehicle was behind him but did not stop and rammed into his motorcycle crushing his right leg.
9. That good Samaritans rushed him to Gilgil District Hospital where an X-ray was taken which revealed that he had sustained a fracture of the right mid shaft tibia fibula and a pop was applied.
That he was treated as an outpatient for ten (10) days for purposes of dressing and cleaning his wounds. Thereafter he was referred to Nakuru Level 5 Hospital where he was taken to theatre and an open reduction and internal fixation of the fracture (ORIF) was done. That he was admitted from 20th February 2021 to 11th March 2021.
10. Further, he was examined by Dr Obed Omuyoma who was of the opinion that the metal implant in his leg would be removed in future at a cost of Kshs. 200,000 and assessed permanent disability at 20%.
11. The respondent closed his case without adducing any evidence or calling any witnesses. However, the medical report by Dr, Malik was produced by consent of the parties.
12. Subsequently, the trial court rendered a judgment dated 7th November 2023, and held the respondent 100% liable for causing the accident and awarded the appellant quantum as follows: -
 - a. General damages-----Kshs 300,000
 - b. Special damages-----Kshs 84,680
 - c. Cost of future treatment.....Kshs. 130,00
 Total-----Kshs 514,680
13. However, the appellant is aggrieved by the decision of the trial court based on the following grounds: -
 - a. That the learned Magistrate erred in law and fact in failing to consider adequately or at all the submissions by the appellant and the authorities submitted.
 - b. That the learned Magistrate erred in law in awarding general damages which were so inordinately low as to represent an entirely erroneous estimate of the compensation due to the appellant, owing to the nature of the injuries sustained and the residual disabilities there to.



14. Consequently, the appellant prays for the following orders: -
 - a. That the lower court assessment on general damages be set aside and the same be enhanced by this court to Kshs. 800,000.
 - b. Costs of the appeal to the appellant
15. The appeal was disposed of by way of written submissions. The appellant submitted that Kshs. 300,000 awarded as general damages is inordinately low as to constitute an erroneous assessment of the damages payable. He faulted the trial court for failing to be guided by precedent which are binding upon the court or distinguish them for good reason existed.
16. That the trial Magistrate erred in holding that the injuries in the authorities he relied on were more severe yet they were comparable.
17. That he proposed an award of Kshs. 800,000 guided by the case of Daniel Oduor Shieuda vs Christopher Wambugu [2021] eKLR where the appellant sustained a fracture of the left leg tibia and left fibula which was fixed with a metallic K nail. That the injuries were similar on all fours with the injuries he had sustained.
18. That in addition, in the case of Stanley Karanja vs Riddon Anyangu Mutumbwa [2019] eKLR the claimant sustained a fracture of the left tibia malleolus and fracture of the left fibula malleolus which injuries were similar to the injuries herein.
19. The appellant further submitted that the trial court erred in failing to consider inflationary trends. That, the trial court in awarding the general damages was guided by the case of Harun Muyona Boge vs Daniel Otieno Agulo [2015] eKLR which related to an accident that occurred in the year 2010 and the award was made in the year 2015, being a period of eight and half (8 ½) years from the date of impugned judgment herein.
20. That while the award of Kshs. 300,000 was reasonable compensation in the year 2015, it is inordinately low for an award made in the year 2023 considering inflation of a period eight and half (8 ½) years.
21. However, the respondent in response submissions cited the case of Butt vs Khan [1978] eKLR where the Court of Appeal stated that an appellate court will seldom interfere with a trial court's award of damages as assessment is an exercise of discretion unless an award is inordinately high or low thereby constituting an erroneous estimate.
22. The respondent further cited an extract from the book Measure of Damages for Bodily Injuries by Rtd Justice Kuloba that members of the appellate court are anxious to ensure damages are adequate for injuries suffered and help parties arrive at a fair and just figure.
23. The respondent submitted that the general damages awarded by the trial court were not inordinately low but reflected the principles applicable to the award of damages including the principle of compensation which requires that a plaintiff receive no more and no less than the actual loss, such that it is fair to both the plaintiff and defendant.
24. That, the trial court considered the authorities relied on by both parties and gave clear and well-reasoned pronouncements on the same and was instead guided by the case of Harun Muyona Boge vs Daniel Otieno Agulo where the court awarded the plaintiff Kshs. 300,000 as general damages for fracture of the tibia and fibula and soft tissue injuries, and permanent disability assessed between 5% to 25%.



25. Furthermore, that the trial court was equally guided by the medical reports of both Dr. Malik and Dr. Omuyoma, though it placed more reliance on the medical report by Dr. Malik, who is a consultant orthopaedic surgeon, which indicated the appellant had fully recovered with no permanent incapacity and only used crutches for two (2) months before he was able to walk without any assistance.
26. The respondent lastly, submitted that the trial court was cognizant of inflation trends and maintained the award as per the most relevant authority from the High Court in the year 2021.
27. The appeal is considered on the grounds thereof and noted that, it is generally on quantum and in particular general damages and future medical expenses.
28. In that regard, I note that, the law is settled that, while assessing damages at the appeal stage, the appellate court will not interfere with the trial court's decision on quantum unless in exercising that discretion the court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice as held in the cases of; Mbogo & another Vs Shah (1968) EA and Mkube -vs- Nyamuro 1983 KLR 403.
29. Further the Court of Appeal in *Loice Wanjiku Kagunda vs. Julius Gachau Mwangi* [CA 142/2003](#) (unreported) stated that: -

“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (see *Manga vs Musila* [1984] KLR 257).”
30. In the instant matter, I note that the respondent pleaded to the injuries suffered at paragraph 4 of the plaint as follows: -
 - a. Closed mid shaft right tibia and fibula fracture
 - b. Severe soft tissue injuries on the right leg
31. In support of the injuries he produced a medical report by Dr. Obed Omuyoma, discharge summary from Nakuru Level 5 Hospital, and the P3 form which notably is illegible.
32. Be that as it were, the medical report by Dr. Obed Omuyoma dated 6th May 2021 produced by the appellant reflects the injuries as pleaded in the plaint. It further states that, the appellant was admitted for three (3) weeks and taken to theatre and open reduction internal fixation done. That the X-ray done after the surgery revealed the intramedullary nail is in situ. Dr. Omuyoma assessed the permanent disability at 20% and recommends Kshs. 200,000 for removal of the implants.
33. The discharge summary from Nakuru Level 5 Hospital confirms a closed tibia and fibula fracture at mid shaft. That the appellant was taken to theatre for intramedullary nailing of right tibia.
34. The medical document by Dr M. S. Malik, confirm the fractures with slight displacement of the bones. Further, it confirms internal fixation with an intra-medullary interlocking metal nail and screws.
35. However, Dr. Malik departs from Dr Omuyoma's observations and states that there is no degree of permanent physical disability. Furthermore, whereas Dr. Omuyoma says that the appellant will require Kshs. 200,000 for removal of the implant, Dr. Malik puts it at Kshs. 50,000.



36. However, before considering the variance, it is noteworthy that this court has the benefit of reading appellant's submissions in the trial court. Having done so, it is noted that the appellant referred to three decisions as follows:-
- a. Stanley Karanja vs Riddon Anyangu Mutumbwa [2019] eKLR where the respondent sustained a fracture of the left tibia malleolus and fracture of the left tibia malleolus with pain on the left ankle joint, swelling on the left ankle and foot with permanent assessed at 10% and the High Court awarded Kshs. 700,000 as general damages.
 - b. Daniel Oduor Shieuda vs Christopher Wambugu [2021] eKLR where the appellant sustained a fracture of the left leg tibia and left fibula which was fixed with a metallic K nail and permanent disability assessed at 12% and the High Court awarded Kshs. 800,000 as general damages.
 - c. Gitau Peris vs Gerald Njoroge Chege [2020] Eklr where the respondent sustained a head injury with deep cut wound right occipital scalp, laceration wound right shoulder, blunt trauma with swelling left hand, compound fracture right tibia/fibula with permanent disability assessed at 30% and the High Court awarded Kshs. 800,000 as general damages.
37. However, notably the respondent's submissions in the record of appeal are incomplete. It was hoped that the same would be availed in time but they were not availed.
38. However, I gathered from the trial court's judgement the respondent referred to three decisions as follows: -
- a. Amritlal S. Shah Wholesalers Ltd & another vs Joshua Ekeno Eldoret HCCA No. 99 of 2010 where the plaintiff sustained compound fractures of the tibia and fibula, he lost consciousness and came to at Moi Teaching and Referral Hospital where he was admitted for 2½ weeks. That at the time of testifying he could not walk long distances and his leg was deformed with the doctor concluding the leg would not be able to bare excessive weight as before and the High Court upheld an award of Kshs. 350,000.
 - b. Daniel Otieno Owino & another vs Elizabeth Atieno Owour [2020] eKLR where the plaintiff sustained compound fractures of the tibia/fibula bones on the right leg, deep cut wounds and tissue damage on the right leg, head injury with cut wound on the nose and blunt chest and the High Court awarded Kshs. 400,000 as general damages.
 - c. Tabro Transporters Ltd vs Absalom Dova Lumbasi [2015] eKLR where the High Court awarded KShs 400,000 as general damages to the plaintiff who sustained blunt trauma to the chest, blunt trauma to the back, blunt trauma to the spinal column, swollen left leg and fracture of the left tibia and fibula.
39. Notably the the amount awarded in the decisions cited by the appellant range between Kshs 700,000 to Kshs 800,000, while the in decisions cited by the respondent's they range between Kshs 350,000 to Kshs. 400,000.
40. In considering the submissions of the parties, the trial court in its judgment stated as follows :-
- ” The injuries sustained in the aforesaid authorities, I find to be more severe and incomparable to the present case. I'm guided by Harun Muyona Boge vs Daniel Otieno Agulo HCCA 86/2021 in which the court awarded Kshs. 300,000 for fracture of the tibia



and fibula and soft tissue injuries. Permanent disability was assessed at between 5-25% by the two doctors who examined him.”

41. However, although the trial court states that the submissions of the parties were considered there is no analysis thereof in the trial court’s decision and therefore difficult for this court to appreciate comparability of injuries in each case and how the general damages were assessed. Further, it is not clear whether the court found injuries to be severe, in the authorities cited by both parties or appellant’s only.
42. I have taken a deep analysis of the authorities cited by the plaintiff, and I hold the view that they were comparable, for all intent and purpose, and generally comparable to the injuries herein. If the trial court had compared the injuries in the decisions cited by the appellant and herein, the trial court would have arrived at a different decision.
43. In the same vein, the trial court relied on the decision of Harun Muyona Boge vs Daniel Otieno Agulo HCCA 86/2021 stating that the injuries were very comparable and awarded Kshs. 300,000 as general damages. However, a reading of that decision reveals it was not rendered in the year 2021 but in the year 2015 as reflected and indicated in the appellant’s submissions.
44. Further taking into account that the decision relied on by the trial court was given in the year 2015, considering the issue of inflation, the award will not be the same now, considering that the accident herein occurred in the year, 2021 that is over six (6) years ago and the award made on 7th November 2023, eight (8) years ago from the decision relied on by the trial court.
45. Be that as it may, the purpose of general damages is to award for pain and suffering. How do you ascertain the extent of pain and suffering? It is my holding that among the things that the Court should consider is not just the injury sustained, but the extent of those injuries, if they required any hospitalization, the length of hospitalization and the process that the victim went through, for instance if the victim went to theatre and how many times.
46. The court takes judicial notice of the fact that the more time the victim goes to theatre; the more pain he goes through. As such, an award of general damages should not just consider the injuries pleaded. For example, a victim may have a fracture that healed in two days or took a long period of time, therefore these other issues beyond the pleadings should be taken into account.
47. Having considered the aforesaid, I find that the award of general damages calls for interference, consequently, and I set aside the award of Kshs. 300,000 and substituted with a sum of Kshs. 600, 000, noting that the appellant has already been awarded special damages, which is basically reimbursement of the sums incurred, and the award for future medical expenses.
48. On the issue of future medical expenses, there were two reports that were conflicting. The report by Dr. Omuyoma indicates a sum of Kshs. 200,000, while the report by Dr. Malik propose Kshs. 50,000. The only way that that position would have been reconciled was to call for a third report to reconcile the two. That was not done.
49. In my considered opinion, the trial court did the best it could do in the given circumstances, and I have no reason to interfere with what was given as an award for future medical expenses.
50. In the end, the award in this matter is as follows: -
 - a. General damages-----Kshs. 600,000
 - b. Special damages-----Kshs. 84,680
 - c. Future medical expenses-----Kshs. 130,000



- d. Total-----Kshs. 814,680
- e. Interest from the date of this judgment to payment in full
- f. Each party to meet its own costs of this appeal.

51. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 19TH DAY OF MARCH 2025.

GRACE L. NZIOKA

JUDGE

In the presence of

Mr. B. G. Wainaina for the appellant

Mr. Kairu for the respondent

Hannah: Court assistant

