



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngure & another v Ngugi (Civil Appeal E001 of 2023)  
[2025] KEHC 3096 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL**

**CIVIL APPEAL E001 OF 2023**

**KW KIARIE, J**

**MARCH 6, 2025**

**BETWEEN**

**JOHN NGURE ..... 1<sup>ST</sup> APPELLANT**

**JOHN MUTURI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOHN KIHARA NGUGI ..... RESPONDENT**

*(Being an Appeal from the judgment and decree in Engineer Principal Magistrate's  
PMCC No. E218 of 2022 by Hon. H.O. Barasa – Senior Principal Magistrate)*

**JUDGMENT**

1. John Ngure and John Muturi, the appellants, were the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants in Engineer Principal Magistrate's PMCC No. E218 of 2022. They had been sued for a claim of general and special damages following a road traffic accident involving motor vehicle KCU 542W, where the respondent was travelling as a passenger. The motor vehicle was involved in an accident, and the respondent sustained injuries. The learned trial magistrate held the appellant 100 per cent liable. The respondent was awarded Kshs. 200,00.00 in general damages.
2. The appellants were aggrieved by the judgment on quantum and filed this appeal through Kimondo Gachoka & Company Advocates. They raised the following grounds of appeal:
  - a. The learned magistrate erred in law and, in fact, by awarding the respondent general damages of Kshs. 200,000/=, which is an inordinately high and excessive award in the circumstances.
  - b. The learned magistrate erred in fact and law in failing to consider conventional awards in cases of a similar nature.



- c. That the learned trial magistrate erred in law and fact by failing to consider the nature of the injuries suffered by the respondent, thus arriving at a wrong finding.
  - d. That the learned Magistrate's decision was unjust, against the weight of evidence, and based on misguided points of facts and wrong principles of law, which has occasioned a miscarriage of justice.
  - e. The learned magistrate erred in law and fact when he over-relied on the respondent's submissions and erroneous law principles in arriving at the award herein.
3. The respondent opposed the appeal through Wanjohi Wawuda & Company Advocates. It was argued that the appeal lacked merits.
  4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
  5. The appeal is on the quantum assessed in general damages. Before an appellate court can interfere with an award of damages, it must be satisfied that the applied a wrong principle of the law, considered some irrelevant factors or left out some relevant ones or that the award is so inordinately low or so inordinately high. These principles were laid down by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951]AC 601 on page 613, where it held:

The principles which apply under this head are not in doubt. Whether the assessment of damages is by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have granted a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of the law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages (*Flint vs Lovell* [1935] 1KB 354) approved by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941]AC 601.
  6. The respondent sustained the following injuries:
    - a. Blunt injury to the head leading to soft tissue injuries.
    - b. Blunt injury to the right shoulder joint leading to soft tissue injuries.
    - c. Blunt injury to the left leg leading to soft tissue injuries.
  7. In the trial court, the appellants did not file any submissions to guide the court on quantum, and they have not filed any submissions in this appeal.
  8. In the case of *Ochieng & another v Kariuki* (Civil Appeal E073 of 2023) [2024] KEHC 11930 (KLR), an award of Kshs.400,000.00 was upheld. The respondent had sustained blunt soft tissue injuries to the head, chest, back, and pelvis(trunk). He continued to experience pain in the trunk. These are comparable injuries to the ones suffered by the respondent in this case. I find no basis to disturb the ward.
  9. The appeal is dismissed with costs.



**DELIVERED AND SIGNED AT NYANDARUA THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

