



REPUBLIC OF KENYA



**Oyaro v Mwanyonyi (Civil Appeal E035 of 2023)
[2025] KEHC 5214 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E035 OF 2023
AN ONGERI, J
MARCH 20, 2025**

BETWEEN

DARIUS MOSOTI OYARO APPELLANT

AND

MATILDA NG'ANDU MWANYONYI RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. D. Wangeci (SPM)
in Wundanyi SPMCC No. E051 of 2021 delivered on 28th July 2023)*

JUDGMENT

1. The Respondent sued the Appellant in Wundanyi CMCC seeking general damages and costs of the suit for injuries the Respondent sustained in a road traffic accident.
2. The issue of liability was determined in a test suit being Wundanyi PCMCC No. 056 of 2021 Benson Ngodo =Versus= Darius Mosoti Oyaro.
3. The trial court assessed general damages at Kshs. 200,000/= and special damages at Kshs. 2,550/= making a total award of Kshs. 202,550/=.
4. The Appellant appealed against the award on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact in his award arriving at unjust decision, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - ii. That the learned trial Magistrate erred in fact and in law reaching a decision that was thus unjust, against the weight of evidence and was misguided to awarding the Respondent an amount of general damages Kshs. 200,000/= special damages Kshs. 2,550/= plus costs and interest of the suit an amount that is considered excessive in a number of precedents regarding such injuries.



- iii. That the learned trial Magistrate erred in fact and in law in awarding a huge award for the injuries sustained by the Claimant in this suit which were: bruises to the right arm and left leg which are considered very minor soft tissue injuries and not enough to attract the huge award that was given by the learned Magistrate.
 - iv. That the learned trial Magistrate erred in law and in fact in disregarding the Defendant's submissions on the issue of calculation on quantum thus awarding an inordinately high amount.
5. The parties filed written submissions as follows:-
 6. The appellant submitted that the appeal arises from a judgment delivered on 28th July 2023 in Wundanyi CMCC No. 51 of 2021, where the Appellant was held liable and ordered to pay Kshs. 200,000 as general damages to the Respondent.
 7. The Appellant is appealing the judgment on the grounds of quantum only.
 8. The Appellant argues that the Kshs. 200,000 awarded by the Trial court was excessive given the nature of the injuries sustained by the Respondent.
 9. That the Respondent's injuries, as per the plaint and medical report by Dr. Darius Wambua Kiema, included bruises, abrasions, blunt trauma, and a sprained ankle. These were classified as soft tissue injuries with no permanent disability.
 10. The Appellant contends that the injuries were minor and should warrant a lower compensation, suggesting Kshs. 50,000 as adequate.
 11. The Appellant cited several cases to support their argument that the damages awarded should be proportionate to the injuries:
 - i. HB v Jasper Nchonga Magari & another [2021] eKLR where Kshs. 60,000 awarded for soft tissue injuries.
 - ii. Eva Karemi & 5 others v Koskei Kieng & another [2020] eKLR where awards ranging from Kshs. 40,000 to Kshs. 70,000 for similar injuries.
 - iii. James Kwanya Rege v Lizzy Awuor & Loice Mbone Cweya where Kshs. 80,000 awarded for blunt trauma and bruises.
 12. The Appellant requests the court to set aside the trial court's judgment and reassess the quantum, proposing Kshs. 80,000 as adequate compensation.
 13. The Respondent submitted that this case is an appeal from a judgment delivered by the Senior Principal Magistrate in Wundanyi, where the Appellant was held 100% liable for a road traffic accident that occurred on 2.10.2021, in which the Respondent sustained injuries.
 14. That the Respondent was involved in a road traffic accident while traveling as a passenger in the Appellant's vehicle.
 15. That the Respondent filed a suit seeking damages for injuries sustained, and the Appellant was found 100% liable in a related test suit (Wundanyi SPMCC No. E056 of 2021).
 16. That the trial court awarded the Respondent Kshs. 200,000 for general damages (pain, suffering, and loss of amenities) and Kshs. 2,550 for special damages.



17. The Respondent argues that the assessment of damages is within the discretion of the trial court, and an appellate court can only interfere if the trial court applied wrong principles, considered irrelevant factors, or if the award is inordinately high or low.
18. The Respondent cited case law (e.g., Catholic Diocese of Kisumu vs. Tete) to support the principle that comparable injuries should attract comparable awards, considering inflation and recent precedents.
19. The Respondent further submitted that he sustained injuries including bruises, abrasions, blunt trauma, and a dislocated clavicle, as documented in medical reports.
20. That the trial court awarded Kshs. 200,000, which the Respondent argues is fair and consistent with recent awards for similar injuries.
21. The Respondent cites another recent case of Musa Were Musakiwe vs. Silver Style Investment Company Limited where the High Court enhanced an award to Kshs. 200,000 for similar injuries.
22. The Respondent contends that the Appellant failed to demonstrate how the trial court erred in its assessment or applied wrong principles.
23. The Respondent seeks the dismissal of the appeal and affirmation of the trial court's award.
24. 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”.
25. The sole issue for determination is whether the award of Kshs. 200,000/= is excessive.
26. I have considered the submissions by both parties. The Respondent suffered the following injuries:-
 - i. Bruises and abrasions on the forehead.
 - ii. Bruises and abrasion on the right shoulder.
 - iii. Bruises and abrasions on the right forearm.
 - iv. Blunt trauma to the back.
 - v. Blunt trauma to the left leg.
 - vi. Sprain and strain left ankle joint.
27. The trial court relied on the case of *Equity Bank Kenya Ltd & 2 Others* versus *David Githuu Kuria* (2020) eKLR where Kshs. 250,000/= was awarded for similar injuries.
28. I find that the trial court was guided by the principle of comparable damages.
29. Taking into account inflationary trends I find the award of Kshs. 200,000/= reasonable for soft tissue injuries.
30. The only occasion the trial court can tamper with an award is when the trial court relied in the wrong principles and arrived at an erroneous decision or where the award is too high or too low as to warrant interference.



31. I find that this appeal lacks in merit and the same is dismissed with costs to the Respondent.

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

