



**Watu Credit Co Limited v Matere (Civil Appeal E055 of 2023)
[2025] KEHC 2608 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E055 OF 2023
REA OUGO, J
MARCH 13, 2025**

BETWEEN

WATU CREDIT CO. LIMITED APPELLANT

AND

STEPHEN WANYAMA MATERE RESPONDENT

*(An Appeal from the judgment of Hon. John O. Manasses PM
delivered on 11.5.2023 in Sirisia PMCC No. E066 of 2022)*

JUDGMENT

1. The respondents sued the appellant via a plaint dated 14.7.2022 for general damages and special damages. An accident occurred on 13.3.2022 along Kimwanga Siboti involving the appellant's motorcycle registration number KMFV 532H TVS STAR and motor vehicle registration number No. KCK 235V. The respondent was a pillion passenger aboard motorcycle registration number KMFV 532 H Tvs Star. The respondent sustained the following injuries as a result of the said accident: Head injury with loss of consciousness, Depressed skull fractures, cut wound on the forehead, laceration, 7 bruises on the right shoulder and laceration on the right elbow.
2. The parties recorded a consent on liability in the ratio of 80:20% in favour of the respondent against the appellant. The trial magistrate in his judgment, awarded the respondent general damages of Kshs. 750,000/-and special damages of Kshs 11950/-The appellant being dissatisfied with the award, filed this appeal. The appellant has 3 grounds of appeal as follows;
 - i. The learned Trial Magistrate erred in law and fact in awarding general damages of Kshs. 750,000/- for pain suffering and loss of amenities which award was too high, excessive, unmerited and not commensurate with the injuries suffered by the respondent.
 - ii. The Learned trial Magistrate erred in law and or fact in awarding special damages which had not been specially pleaded and strictly proved to the standard required in law.



- iii. The Learned trial Magistrate applied the wrong principles and or he failed to apply the correct principles in determining the award of damages leading him into error and his awards were excessive, unlawful, indefensible, unmerited and unjust and have resulted in a miscarriage of justice.
3. The appellant seeks that the appeal be allowed with costs and that the judgment and or awards on both general and special damages be revised and or set aside and the same be substituted with reasonable and lawful award.
4. The appeal was canvassed by way of written submissions. I have read and considered the said submissions. The appellant in its submissions, argues the court should avoid astronomical awards and strive to ensure that the final award makes sense and finally compensates the claimant (see *Kigaraari vs Aya* (1982-88) 1KAR 786 *Ugenya Bus Services vs Gachoki NKU CA Civil Appeal No.66 of 1991(1982) eKLR* and *Jabane vs Olenja* (1986) KLR661). According to the appellant, Doctor J.C. Sokobe, in his medical report, confirmed that the respondent's injuries as having permanently healed with no disability. It is submitted that the trial magistrate overlooked and disregarded the evidence and arrived at a figure that was inordinately high and excessive. The trial magistrate failed to consider the authorities cited by the respondent. It is the opinion of the appellant that a sum of Kshs 500,000/- would suffice. Reliance was made on 3 cases namely; *Nairobi HCCA No. 235 of 2019 Specialized Aluminium Renovators Ltd & Another vs Stephen Mutuku*, *Naivasha HCC No. 19 of 2018 Moiz Motors Ltd & Another vs Harun Ngethe Wanjiru* and *Telkom Orange Kenya Limited vs ISO* minor suing through his next friend and mother *JN (2018) eKLR*.
5. The respondent argues that the award by the trial court was not manifestly high. The respondent submitted that the appeal is not competent as there is no certified copy of the decree in the Record of Appeal. Reliance was made on the following case; *Bwana Mohamed Bwana vs Silvano Buko & 2 Others [2015] eKLR* the Supreme Court held as follows;
- “Without a record of appeal, a Court cannot determine the appeal cause before it. Thus if the requisite bundle of documents is omitted the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise the adjudicatory powers conferred in law, or *the Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues”
6. Reliance was also made on the following cases; *Chege vs Suleiman [1988]eKLR* and *Kilonzo David t/a Silver Bullet Bus Company vs Kyalo Kiliku & Another [2018] eKLR*, *Paul Karenji Leshuel vs Ephantus Kariithi Mwangi vs Another [2015] eKLR*, *Rachael Wambui Nganga & Another vs Rahab Wairimu Kamau [2020] eKLR* and *Ruth Anyolo vs Agetta Oiyela Muyeshi [2019] eKLR* and *Nancy Wamuyu Gichobi vs Jane Wawira Gichobi [2018] eKLR*. It was further submitted that the award by the trial court was reasonable, given the nature of the injuries sustained by the respondent and the authorities cited. The respondent sought to have the appeal struck off and /or dismissed with costs to the respondent.
7. As a first appellate court, this court has to examine matters of both law and facts and subject the whole of the evidence to fresh before concluding that analysis.



Analysis And Determination

8. I have considered the written submissions, the record, and cited cases. In my view, the issues for determination in this appeal are; is the appeal incompetent for failure to annex a decree in the record of appeal, and was the award of Kshs. 750,000/- for general damages too high and or excessive.

On whether the appeal is incompetent for failure to include the decree in the record of appeal

9. Section 65(1)(b) of the Civil Procedure Act provides:

“(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—

(b) from any original decree or part of a decree of a subordinate court, on a question of law or fact;

Order 42 Rule 2 of the Civil Procedure Rules provides as follows:-

“Where no certified copy of the decree or order appealed against is filed with the Memorandum of Appeal, the Appellant shall file such certified copy as soon as possible and in any event within such a time as the court may order, and the court need not consider whether to reject the Appeal summarily under Section 79B of Act until a copy is filed.”

10. I have perused the record of appeal. The appellant has not attached a certified copy of the decree of the judgment delivered on 11.5.2023. The lower court file, which is attached to the appeal file too, does not have a decree or even a letter requesting for the decree. The appellant only attached a copy of the judgment. The appellant did not respond to this issue in their written submissions. The Supreme Court of Kenya, in the case of *Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 others* [2015] eKLR held as follows:

“Without a record of appeal, a Court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or *the Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.”

11. This court is bound by the Supreme Court decision, failure to include a decree is fatal as the same goes to the root of the appeal and jurisdictional aspect of the court. The appeal is, therefore incompetent in the absence of a certified copy of the decree.

On whether the award on general damages was excessive.

12. On the issue of damages, it is now settled that the award of damages is within the discretion of the trial court and the Appellate court would only interfere on grounds that, the court acted on wrong principles or that the award is so excessive or so low that no reasonable tribunal would have awarded or that the court has taken into consideration matters which it ought not to have or left out matters



it ought to have considered and in the result arrived at wrong decision. (See Butler Vs Butler (1984) KLR 225).

13. The respondents sustained the following injuries; head injury with loss of consciousness, depressed skull fractures, cut wound on the forehead, lacerations & bruises on the right shoulder and lacerations on the right shoulder. The appellant does not dispute the injuries. The trial court relied on the case of Maintenance Ltd and Another vs W.A CA minor suing through the father and next friend (KH) Eldoret HCCA No. 52 of 2007 (2015) eKLR , where the plaintiff who suffered a fracture at the base of the skull, comminuted complex mandibular fracture, loss of incisor tooth, right eye vertical dystopia on the left temporal region, these injuries were of a more serious nature than the respondent in this case. The High Court upheld an award of Kshs. 800000/-. The respondent also relied on the case on the following cases ,of Nairobi HCCA No. 235 of 2019 Specialized Aluminium Renovation ltd & Another vs Stephen Mutuku Musyoka where a plaintiff who suffered the following Fracture of the frontal nasal bones, fracture of the right orbit , frontal lobe haemorrhage contusion and bleeding into sinuses, was awarded Kshs. 500,000/- . Naivasha HCCA No. 19 of 2018 Moiz Motors Ltd and Another vs Harun Negthe Wanjiru where the plaintiff who suffered the following injuries for multiple facial lacerations; depressed skull frontal bone, soft tissue injury right upper chest, multiple bruises both hands dorsal aspect, multiple bruises both hips, swollen toes right leg and bruise on both knees was awarded Kshs. 500,000/-. The respondent was treated at Lifecare Hospitals on the 13.3.2022 and report by Dr. Wabomba a radiologist indicates that the respondent suffered high frontal-parietal paramidine linear minimally depressed skull fracture with small volume intracerebral contusion haemorrhages and left frontal small volume tension pneumocephalus. A medical report by Doctor Soboke dated 9.6.2022 indicates that injuries the respondent suffered as indicated in his plaint and his conclusion is that the respondent sustained both soft and skeletal (fracture) tissue injuries from which he has recovered. In the case of Mbeva v Kenya Malik Limited & another (Civil Appeal E003 of 2022) [2023] KEHC 23269 (KLR) the 2nd respondent/plaintiff who suffered the following injuries calvarian and facial comminuted minimally depressed fractures, tension pneumocephalus, ccerebral oedema, maxillary and ethmoid hemo/CSF pneumosinuse, scalp and facial soft tissues oemema and emphysema, llacerations behind the left ear and above the right eye, was awarded Kshs. 500,000/-. The plaintiff's injuries are comparable with the respondent in the instant case. Considering all the cases cited, I find that an award of Kshs 500,000/-, would suffice for the injuries the respondent suffered. This is the amount I would have awarded the respondent. The appellant did not oppose the special damages at the hearing of this appeal. I however, find that the special damages were proved.
14. However, the appeal is incompetent and is therefore dismissed with costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 13TH DAY OF MARCH 2025.

R.E.OUGO

JUDGE

In the presence of:

Appellant - Absent

Miss Chebet h/b for Mr. Okara For the Respondent

Wilkister - C/A

