



**Watu Credit Co. Limited v Wanjala (Civil Appeal 54 of 2023)
[2025] KEHC 2953 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 54 OF 2023
REA OUGO, J
MARCH 13, 2025**

BETWEEN

WATU CREDIT CO. LIMITED APPELLANT

AND

EZRA SIUNDU WANJALA RESPONDENT

*(An appeal from the judgment dated 11.5.2023 delivered
by Hon. J.O.O. Manasses in PMCC No. E067 of 2022)*

JUDGMENT

1. The respondents sued the appellant vide a plaint dated 14.7.2022 for general 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 sustained the following injuries: lacerations, bruises on the right knee, bruises on the right shoulder, and lacerations on the right side.
2. The parties recorded a consent on liability in the ratio of 80:20% in favor of the respondent against of the appellant. The trial magistrate in his judgment awarded the respondent general damages of Kshs. 350,000/- and special damages of Kshs. 6,000/- The appellant being dissatisfied with the award filed this appeal. The grounds of appeal are that;
 - i. The Learned trial Magistrate erred in law and fact in awarding general damages of Kshs. 350,000/- for pain, suffering, and loss of amenities which the 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 specifically pleaded and strictly proved to the standard required in law.



- iii. The learned trial Magistrate applied 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 that the award of general and special damages is excessive and that there was no justification for the said award as it was not commensurate with the injuries occasioned by the respondent. The injuries were less severe than the authorities cited and relied upon by the Learned trial Magistrate and not persuasive. The appellant suggests an award of Kshs. 80,000/- . Reliance was made in the case Kakamega HCCA No. 19 of 2017 (suing as next friend of S.K. Minor) vs. Victor O. Kamadi & Another and Buds & Bloom Ltd vs Lawrence Emusugut Obwa (2016) eKLR where the court of appeal reduced the award made by the trial court of Kshs. 70,000/- and substituted it with Kshs. 50,000/- for soft tissue injuries to the leg and a deep-cut wound on the left leg.
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 cases; 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 Karenyi 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. 350000/- 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 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 its 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. The trial court awarded the respondent Kshs. 350,000 general damages. The appellant claims that the amount is excessive. The respondent suffered soft tissue injuries, lacerations bruises on the right knee, bruises on the right shoulder, and lacerations on the right leg. The injuries were confirmed as having permanently healed with no disability, as stated in the medical report by Doctor Sokobe. It was submitted that an award of Kshs.80,000 would suffice. Reliance was made in the case of *D.F(suing as the next friend of S.K minor) vs Victor O. Kamadi & Another Kakamega HCCA No. 19 of 2017* and *Buds & Bloom Ltd vs Lawrence Emusugut Obwa* (2016) eKLR.
13. The respondent was of the view that the award by the trial court was reasonable given the nature of injuries that were sustained by the respondent.
14. 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).

15. The injuries the respondent sustained were soft tissue injuries and is not contested. After considering the authorities cited it is my view that the injuries sustained by the appellant herein were less severe in nature than the cases relied on by the trial court. In the case of Catherine Wanjiru Kingori & 3 others vs Gibson Theuri Gichubi (2005) eKLR the 3rd plaintiff suffered multiple soft tissue injuries and was awarded Kshs. 350000/-. In the case cited by the appellant Buds & Bloom Ltd vs Lawrence Emusugut Obwa (supra), the plaintiff who suffered soft tissue injuries to the leg and deep cut wounds on the leg was awarded. It's a case with comparable injuries, but the award was made in 2016. I would have awarded the respondent Kshs. Between Kshs 80,000/- to Kshs.100,000/- On special damages the respondent proved a sum of Kshs 6150/- .
16. 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

