



**Kimeu v Mwakio (Civil Appeal E053 of 2024)
[2025] KEHC 5362 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E053 OF 2024
AN ONGERI, J
APRIL 24, 2025**

BETWEEN

PASCAL MBONDO KIMEU APPELLANT

AND

GABRIEL MWAMBILI MWAKIO RESPONDENT

*(Being an appeal from the judgment and decree of Hon. D. Wangeci
(SPM) in Voi CMCC No. 43 of 2022 delivered on 22nd July 2024)*

JUDGMENT

1. The appeal herein arises out of a judgment which was delivered on 22nd July 2024 in Voi CMCC No. 43 of 2022.
2. The Respondent sued the Appellant in that case seeking general damages and special damages for injuries the Respondent sustained in a Road Traffic Accident (RTA) that occurred on or about 28th October 2022 at the junction of Voi Taveta Road.
3. The accident involved motor vehicle registration No. KDD 665K in which the Respondent was lawfully travelling as a passenger when the said motor vehicle lost control and veered off the road landing on a trench and as a result of the Road Traffic Accident, the Respondent sustained serious injuries.
4. The Appellant denied negligence and also occurrence of the said Road Traffic Accident and alleged that the Respondent gave false evidence to the police and uttered a false document namely a false police abstract obtained irregularly to advance a fraudulent claim.
5. The Respondent evidence was that the motor vehicle registration number KDD 665K Nissan Matatu was being driven from Wundanyi towards Mwatate when it lost control and landed in a ditch.



6. The Respondent testified as PW3 said she suffered the following injuries:-
 - i. Blunt trauma to the head.
 - ii. Blunt trauma to the lower back.
 - iii. Cut and laceration nasal area.
 - iv. Bruises and abrasions left knee.
 - v. Complaint of abdominal pains and headache.
7. The trial court found the Appellant 100% liable in negligence and awarded general damages as follows:-

General damages for pain and suffering Kshs. 300,000/=

Special damages Kshs. 2,000/=

Total __Kshs. 302,000/=
8. The Appellant has appealed to this court against both liability and quantum 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. 300,000/=:, special damages Kshs. 2,000/= plus costs and interest of the suit an amount that is considered excessive in a number of precedents regarding soft tissue 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 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 disregarding the Defendant's submissions on the issue of calculation on quantum thus awarding an inordinately high amount.
9. The parties filed written submissions as follows:-
10. The appellant submitted that the appeal challenges the judgment of Voi CMCC No. 043 of 2022 (delivered on 22nd July 2024), where the Appellant was held liable and ordered to pay Ksh. 300,000 as general damages.
11. The Appellant argued that the award was excessive and seeks a reduction.
12. That the Respondent suffered soft tissue injuries (head trauma, back pain, nasal lacerations, knee bruises, and abdominal pains).
13. The Appellant contends that Ksh. 100,000 or less (preferably Ksh. 80,000) would be fair compensation, citing precedents:
 - i. HB (Minor) v Jasper Nchonga Magari [2021] – Ksh. 60,000 for similar soft tissue injuries.
 - ii. Eva Karemi & 5 Others v Koskei Kieng [2020] – Awards ranging Ksh. 40,000–65,000 for comparable injuries.



- iii. James Kwanya Rege Cases (Homabay, 2021) – Ksh. 80,000 awarded for blunt trauma to the chest, neck, and abdomen (reduced from Ksh. 300,000–400,000).
14. The appellant submitted that the Damages should:
 - i. Be reasonable, not excessive or too low.
 - ii. Compensate, not enrich the claimant.
 - iii. Consider inflation and case-specific facts.
15. The Appellant urged the court to allow the appeal and adjust the award to align with precedent cases.
16. The Respondent submitted that he was injured in a road accident involving the Appellant’s vehicle on 28th October 2022.
17. That the trial court (Wundanyi SPMCCC No. E043 of 2022) held the Appellant 100% liable and awarded:
 - i. General damages (pain & suffering): Kshs. 300,000
 - ii. Special damages: Kshs. 2,550
18. The Appellant appealed only on quantum (general damages), not liability or special damages.
19. The respondent submitted that an appellate court can only interfere with damages if the trial court applied wrong principles, considered irrelevant factors, or ignored relevant evidence or where the award is inordinately high or low (per Catholic Diocese of Kisumu v Tete).
20. That an award should align with recent cases involving similar injuries (Arrow Car Ltd v Elijah Shamalla).
21. That the Respondent’s injuries included blunt head trauma, lower back trauma, nasal lacerations, knee abrasions, and persistent pain.
22. That the award of Kshs. 300,000 is supported by the following recent precedents:
 - i. Joseph Wahinya v Benson Lucheveli (Kshs. 200,000 for similar injuries, adjusted for inflation).
 - ii. East Africa Institute of Certified Studies v Francis Saha Lewis (Kshs. 300,000 upheld for comparable injuries).
 - iii. POA Links Services Ltd v Sindani Boazi (Kshs. 350,000 upheld for similar trauma).
23. That the Appellant failed to prove the award was excessive or based on misapplied principles.
24. Further, that the Appellant merely alleged the award was “inordinately high” without identifying specific errors in the trial court’s reasoning.
25. That the trial court’s judgment (paras 26–32) correctly applied legal principles.
26. That the appeal lacks merit and should be dismissed with costs.
27. The Respondent argued that the trial court’s award was reasonable, precedent-based, and properly exercised judicial discretion, urging the appellate court to uphold it.
28. The first appellate court acts as the last court of facts and must ensure a proper re-evaluation of evidence while correcting any errors in the trial court’s judgment. The first appellate court must re-examine the



entire evidence (oral and documentary) and arrive at its own independent conclusions on facts and law. It cannot simply rely on the trial court's findings but must apply its own mind.

29. The issues for determination in this appeal are as follows:-
 - i. Whether the trial court was right in finding the Appellant 100% liable in negligence.
 - ii. Whether the award of damages was excessive.
30. On the issue of liability the Respondent was a passenger in motor vehicle registration No. KDD 665K and there is no way he would have contributed to the accident.
31. On the issue of quantum of damages, I have considered the submissions by both parties.
32. The Appellant submitted on the cases of Homabay Civil Appeal No. E111 of 2021 James Kwanga Rege =Versus= LA (a minor suing through her father and next friend GAA) where the Plaintiff suffered soft tissue injuries and an award of Kshs. 400,000/= was reduced to Kshs. 80,000/=
33. The Appellant also relied on the case of Homabay HCCA No. 113 of 2021 where an award of Kshs. 300,000/= for soft tissue injures was reduced to Kshs. 80,000/=.
34. I have also perused the authorities relied on by the respondent and I find that the injuries were slightly more serious than in the current case.
35. The Respondent suffered the following injuries:-
 - vi. Blunt trauma to the head.
 - vii. Blunt trauma to the lower back.
 - viii. Cut and laceration nasal area.
 - ix. Bruises and abrasions left knee.
 - x. Complaint of abdominal pains and headache.
36. These are soft tissue injuries with no deep cuts, fractures or incapacity.
37. I find the award of Kshs. 300,000/= excessive in the circumstances and I reduce the same to Kshs 120,000/=.
38. Since the appeal partially succeeded, each party to bear its own costs of this appeal.

DATED, SIGNED AND DELIVERED THIS 24TH APRIL 2025 VIRTUALLY AT COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

