



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Muli v Mwanja (Civil Appeal 12 of 2023) [2025] KEHC 4332 (KLR) (2 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4332 (KLR)

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

CIVIL APPEAL 12 OF 2023

RC RUTTO, J

APRIL 2, 2025

BETWEEN

MARTIN MWENDWA MULI APPELLANT

AND

ROSE MUNYWOKI MWANIA RESPONDENT

*(Being an appeal from the Judgment and orders of Honourable M.A Otindo
in Machakos CMCC No. 496 of 2021, delivered on 14th December 2022)*

JUDGMENT

1. This is an appeal against the quantum. The appeal arises from a judgment and decree in Machakos Chief Magistrate's Court Civil Suit No. 496 of 2021. In the said suit, the Respondent sued the Appellant for general and special damages arising from a road traffic accident in which she sustained bodily injuries.
2. The Appellant was sued in his capacity as the registered owner of the motor vehicle registration number KCW 619G while the respondent was lawfully aboard as a passenger. It was alleged that the motor vehicle was driven negligently as a result of which an accident occurred and the Respondent was injured. Upon hearing the parties, the trial court delivered its Judgment in which she apportioned liability at the ratio of 85% to 15% in favour of the Respondent.
3. The trial Court also awarded both general damages of Kshs.600,000/= and special damages of kshs.3,600/=, resulting in a total net amount of Kshs.513, 060/= payable to the respondent plus interest at court rates from the date of the judgment as well as costs of the suit.
4. The appellant being aggrieved by the judgment lodged this appeal setting out the following grounds that the Learned Magistrate; grossly misdirected herself in treating the evidence and the submissions on quantum before her and consequently coming to a wrong conclusion on the same; erred in fact and law by awarding general damages of Kshs.600, 000/- an amount that was excessive, unjust in the circumstances, considering the nature of injuries and the current decided cases; misdirected



herself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions filed by the appellants; proceeded on wrong principles when assessing damages to be awarded to the Respondent if any and failed to apply precedents and tenets of the law applicable; erred in awarding a sum in respect of damages which was inordinately high in the circumstance was excessive and occasioned miscarriage of justice and failed to adequately evaluate the evidence and exhibits thereby arrived at a decision unsustainable in law.

5. The Appellant prayed that the appeal be allowed and the judgment of the trial Court in Machakos Chief Magistrate Court Civil Suit No 496 of 2021 be set aside.
6. The Appeal proceeded by way of written submissions. As at the time of writing this judgment the Appellant had not filed its submissions. The Respondent's filed submissions dated 14th October 2024.

Respondent's Submissions

7. The Respondent identified two issues for determination which are whether the trial court improperly evaluated the evidence hence arriving at a wrong conclusion and whether the damages of Kshs.600,000/= for pain and suffering awarded were excessive in the circumstances.
8. Regarding the first issue, counsel relied on Section 107 of the *Evidence Act*, as well as the cases of *Kyalo Elly Joy v. Samuel Gitahi Kanyeri* [2021] eKLR and *Autar Singh Bahra & Another v. Raju Govindji*, HCCC No. 548 of 1998 to submit that the Appellant's failure to adduce any evidence meant that the evidence presented by the Respondent remained uncontroverted and unchallenged. Consequently, the Respondent successfully proved her case on a balance of probabilities. Further, counsel argued that an appellate court cannot interfere with the trial court's findings or its apportionment of liability unless it is demonstrated that the decision was manifestly erroneous or based on incorrect legal principles. That in this case, the trial court properly applied the relevant principles in arriving at its decision, and there is therefore no justification for interfering with its findings.
9. On the second issue, the Respondent's counsel submitted that the trial court thoroughly evaluated the evidence on record and exercised its judicial discretion appropriately in making the award. Counsel relied on the case of *Ahmed Mzee Famau t/a Najaa Coach Ltd & Batodo Hangah v. Veronica Ngii Muia aka Veronica Ngui Muiya* [2017] KEHC 8067 (KLR), where the court held that an appellate court should only interfere with a trial court's award of damages if it is inordinately low or excessively high, or if the trial court considered irrelevant factors in reaching its decision.
10. Counsel further submitted that according to the medical examination report presented as evidence by the Respondent, the injuries sustained were more severe than those in the case of *Wafula v. Sietco Development Africa Limited* [2004] eKLR, where the court awarded Kshs. 800,000 as general damages for pain, suffering, and loss of amenities. Therefore, the award of Kshs.600,000 in general damages by the trial court was neither erroneous in law nor in fact. Instead, it was a reasonable and justifiable compensation for the pain and suffering endured by the Respondent as a result of the accident and should not be deemed excessive.
11. The Respondent's counsel urged the court to uphold the trial court's decision and dismiss the appeal with costs.

Analysis and Determination

12. This being a first appellate court, this court is guided by the dictum in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider



and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.

13. Having considered the record of appeal, grounds of appeal, the Respondent's submissions and the authorities relied on, I opine that the sole issue for determination is: Whether the award on general damages was excessively high.
14. The principles upon which this court can interfere with an award of damages made by the trial court are well settled. In *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR, the Court of Appeal held that –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. (Emphasis mine).
15. Additionally, the Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated as follows: -

“comparable injuries should attract comparable awards”.
16. In the present suit, the Respondent's injuries were set out in the Medical examination report by Doctor Cyprianus Okoth Okere as follows: fractures of the right 3rd to 6th posterior ribs, blunt neck injury, blunt injury to the right shoulder, blunt head injury and bruises on the left knee.
17. This court has considered the award of Kshs.600,000/= as made by the trial magistrate. It was based on the authority cited by the Plaintiff at the trial court that is, *Kensilver Express Limited v Nzangu* (Civil Appeal E039 of 2021) [2022] KEHC 10331 (KLR) (20 July 2022) (Judgment) which the court found persuasive and clearly indicated that the ones relied upon by the Appellant were old cases.
18. I have considered other comparative cases where awards for made as follows;
 - a. *K.B Sanghani v Lydia Wanjiku Njuguna & 2 Others* [2016] eKLR the plaintiff therein suffered fracture of the ribs (9th right rib as well as 5th, 6th, 7th, 8th and 9th ribs on the left side), bruised knee and developed chest problems and the court awarded general damages of Kshs.450,000/-
 - b. In *Swift Rides Logistics Limited v Ogambo* (Civil Appeal E006 of 2021) [2022] KEHC 11727 (KLR) (14 June 2022) (Judgment) the particulars of the injuries suffered were as follows; injuries on the neck, on the head, and on the chest; fractures of the right 3rd, 4th, 5th, 6th, 7th, 8th, 9th posterior and 4th auxillary line ribs; injury on the back; an injury on the shoulder and upper arm and on the right ankle.” The court set aside an award of kshs.3,000,000/- and substituted it with an award of kshs.800,000/=.
19. In view of the above cited authorities this court is convinced that the award of Kshs.600,000/= by the trial magistrate was not excessively high and this court will not interfere with it. I therefore dismiss the Appeal with costs.
20. Orders accordingly.



DATED AND DELIVERED AT MACHAKOS THIS 2ND DAY OF APRIL 2025.

RHODA RUTTO

JUDGE

In the presence of;

Mr Oduor for the Appellant

Mr. Nguma for the Respondent

Sam Court Assistant

