



REPUBLIC OF KENYA



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**Mugure v Oira & another (Civil Appeal E357 of 2023)
[2025] KEHC 6163 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6163 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E357 OF 2023
DO CHEPKWONY, J
MAY 8, 2025**

BETWEEN

ESTHER MURIITHI MUGURE APPELLANT

AND

DENNIS OIRA 1ST RESPONDENT

TONE MOTORS 2ND RESPONDENT

((Being an appeal from the Judgment of the Hon. M. A. Opondo (PM) delivered on 6th September, 2023 at Chief Magistrate's Court in Kiambu Civil Suit No.E283 of 2022))

JUDGMENT

1. This Appeal emanates from the judgment of the trial court delivered on 6th September, 2023 by the Hon. M. A. Opondo in Kiambu CMCC No. E283 of 2022. In that Judgment, the trial court found the Respondents therein wholly liable for the road traffic accident which occurred on 1st June, 2022, involving Motor Vehicle Registration Number KBU 761H wherein the Appellant was travelling as a lawfully fore-paying passenger and another Motor Vehicle Registration No.KDE 498B at Ruaka Junction along Limuru Road. The trial court awarded special damages of Kshs. 31,400/=, general damages of Kshs. 50,000/= together with costs and

Interests of the suit to the Appellant as against the Respondents.

2. Being aggrieved with the judgment especially the assessment of quantum, the Appellant lodged the present appeal through the Memorandum of Appeal dated 15th September, 2023 citing the following Grounds of Appeal:-
 - a. That the Learned Trial Magistrate erred in law and in fact in failing to analyse all the relevant evidence availed at the trial and award the Plaintiff the relief sought in the Plaint.



- b. That the Learned Trial Magistrate erred in law and in fact in failing to consider Plaintiff/Appellants submissions and legal authorities tendered before the court and arrived at an award that was manifestly low.
 - c. That the Learned Magistrate erred in law and in fact by failing to find that the Plaintiff had proved his case on a balance of probabilities.
 - d. That the Learned Trial Magistrate erred in law and in fact by failing to take into consideration the nature of injuries the Plaintiff sustained and awarded general damages at Kshs.50,000/=, special damages at Kshs.11,400/= and Kshs.20,000/= for future medical costs.
 - e. That the Learned Trial Magistrate erred in law and in fact by failing to take into consideration the current inflationary trends and using misplaced authorities to arrive at Kshs.50,000/= as General Damages.
 - f. That the Learned Trial Magistrate erred in law and in fact by dismissing the Plaintiff's case by disregarding the Doctrine of Res Ipsa Loguitur.
3. It is the Appellant's prayers that:-
 - a. The Appeal be allowed with costs.
 - b. The Judgment/Decision of Hon. M. A. Opondo delivered on 6th September, 2023 be set aside and/or varied.
 - c. That this Honourable Court to deliver a fresh Judgment based on the evidence on record and submissions of parties on record.
 - d. The costs be awarded to the Appellant.
 - e. Such further orders may be made as this Honourable Court may deem fit.
 4. The Appeal was admitted for hearing on 14th November, 2024 and the Appellant proceeded to file written submissions in support of her appeal.
 5. The Appellant filed submissions dated 10th July, 2024 in support of the appeal and the arguments are that despite the severe injuries sustained, the trial court awarded general damages of Kshs. 50,000/= which was manifestly too low. She submitted that the injuries listed in the Plaint were supported with medical reports prepared by Dr. G.K. Mwaura which were produced at the trial. According to the Appellant, given that the matter proceeded by way of formal proof, the evidence presented was not in any way rebutted or challenged by the Respondents. As such, there was no ground for the trial court to award such inordinately low damages.
 6. The Appellant has relied on the case of Joseph Muita Nthis v Fredrick Moses M. Katuva [2017]eKLR. where the Plaintiff therein sustained an injury to the face, loose teeth 41,31 and 32, loss of two teeth, blunt chest injury and blunt back injury and the court awarded the sum of Kshs. 400,000/=as general damages.
 7. She has also relied on the case of Butt v Khan (1977) 1 KAR to state that this court can only interfere with an award of the trial court if it is based on wrong principles of law so as to arrive at a figure that is inordinately high or low. And on the issue of awarding general damages, this is discretionary on the court and has relied on the case of Kemfro Africa Ltd T/A Meru Express Services & Another –vs- A. M. Lubia and Another (1982-88) KLR 727. She has however asked the court to uphold the award on special damages claiming that it was specifically proven as pleaded. On this line of argument, the



Appellant has placed reliance on the case of Hahn –vs- *Singh Civil Appeal No. 42 of 1983* [185] KLR 716. The Appellant thus urges this court to set aside the award of the trial court on general damages of Kshs. 50,000/= and proceed to reassess the same by taking into account all the relevant factors.

8. The Respondents did not participate in this appeal.
9. It is trite that the duty of the Appellate court is as stated in the case of Abok James Odera T/A A.J Odera & Associates –vs- John Patrick Machira T/A Machira & Co. Advocates [2013] e KLR, where the Court stated that:-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way”

10. This duty was first enunciated in the celebrated case of Selle & Another –vs- Associated Motor Boat Co. Ltd. & Others [1968] EA 123 in the following terms:-

“I accept counsel for the respondent’s proposition that this

court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hammed Saif –vs- Ali Mohamed Sholan (1955), 22 E.A.C.A. 270).”

Analysis and Determination.

11. This Court has considered the grounds cited in the Memorandum of Appeal dated 15th September, 2023 and filed by the Appellant by reading through the record of proceedings and Judgment before the trial Court, the written submissions and cited case and statute law and finds the issues for determination are:-
 - a. Whether the trial Court failed to take into account all the relevant evidence, submissions and cited legal authorities, nature of injuries and the current inflationary trends to arrive at the award on special damages.
 - b. Whether the said award on general damages is manifestly too low.
12. With regard to the first issue, it is trite that this Court can only interfere with discretion of the court in awarding damages if it is based on wrong principles of law. This principle was laid by the Court in the case of Butt –vs- Khan [1981] KLR 349 where it was held thus:

“... An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low...”



13. It is also trite that the court should award damages that are commensurate to the injuries which a party sustained. The principles that guide the court in this respect are not exhaustive. However, this Court associates itself with the approved principles that were laid down in the case of Charles Oriwo Odeyo –vs- Appollo Justus Andabwa & Another [2017] eKLR. In this case, the Court of Appeal stated as follows:-

“The assessment of damages in personal injury case by a court is guided by the following principles:

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- 2) The award should be commensurable with the injuries sustained.
- 3) Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.
- 4) Previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account.
- 5) The awards should not be inordinately low or high”

14. Therefore, taking cue from the principles set out in the above cited case, in essence, this Court ought to interfere with the decision of a trial court where it finds that it was based on an error in principle or in application application of the law. The court has looked at the injuries sustained by the Appellant which were pleaded to be as follows:-

- a. Cut wound on the occipital region (head)
- b. Swollen , tender and painful left frontal parietal scalp (head)
- c. Loss of two upper molar teeth.
- d. Blunt injury on the lower back.

15. The court has indeed also considered the authorities that the trial court relied on in its assessment of general damages to be awarded to the Appellant in regard to the injuries she sustained such as :-

- a. Buds and Bloom Ltd v Lawrence Emusugut Obwa [2016] eKLR, where the trial court awarded Kshs. 70,000/= for a deep cut wound on the left leg and soft tissue injuries on the leg. The High court reduced the award to Kshs. 50,000/=.
- b. Kipkere Ltd v Peterson Ondieki Tai [2016] eKLR, the trial court awarded Kshs. 100,000/= for deep cut wound on the left leg, chest constusion and bruises on the left shoulder and the high court substituted it with Kshs. 70,000/=.
- c. Eastern Produce Ltd v Mamboleo Khamadi [2015] eKLR, the trial court awarded Kshs. 120,000/= for cut wound on the right middle finger and severe pains incurred during and after the injury and the same was substituted with an award of Kshs. 50,000/=.

16. It is this Court’s view that the above authorities that were relied upon in arriving at the award of general damages are irrelevant since the injuries cited therein are not comparable to the injuries the Appellant pleaded she sustained and are supported by medical reports by Dr. G. K. Mwaura produced in this case. The court has thus gone on to consider the decision and awards made in the following cases, where the



injuries sustained by the Claimants were similar or almost similar to those sustained by the Appellant herein.

- a. In the case of Patel vs. Mose & another [2022] KEHC 11109 (KLR) (Civil Appeal 45 of 2019), the claimant suffered deep cut wound on the occipital region of the scalp & mandibular region, had three loose lower teeth, blunt injury to the neck & chest and soft tissue injuries on both knee and wrist joints. The court on appeal substituted the award of Kshs. 700,000/= in general damages with an award of Kshs. 320,000/=.
 - b. In the case of Justine Nyamweya Ochoki & Another –vs- Prudence Anna Mwambu [2020] eKLR, the Respondent suffered loss of upper front incisor tooth, deep cut on the chin, cut on the lip, loosening of the upper teeth, injury to the right forearm and loss of consciousness. The Court on appeal substituted the award of Kshs. 650,000/= with an award of Kshs. 300,000/=
17. Having taken the findings in the above cited decisions, this Court finds that indeed the award on general damages of Kshs. 50,000/= issued by the trial court for the Appellant herein was indeed manifestly low and not commensurate to the injuries she sustained and current inflationary trends. The Court proceeds to find an award of Kshs.350,000/= reasonable compensation for the injuries the Appellant sustained.
18. The upshot is that the Appeal herein is found merited and the same is hereby allowed in the following terms:-
- a. That the general damages in the sum of Kshs. 50,000/= awarded by the trial court is hereby substituted with an award of Kshs. 350,000/=.
 - b. The other awards including the award on special damages for Kshs. 31,400/= are hereby upheld.
 - c. The costs in both the suit before the trial court and the appeal to be awarded to the Appellant.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 8TH DAY OF MAY, 2025.

D. O. CHEPKWONY

JUDGE

