



REPUBLIC OF KENYA



**Njuguna v Ndiaga (Civil Appeal 50 of 2023) [2025] KEHC 6642 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6642 (KLR)

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

**CIVIL APPEAL 50 OF 2023**

**H NAMISI, J**

**MAY 23, 2025**

**BETWEEN**

**JOEL NJOROGI NJUGUNA ..... APPELLANT**

**AND**

**PAUL NJOGU NDIAGA ..... RESPONDENT**

*(Being an Appeal from Judgement of Hon. D. Milimu, Senior Resident Magistrate delivered on 5 June 2023 in Thika CMCC No. 730 of 2018)*

**JUDGMENT**

1. This appeal arises from a suit filed by the Respondent against the Appellant, in which the Respondent claimed the following reliefs:
  - i. Special damages of Kshs 2,000/=;
  - ii. General damages for pain and suffering;
  - iii. Costs and interest
2. The particulars of the suit are that on 12 September 2017, the Respondent was lawfully driving tuktuk registration no. KTWA 045B from Makongeni towards Kisii estate along the Thika-Garissa Road, when the Appellant by himself, his authorised driver, agent or servant drove tuktuk registration n. KTWA 290C so carelessly and negligently, thus causing an accident.
3. As a result of the accident, the Respondent sustained injuries, including deep cut wound to the back of the head, deep cut wound to the lips and loss of three upper incisors.
4. The Appellant entered appearance and filed a Defence denying the claim.
5. At the hearing, the Respondent testified that he lost 4 teeth. He produced a Police Abstract, Medical Examination Report and treatment notes. PW2 was Dr. A. K. Mwaura, who confirmed the injuries



- sustained by the Respondent. He testified that the Respondent would need 4 teeth implants, at a cost of Kshs 20,000/- each.
6. The Appellant did not call any witnesses. However, the Medical Report by Dr. Ichamwenge Ruth was produced by consent. The Report dated 8 May 2019 confirmed the injuries sustained by the Respondent but pegged the estimated cost of future treatment at Ksh 30,000/= for dentures.
  7. The trial court entered judgement in favour of the Respondent as follows:
    - i. General Damages - Kshs 350,000/=
    - ii. Future medical expenses - Kshs 60,000/=
    - iii. Special damages - Kshs 2,000/=
  8. In assessing the special damages, the trial Court observed that the Respondent had only produced one receipt for the Kshs 2,000/=. With respect to future medical expenses, the trial court held that the evidence pointed to loss of three teeth and not four.
  9. Aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
    - i. That the learned trial magistrate erred in fact and law and misdirected herself in finding that the Respondent is entitled to general damages of Kshs 350,000/=:, future medical expenses of Kshs 60,000/=:, special damages of Kshs 2,000/= with costs and interest;
    - ii. That the trial Magistrate erred in law and in fact and misdirected himself when he failed to consider the Appellant's submissions on both points of law and facts;
    - iii. That the learned trial Magistrate misdirected himself in ignoring the principles applicable in awarding quantum of damages and relevant authorities on quantum cites in the written submissions presented and filed by the Appellant;
    - iv. That the learned trial Magistrate proceeded on wrong principles when assessing the damages to be awarded to the Respondent (to apply precedents and tenets of law applicable);
    - v. That the learned trial Magistrate failed to apply himself judicially and to adequately evaluate the evidence and exhibits tendered on quantum thereby arriving at a decision unsustainable in law;
    - vi. That the learned trial Magistrate erred in law and fact in arriving at the said decision
    - vii. That the learned trial Magistrate's decision is unjust, 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;
    - viii. That the learned trial Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature
  10. The Appeal was canvassed by way of written submissions.

### **Analysis and Determination**

11. This being the first appeal, it is this court's duty under Section 78 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion, taking into account the fact that it did not have the advantage of seeing



and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123.

12. It is trite that though an appellate court has mandate to interfere with findings of fact made by a trial court, this mandate should be exercised cautiously and only when it is clear that the trial court's decision or finding of fact was not based on any evidence or was based on a misrepresentation of the evidence or on wrong legal principles.
13. I have keenly read the contents of the Record of Appeal and the submissions by the respective parties. The appeal herein is on one issue, quantum of damages.
14. In his submissions, the Appellant has invited this Court to consider 2 cases. It is his submissions that the appropriate general damages would be Kshs 250,000/=
15. In *Matunda (Fruits) Bus Services Ltd -vs- Agnes Chemngeno Tuiya* [2021] eKLR, the Respondent sustained deep cut wounds on the scalp, cut wound on the right temporal region of the scalp, deep cut wound on the right shin, blunt injuries to the neck, loose two upper incisor teeth and cut wound on lower lip. The Court of Appeal substituted an award of Kshs 390,000/= with Kshs 250,000 in general damages,
16. In *Justine Nywamweya Ochoki & Anor 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 upper teeth, injury to the right forearm and loss of consciousness. The Court substituted an award of Kshs 650,000/= with Kshs 300,000/=.
17. The Respondent relied on two cases. *Joseph Gatitika & Another -vs- Felista Muthoni & 2 Others* [2015], where the Plaintiff sustained injuries to her upper lips, mouth and chest and loss of both upper incisors and canine teeth. The Court awarded Kshs 700,000/-. The award was upheld on appeal.
18. In *Anthony Nyamweya -vs- Dorcas Gesare Mounde*, Kisii Civil Appeal No 76 of 2020, the Plaintiff sustained loss of 3 upper teeth, loss of the lower teeth, swollen knee and bruises on the neck. The lower court awarded Kshs 750,000/-, which was reduced to Kshs 600,000/- on appeal.
19. This Court is alive to the fact that no two injuries can be exactly the same and it must be understood that money can never really compensate a person who has sustained any injuries. No amount of money can remove the pain that a person goes through no matter how small an injury may appear to be. It would in fact be difficult to say with certainty that a particular amount of money would be commensurate with the injuries that a person has sustained. It is merely an assessment of what a court would find to be reasonable in the circumstances to compensate a person who has suffered an injury.
20. However, this assessment is not without limits. The Court must have presence of mind to ascertain to itself the sum of general damages that courts and especially appellate courts would ordinarily award in respect of a particular injury. This Court must, therefore, be guided by precedents and look at several cases with a view to establishing whether or not the learned trial magistrate applied the correct principles in awarding the Respondent general damages.
21. Having compared the injuries sustained by the Respondent and reviewed the authorities cited by the two parties, it is my considered view that the award of Kshs 350,000/- by the trial court in the circumstances of the case was not excessive, in light of inflationary tendencies.
22. In view of the foregoing, the appeal is unmeritorious and the same is dismissed with costs to the Respondent assessed at Kshs 50,000/=.

**DATED AND DELIVERED AT THIKA THIS 23 DAY OF MAY 2025.**



**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Mr. Njuguna for the Appellant

Mr. Kamau for the Respondent

Libertine Achieng .....Court Assistant

