



**Nduruhi v Wangechi (Civil Appeal E013 of 2024)
[2025] KEHC 6091 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E013 OF 2024
AN ONGERI, J
MAY 16, 2025**

BETWEEN

FREDRICK MWENDA NDURUHU APPELLANT

AND

STEPHEN MUMU WANGECHI RESPONDENT

*(Being an appeal from the SCCC Case No. E007 of 2023 by
Hon. S. M. Musili (RM) (adjudicator) delivered on 6/2/2024)*

JUDGMENT

1. The respondent Stephen Mumu Wangechi was the claimant in Taveta SCCC Case No. E007 of 2023 where he filed a claim seeking general damages and special damages for injuries sustained on 7th September 2023 while the respondent was lawfully travelling as a fare paying passenger aboard motor vehicle registration no. KDA 089N along Mombasa-Nairobi highway.
2. The appellant's motor vehicle registration no. KDA 089N was overtaking when it collided with motor vehicle registration no. 185Y/ZD2478 and as a result the respondent sustained the following injuries
 - i. Head injuries (with no loss of consciousness) resulting in a v-shaped right sided cut on the scalp measuring 9cm.
3. The trial court found the appellant 100% liable and awarded ksh.400,000 for general damages for pain and suffering and ksh.25,400 as special damages.
4. The appellant has appealed on the following grounds:
 - i. That the learned trial magistrate erred in law and in fact in his award arriving at an unjust decision against the weight of evidence and was based on misguided points of fact and wrong principles of law which has occasioned a miscarriage of justice.



- ii. That the learned trial magistrate erred in law and in fact in awarding the respondent Kshs.400,000/= and Kshs.25,400/= being general and special damages plus costs and interest of the suit, an amount considerably excessive in the backdrop of the precedents that were presented.
 - iii. That the learned trial magistrate erred in law and in fact in disregarding other decided authorities on the issue of calculation of quantum thus awarding an inordinately high amount.
5. The parties filed submissions as follows; The Appellant submitted that he is contesting the award of Kshs 400,000 in general damages and Kshs 25,400 in special damages as being excessive and contrary to precedent.
 6. That the Respondent suffered soft tissue injuries, including a 9cm facial scar and a head injury (without loss of consciousness), with medical evidence confirming full recovery.
 7. The Appellant further submitted that the Magistrate erred by misapplying precedent and that he cases relied on (e.g., James Mutungi and Samuel Muthama) involved far more severe injuries (e.g., prolonged unconsciousness, multiple fractures, or permanent disabilities), rendering them inapt for comparison.
 8. Further, that the Trial court ignored relevant authorities—Recent cases (HB v Jasper Magari, Kiwanjani Hardware, and OMN v Jasper Magari) awarded Kshs 50,000–80,000 for comparable soft tissue injuries, which the Appellant submits should guide this court.
 9. That the Trial court awarded inordinately high damages—The Kshs 400,000 award which is disproportionate to the minor, fully healed injuries sustained.
 10. The Appellant urged the court to reduce general damages to Kshs 80,000, aligning with conventional awards for similar injuries, and to grant costs of the appeal.
 11. The respondent submitted that the role of the first Appellate Court is to re-evaluate the evidence but that it should only interfere with the trial court’s discretion on quantum if the award was based on irrelevant factors, omitted relevant ones, or was so excessive or inadequate as to be plainly erroneous.
 12. Further, that the respondent suffered a significant head injury (a 9cm V-shaped scalp laceration) requiring suturing and a 5-day hospitalization, as confirmed by medical reports (P3 form, treatment notes, and a doctor’s assessment).
 13. That the appellant did not challenge this evidence, confirming the injury’s seriousness and the Trial Court’s Proper Exercise of Discretion.
 14. That the magistrate correctly considered the medical evidence, inflationary trends, and comparable precedents in awarding damages.
 15. Further, that the appellant has not shown that the court acted on a wrong principle, misapprehended facts, or made an award so unreasonable as to justify interference.
 16. That the appellant’s authorities involved minor soft-tissue injuries with no hospitalization or suturing, making them irrelevant to this case.
 17. The respondent’s cited precedents (e.g., James Maina Kibe and James Mutungi) support the award for comparable head injuries and stated that the award was reasonable, aligned with judicial trends, and reflected the injury’s severity.
 18. The respondent submitted that no grounds exist for appellate intervention under established principles (Kemfro Africa Ltd, Peters v Sunday Post).



19. The respondent submitted that the appeal lacks in merit and should be dismissed with costs to the respondent.
20. This being the final court of appeal from SCCC, the same is allowed only on points of law.
21. The sole issue is whether the trial court erred in awarding general damages of ksh.400,000/=.
22. The appellant relied on the following authorities :
 - i. HB (a minor suing through the mother and next friend (OKM) v Jasper Nchonga Mageri & Another [2021] eKLR where kshs.60,000 was awarded for similar injuries.
 - ii. Kiwanjani Hardware and Ano. v Nicholas Mule Mutinda [2008]e KLR where kshs.50,000 was awarded for blunt injury to the head, blunt injury to the neck and cut throat, blunt injury to the left shoulder, chest and right forearm and deep cut on the left leg and cuts and bruises on the same leg.
 - iii. OMN (minor suing through next friend EMW) v Jasper Nchonga Magari & Ano. [2021] eKLR where an award of kshs.70,000 was upheld for a cut on the hand, multiple abrasions and bruises on the right limb.
23. I find that the guiding principle is comparable to injuries and comparable to awards.
24. I find an award of ksh.400,000 excessive and I reduce it to ksh.200,000/=.
25. The appeal succeeds partially and for that reason each party to bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 16TH DAY OF MAY, 2025.

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A. N. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

