



REPUBLIC OF KENYA



KENYA LAW
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**Kioni & another v Mukumbu (Civil Appeal E052 of 2024)
[2025] KEHC 8589 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E052 OF 2024**

**TW OUYA, J
JUNE 19, 2025**

BETWEEN

TERESIA WANJIRU KIONI 1ST APPELLANT

CHANIA KIBWEZI SACCO 2ND APPELLANT

AND

REUBEN JOHN MUKUMBU RESPONDENT

*(Being an Appeal from the Judgment delivered by the Honourable Adjudicator
O.J. Muthoni on 25th September 2023 in Thika SCCC No. 283 of 2023)*

JUDGMENT

1. The Appellants approached this Court through a Memorandum of Appeal dated 7th February 2023 seeking for orders as against the Respondent that the Appeal be allowed and that the whole judgment of the Honourable Adjudicator/Resident Magistrate in Thika SCCC No. 283 of 2023 be set aside and the same be assessed afresh. The appellants also seek for the costs of this Appeal and such further orders may be made by this Honourable Court may deem fit to grant.
2. The Appeal is premised on the following six (6) grounds: that the trial Court misdirected itself in both law and fact in finding that the Respondent is entitled to Ksh.600,000 for general damages and kshs.3,550 as special damages and proceeded on wrong principles in assessing the damages to be awarded to the respondent. Thirdly, the trial court's award to the respondent of kshs.600,000 being general damages and kshs.3,550 as special damages was unjust, misguided and against the wright of the evidence placed before the trial court by the appellants. Further, the amount of general damages awarded to the respondent was excessive and underserved and the trial's court's decision was misguided. Finally, the trial court disregarded the appellant's evidence in assessing both liability and quantum.



3. The appeal was dispensed by way of written submissions. The appellants' written submissions are not on record despite the directions issued by the court requiring them to do so by close of business on 6th December 2024. Accordingly, the Court will rely on the appellants' entire record of appeal.
4. The Respondent filed written submissions dated 19th September 2024 through his counsel and submitted the following two issues for resolution by the Court; Whether the instant appeal has merit and whether the appeal should be dismissed.
5. It was submitted that the respondent suffered serious injuries requiring future medical attention hence the trial Court's award of Ksh.600,000 being general damages is sufficient given the country's inflation rate. Further, the respondent suffered a fracture of the tarsal bone of the left foot, and soft tissue injuries on the right arm and left foot. Reliance was placed in the holding of the court in the case of Njora Samuel Richard Nyang'au Orechi [2018] eKLR to buttress the proposition that the court awarded the plaintiff who suffered fractures of the metatarsal bone, pain and suffering and loss of amenities of kshs.500,000 for general damages which injuries are similar to those suffered by the Respondent herein. Further guidance was sought in the decision of the Court in the case of John Mwangi Kiiru v Salome Njeri Mwangi [2019] eKLR in support of the argument that the court awarded Ksh.450,000 being general damages for the fractures to the Metatarsal bone.
6. The Respondent relied on the reasoning of the Court in the case of Telkom Orange Kenya Limited v ISO Minor suing through his next friend & mother JN [2018] eKLR and urged the Court to consider the rates of inflation prevailing in the country as well as the state of the national economy in assessing the amount awarded by the trial Court.
7. The Respondent raised a procedural argument premised under the provisions of Order 42 Rule 13(4) of the Civil Procedure Rules to the effect that the instant appeal ought to be dismissed due to lack of a copy of the trial court's judgment and proceedings on record. Reliance was sought in the holding of the court in the case of Talewa Road Contractors Limited v Kenya National Highways Authority (Civil Appeal 246 of 2019 to anchor the foregoing submissions.
8. Having carefully considered the entire record, grounds of appeal and the parties rival written submissions together with all the authorities cited, I find that the issues arising for my determination revolve around; Whether the subject Appeal flouts the provisions of Order 42 Rule 13(4) of the Civil Procedure Rules and whether the appeal is merited.
9. Whether the subject Appeal flouts the provisions of Order 42 Rule 13(4) of the Civil Procedure Rules. The Memorandum of Appeal before the Court is expressed to be dated 7th February 2023. This Court is persuaded that the same is wrongly dated particularly in respect of the year. The decision appealed against was delivered on 25th September 2023; hence, it is anomalous for the Memorandum of Appeal to predate the decision of the trial Court forming the subject of the appeal by about than seven (7) months, or, to predate the Respondent's Statement of Claim filed before the trial Court dated 5th April 2023.
10. Be that as it may, the Court is enjoined under Article 159 of *the Constitution* of Kenya to render justice without undue regard for procedural technicalities. The Court has perused the Record of Appeal filed by the Appellants, on page 3 therein is contained a Certificate dated 27th May 2024 and even-dated Index appears on page 5 of the aforesaid record.
11. Further, as the Respondent did not fault the instant appeal for being wrongly-dated, the Court is satisfied that the error in dating the Appellants' Memorandum of Appeal does not constitute a sufficient reason to drive them away from the seat of justice.



12. Order 42 Rule 13(4) of the Civil Procedure Rules which the Respondent alluded in his written submissions stipulates as follows:

“Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—

- a. the memorandum of appeal;
- b. the pleadings;
- c. the notes of the trial magistrate made at the hearing;
- d. the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
- e. all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
- f. the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:

Provided that—

- i. a translation into English shall be provided of any document not in that language;
- ii. the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).”

13. The Court has inspected the instant record of appeal and finds that whereas it contains the pleadings of the parties filed before the trial Court, it does not contain a copy of the Judgment of the trial Court giving rise to the present appeal.

14. Be that as it may, the Court received the original record together with certified copies of proceedings, judgment and decree of the trial Court on 25th July 2024 from the office of Chief Magistrate’s Court at Thika accompanied by the forwarding letter dated 24th July 2024 signed by the Court Administrator of the Chief Magistrate’s Court at Thika.

15. The Court next turns to consider the appeal before it on the merits. In the instant appeal, the Appellants have not challenged the trial Court’s finding in terms of liability for the accident occurring on 1st September 2022. The appellant’s claim is restricted to the amount awarded to the respondent for general damages.

16. The gist of the appellants’ claim in the appeal is that the trial court award the respondent kshs.600,000 being general damages which award was excessive, unjust, misguided and against the weight of the evidence supplied by the appellants.

17. In the proceedings before the trial Court, the respondent, then claimant averred that on 1st September 2022 while working as a guard at Delta Petrol Station along Thika-Garissa Road, he was hit by the Appellants’ motor-vehicle registration number KAV 875D which vehicle had been fueling at the aforesaid station and, then, immediately sped away.



18. On the question of liability, the trial Court found the appellants 100% liable for the aforesaid accident. On the issue of damages, it was the trial court's finding that the respondent was entitled to the award of general damages in the amount of kshs. 600,000 having sustained the following injuries: a fracture of the tarsal bone of the left foot, and soft tissue injuries on the right arm and left foot.
19. In the impugned Judgment, the trial Court noted the respondent herein tendered evidence and called a witness in support of his cause while the appellants closed their case without calling any witness.
20. The Court of Appeal observed in the case of Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 [2014] eKLR that, with regard to injuries resulting from an accident, no two cases are exactly alike; thus, the context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.
21. Similarly, in the case of Odinga Jactone Ouma v Moureen Achieng Odera [2016] KEHC 2922 (KLR), the Court reasoned as follows:

“General damages are damages at large and the court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards.”
22. It is trite that a party seeking the Court to enter a finding in its favor is under obligation to supply evidence in support of their claim, pursuant to the provisions of Sections 107, 108, 109 and 112 of the Evidence Act.
23. In the Appeal before the Court, the responsibility fell upon the appellants to cite several and relevant cases in order assist this Court reach the finding that the trial Court erred in awarding the Respondent General Damages in the amount of Ksh.600,000.
24. It is the finding and holding of this court that the appellants failed to supply the Court with any evidence in support of their main contention that the trial Court's award of General Damages was excessive, unjust and against the weight of the evidence presented before the trial Court.
25. In the case of Njora Samuel v Richard Nyang'au Orechi [2018] eKLR, relied upon by the Respondent in the present appeal, the court awarded kshs.500,000 for general damages for injuries which are similar to those which the trial court determined that the respondent suffered. There has been a lapse of time of about six (6) years between 2018 when the preceding decision was rendered and 25th September 2024 when the trial court entered the impugned decision. The court is persuaded that taking to account the changes in the inflation rates during the intervening six-year period, the trial court was not misdirected in awarding the respondent herein kshs.600,000 being general damages.
26. The Court proceeds to make the following final orders:
 - I. The instant appeal is found unmerited and is hereby dismissed entirely.
 - II. The Appellants shall bear the costs at the trial Court and in respect of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19th JUNE 2025.

HON. T. W. Ouya

JUDGE

For Appellant.....N/A



For Respondent.....M/s Njuguna

Court Assistant.....brian

