



Munyi v Kivuti (Civil Appeal E016 of 2023) [2025] KEHC 7740 (KLR) (4 June 2025) (Judgment)

Neutral citation: [2025] KEHC 7740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E016 OF 2023
RM MWONGO, J
JUNE 4, 2025**

BETWEEN

EPHANTUS NJERU MUNYI APPELLANT

AND

MOSES MURIITHI KIVUTI RESPONDENT

*(Appeal arising from the decision of Hon. H.N. Nyakweba in
Embu CMCC No. E023 of 2021 delivered on 20th March 2023)*

JUDGMENT

The Appeal

1. The appellant filed a Memorandum of Appeal dated 18th April 2023 seeking the orders that:
 - a. This Appeal be allowed with costs;
 - b. The Judgment of the Honourable Senior Principal Magistrate as far as the quantum of general damages is concerned dated 20th March 2023 be discharged and set aside with costs to the Appellant; and
 - c. The Honourable Court be pleased to award the Plaintiff quantum of general
 - d. damages commensurate with his injuries.
2. The appeal is premised on the grounds that:
 1. The Learned Magistrate erred in fact and in law in finding that the Plaintiff was entitled to general damages that were too high in view of the injuries suffered by the Plaintiff;
 2. The Learned Magistrate erred in fact and in Law in failing to consider the Defendant's Submissions on quantum;



3. The Learned Magistrate erred in fact and in Law in failing to consider the Plaintiff's Submissions on quantum;
4. The Learned Magistrate erred in fact and in Law in failing to consider conventional awards for general damages in cases of similar injuries; and
5. The Learned Magistrate erred in fact and in Law in making an award for special damages that had not been strictly proved.

Brief Background

3. The respondent filed plaint dated 17th September 2020 seeking judgment against the appellant for special and general damages together with costs and interest. He stated that on or about the 11th May 2020, he was riding on motor cycle registration mark KMEN 519B carrying one Moses Nukundi Mwaniki along the Mugoya-Karurina road. At around Cathedral area the appellant and or his agent, servant, employee, assignee and or driver so negligently drove, managed, and/or controlled the appellant's motor vehicle that he caused or permitted the same to get out of control and knock the said motorcycle the respondent was aboard as a consequence of which the respondent was injured.
4. The respondent urged that the appellant should be found liable vicariously or otherwise for the tortious acts and/or omissions committed on him. He stated that he sustained a fracture on the mid shaft right femur, and a laceration on the left pre-tibial region.
5. In his statement of defense, the appellant denied the averments made in the plaint. He stated that the accident, if any, occurred as a result of the respondent's negligence.
6. At the hearing, PW1 was the respondent who produced documentary evidence in support of his case. He narrated the circumstances under which the accident occurred. At the time of the testimony, he has recovered from the injuries he had sustained which were a broken bone and soft tissue injuries.
7. The appellant did not tender any evidence before the trial court.

Finding of the Trial Court

8. The trial court noted that the parties had consented to 100% liability against the appellant in Embu MCCC E077 of 2022 which was the test suit. The finding in that matter was adopted in the suit in the trial Court.
9. The trial court relied on the case of Elizabeth Wamuyu Wanjohi v John Muriithi Mbanya & 2 others [2015] KEHC 7220 (KLR) and assessed general damages at Kshs.1,200,000/=. Special damages of Kshs.14,820/= were also awarded as the only amount proved.

Parties' Submissions on the appeal

10. The appeal was canvassed by way of written submissions.
11. The appellant submitted that an award of Kshs.200,000/= would have sufficed for the injuries sustained by the respondent. He relied on the cases of T.A.M. (Minor Suing Thro' her father and next friend J.O.M.) v Richard Kirimi Kinoti & another [2015] KEHC 7852 (KLR) where the court awarded Kshs.250,000/-, Ibrahim Kalema Lewa v Estee Co. Ltd [2016] KEHC 5503 (KLR) where an award of Kshs.300,000/- was made and Erick Ratemo v Joash Nyakweba Ratemo [2018] KEHC 4138 (KLR) where an award of Kshs.300,000/- was made.



12. On his part, the respondent supported the findings of the trial magistrate and urged the court to uphold the award. He relied on the cases of Elizabeth Wamuyu Wanjohi v John Muriithi Mbanya & 2 others (supra) and Transbionics Limited v Micheni [2023] KEHC 18332 (KLR) where the courts awarded Kshs.1,500,000/= and Kshs.1,200,000/- respectively.

Issues for Determination

13. The issue for determination is whether the trial court's findings on quantum should be set aside.

Analysis and Determination

14. In making the decision in this matter, this first appellate court should re-evaluate the evidence of the trial court and make a finding of its own. This was the position held in the case of Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, where the court held:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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...”

15. Following the accident, the respondent suffered a fracture on the mid shaft right femur and a laceration on the left pre-tibial region. The medical examination report by Dr. Njiru G.N. confirmed these injuries and stated that there would be anticipated complication following treatment. No disability was assessed, neither was future treatment recommended.
16. The court should consider awards in cases involving similar injuries. In the case of Watu Credit Limited & another v Oracha & another [2024] KEHC 3752 (KLR), the court awarded Kshs.850,000/- for a spiral fracture of midshaft femur, deep cut wounds on the left leg, both knees swollen, chest pain, back pain, pain on the pelvic region and multiple bruises on the left leg with 15% permanent disability.
17. In Gerald Odera Omollo v Rose Anyango Rayola [2022] eKLR the Respondent suffered a fracture of the right femur, contusion on the pelvis, blunt trauma to the chest and laceration of the left leg. The respondent was likely to develop chronic osteoarthritis due to the instability and the limping gait. The doctor opined that she needed physiotherapy follow up for a long time and analgesics. The High Court upheld an award of general damages at Kshs.600,000/- in March 2022.
18. In Sylvester Onyango Lire v Isack Ouma Shikuku [2022] eKLR, the Respondent suffered a fracture to midshaft left femur, fracture pelvis, laceration on the right inguinal region and laceration of the scrotum. The respondent had healed with no permanent disabilities. The High Court set aside the trial court's award of Kshs 850,000/- in general damages and substituted it with an award of Kshs.650,000/- general damages in March 2022.
19. In Koyi v Obanga & 2 others (Civil Appeal 73 of 2017) [2022] KEHC 9772 (KLR), the injuries sustained by the Appellant were a displaced fracture of the left tibia, fracture of the left femur, laceration of the left leg and soft tissue injuries on the chest. The Appellant had suffered a 40% permanent disability. The High Court upheld an award of Kshs.400,000/= general damages in July 2022.
20. In Parvat Builders v Makau (Appeal 81 of 2022) [2023] KEELRC 575 (KLR), the respondent had sustained fractured left femur – upper 1/3 and a swollen tender and deformed left thigh. The ELRC



Court set aside the trial court's award of Kshs 1,400,000/- in general damages and substituted it with an award of Kshs 600,000/- general damages in March 2023.

21. In *Said & another v Kamau* (Civil Appeal 108 of 2014) [2023] KEHC 20045 (KLR), the Respondent sustained injuries on the forehead, lacerations on both forearms and fracture to the right femur bone. At the time of the examination, he had 2 scars on the forehead, left forearm and on the right thigh. The examining doctor concluded that the Respondent would be predisposed to arthritis. The High Court affirmed an award for general damages for pain and suffering at Kshs.600,000/- in June 2023.
22. In all these cited cases, the injuries were far more severe than those suffered by the respondent, yet the courts awarded far lower damages as compared to what the trial court herein awarded. In the circumstances, it is my considered view that an award of Kshs.400,000/= should suffice and would be commensurate with the injuries sustained.
23. It is trite that special damages must be pleaded and strictly proved. In the case of *Maritim & Another v Anjere* (1990-1994) EA 312 at 316 it was held in this regard:-

“It is now trite law that special damages must not only be pleaded but must also be specifically proved and those damages awarded as special damages but which were not pleaded in the plaint must be disallowed.”
24. The respondent claimed a total of Kshs.49,000/=. However, only receipts for 14,820/= were availed as proof. Accordingly, this is the only amount that should be awarded special damages.

Conclusions and Disposition

25. As earlier noted, liability was agreed at 100% in favour of the plaintiff.
26. I find that the appeal has merit and it should be allowed with orders as follows:
 1. The trial court's award of general damages be and is hereby set aside and substituted with an award of Kshs.400,000/-;
 2. The award of special damages be upheld at Kshs.14,820/-; and
 3. Costs of the appeal go to the appellant.
27. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 4TH DAY OF JUNE, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Abok for Appellant
2. Ms. Maroko holding brief for Ogweno for Respondent
3. Francis Munyao - Court Assistant

