



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Tom & another v Njirata (Civil Appeal 33 of 2019)
[2025] KEHC 7751 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL 33 OF 2019
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

IRUNGU MWANGI TOM 1ST APPELLANT

GEOFFREY IRUNGU MURIUKI 2ND APPELLANT

AND

VENANCIO NYAGA NJIRATA RESPONDENT

*(Being an Appeal from the Judgment of Senior Resident Magistrate, Kivuti
M. at the Magistrate's Court at Baricho, Civil Suit Number 54 of 2018)*

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellants (then Defendants) for general and special damages arising from a road traffic accident that occurred on 2nd April 2016. The Respondent stated that he was a pillion passenger on a motorcycle and he was hit by motor vehicle registration number KCA 0X3V (allegedly belonging to the 1st Appellant and being driven by the 2nd Appellant) thereby occasioning him injuries. The Respondent blamed the Appellants for causing the accident.
2. The trial court conducted a hearing where the Respondent called three witnesses before closing his case and the Appellants called closed their case without calling any witnesses.
3. In its Judgment dated 25th April 2019, the trial court found the Appellants 100% liable for causing the accidents and awarded the Respondent a newt ward of Kshs 1,179,898/=
4. Being aggrieved with the Judgment of the trial court, the Appellants filed his Memorandum of Appeal dated 21st May 2019 appealing against quantum.



5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify.
6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through his Plaint dated 6th March 2018, the Respondent stated that he was a pillion passenger on a motorcycle and he was hit by motor vehicle registration number KCA 0X3V.
8. The Respondent stated that the 1st Appellant was the owner of motor vehicle registration number KCL 3X3Z and the 2nd Appellant was the driver. That the 2nd Appellant was negligent in causing the accident. The particulars of the negligence were listed in paragraph 7 of the Plaint.
9. That as a result of the accident, he the following injuries: -
 - a. Crush injury to the small and ring fingers with compound fractures.
 - b. Deglazing injury to the right lower leg with loss of muscle.
 - c. Bifrontal cerebral contusion.
10. The Respondent's claim against the Appellant was for special and general damages as a result of the accident.
11. Through his written submissions dated 30th July 2024, the Respondent submitted that the trial did not err when it awarded him Kshs 1,000,000/= as general damages. That the injuries he suffered were of a serious nature and were more than the mere amputation of fingers. He relied on Pyramid Packaging Limited vs Humphrey Wanjala (2012) eKLR.
12. With regard to special damages, the Respondent submitted that they produced a receipt for the motor vehicle search (Kshs 550/=), transport costs (Kshs 8,400/=) and that the discrepancy of Kshs 6,500/= was as a result of illegibility of some of the receipts due to passage of time. That this court should hold that the trial court must have been satisfied as to the full amount of Kshs 160,984/= as medical expenses.
13. It was the Respondent submission that it was not a requirement that he affix revenue stamps on the receipts for them to comply with the provisions of the law. He relied on Swaleh C. Kariuki & another vs Violet Owiso Okuyu (2021) eKLR

The Defendants/Appellants' case.

14. Through their statement of defence dated 29th March 2018, the Appellants denied that they were the registered owner and driver of motor vehicle registration number KCA 0X3V.
15. The Appellants denied the particulars of negligence levelled against them. That if any accident happened, it was caused solely by the negligence of the Respondent. He particularized the negligence in paragraph 7 of their defence.
16. The Appellants denied that the Respondent suffered any injuries.
17. Through their written submissions dated 22nd October 2024, the Appellants submitted that the award of Kshs 1,000,000/= was excessive and proposed an award of Kshs 500,000/=. They relied on



Wainaina v Wachaga (Civil Appeal 16 of 2019) [2023] KEHC 26226 (KLR) (9 November 2023) (Judgment), Julie Akoth Onyango vs Daniel Otieno Owino & another (2020) eKLR et.al.

18. Regarding special damages, the Appellant submitted that the expenses that were supported by receipts accompanied by stamp duty was Kshs 58,290/=. That special damages ought to be proved by production of receipts with revenue stamps.
19. I have gone through and carefully considered the Record of Appeal dated 15th August 2022, the Appellants' written submissions dated 22nd October 2024 and Respondent's written submissions dated 30th July 2024. The only issue for my determination therefore was whether the award on quantum was excessive.

Quantum.

20. The Respondent (PW1) testified that he suffered injuries as a result of the accident and produced P3 Form treatment notes, discharge summary and a Medical Report as P. Exh3, 5 and 6 respectively. I have looked at the above exhibits and I have confirmed that the Respondent suffered the injuries as pleaded in the Plaint i.e.: -
 - i. Crush injury to the small and ring fingers with compound fractures.
 - ii. Deglazing injury to the right lower leg with loss of muscle.
 - iii. Bifrontal cerebral contusion.
21. The trial court awarded Kshs 1,000,000/= as general damages. The Appellants proposed an award of Kshs 500,000/= while the Respondent urged this court to uphold the award of Kshs 1,000,000/=.
22. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice.
23. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in *Stanley Maore vs Geoffrey Mwenda (2004) eKLR*, held: -

“...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”
24. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison: -
 - I. In *Transafric Timber Limited v Eunice Kerubo Momanyi [2019] KEELRC 1780 (KLR)*, where an award of Kshs. 700,000/= for an amputation of the right index finger, fracture of the distal phalanx of the right middle finger and deep cut wound of the right thumb was upheld on appeal.
 - II. In *China Road & Bridge Corporation (K) Ltd v Muthuva [2023] KEHC 23772 (KLR)*, the court reduced the award of Kshs 1,000,000/= to Kshs 800,000/= for the following injuries; amputation of the left thumb, fractures of the left 2nd, 3rd and 4th metacarpal hand bones, deep cut on the left hand and multiple lacerations sustained at the left knee



III. In *Alex Wanjala v Pwani Oil Products Limited & another* [2019] KEHC 6096 (KLR), the court reduced an award of Kshs 1,000,000/= to Kshs 600,000/= for the following injuries; closed head injury leading to loss of consciousness, closed fracture of the right humerus and closed fracture of the right femur

25. I have considered the authorities above and the nature of the injuries suffered by the Respondent. I have also considered the current inflation rates and I find that the award of Kshs 1,000,000/= was excessive and not commensurate to the injuries sustained. I hereby vacate the award of Kshs 1,000,000 and substitute it with an award of Kshs 700,000/=.

26. In regards to the special damages, the Respondent pleaded the following: -

- i. Motor Vehicle Search Kshs 550/=
- ii. Medical Report Kshs 10,000/=
- iii. Medical Expenses Kshs 160,948/=
- iv. Transport Expenses Kshs 8,400/=

27. The Respondent produced a bundle of receipts as P. Exh 2 (a) –(k) and a copy of the motor vehicle search as P. Exh 4b. I have gone through the bundle of receipts and I have totalled the entire expenditure to Kshs 114,508/=.

28. In coming to above amount on special damages, I have factored in all the receipts on record including those that do not contain the revenue stamps. The Appellants had submitted that the absence of the revenue stamps on the receipts was fatal and made them inadmissible. Nothing could be further from the truth and in this regard, I concur with Kimaru J. in *Swalleh C. Kariuki & another v Viloet Owiso Okuyu* [2021] KEHC 4863 (KLR) where he held: -

“On the Appellants contention that the court should not attach any probative value to receipts without revenue stamps affixed on them, the court is of the view that it is the duty of the receiver of monies who has a duty to affix revenue stamps and not the payee who cannot be penalized for the omissions of the receiver.....”

29. Similarly in *Benjamin Muela Kimono v Daniel Kipkirong Tarus & another* [2015] KEHC 881 (KLR), the court held: -

“Under the *Stamp Duty Act*, Chapter 480 Laws of Kenya it is not specifically provided that payment receipts in respect of services rendered must be stamped. Section 88 of the Act, in my opinion, it is the duty of the receiver of monies who has a duty to affix revenue stamps, not the payee – who cannot be penalised for omissions of the receiver. I am guided by the cases *Benedetta Wanjiku Kimani -vs- chanaw Cheboi & Another* HCCC No 373 of 2008 and *Irene Ngombo Mshingo -vs- Miriam Kadogo* (2000) KLR where the Learned Judges held that a document does not cease from being admissible for lack of affixation of a revenue stamp in the latter case the court proceeds to admit payment receipts issued from Kenyatta national Hospital without Revenue stamp being affixed thereon.

I am satisfied that the receipts for medical expenses are admissible as they also bear stamps of the doctors and medical institutions that issued them.”

30. The final computation is as below: -

- i. General damages Kshs 700,000/=



ii. Add special damages Kshs 114,508/=

Total Kshs 814,508/=

31. In the end, the Memorandum of Appeal dated 15th August 2022 is merited as the damages awarded to the Respondent is reduced from Kshs 1,179,898/= to Kshs 814,508/=.
32. The Appellants shall have the costs of the Appeal while the costs and interest in the main suit remain as awarded by the trial court.
33. 30 days stay is granted.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

J.K. NG'ARNG'AR

JUDGE

Mwangangi for the Appellant

Karani for the Respondent

Siele/Mark (Court Assistants)

