



REPUBLIC OF KENYA



KENYA LAW
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**Warutere v Muthama (Civil Appeal E045 of 2024)
[2025] KEHC 7837 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E045 OF 2024
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

PETER MAINA WARUTERE APPELLANT

AND

DANIEL MBONDO MUTHAMA RESPONDENT

JUDGMENT

1. The appellant being dissatisfied with the decision of the lower Court at Baricho by Hon. D.M Ileri, Senior Resident Magistrate delivered on 3rd May, 2023 filed a memorandum of appeal dated 3rd may, 2024. The respondent was involved in a road traffic accident (RTA) on 11/1/2019 along Kangundo Road when the appellants' motor vehicle registration no. KBP 145G collided with motor cycle registration no. KMEN 850Z where the respondent was riding as a pillion passenger causing the respondent serious injuries.
2. The respondent filed BARICHO SPMCC No. E075 of 2023 seeking special damages, general damages and costs and interest for injuries he sustained as a result of the road traffic accident.
3. After hearing the respondent's evidence, the trial court assessed and awarded damages as follows
 1. General damages
 - a. for pain & suffering and loss of amenities Ksh. 2,000,000/=
 - b. Future medical expenses Kshs. 300,000/=
 - c. Loss of future earnings Kshs. 600,000/=
 - d. Special damages Kshs. 10,550/=Total Kshs. 2,910,550/=



4. The appellant has appealed to this court on the following grounds;
 - a. That the learned magistrate erred in law and in fact by not properly analyzing and/or considering the materials/evidence on record while arriving at his Judgement on liability.
 - b. That the learned magistrate erred in law and in fact in finding that the respondent was entitled to general damages of kshs. 2,000,000/= which was inordinately high.
 - c. That the learned trial magistrate erred in fact in law by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which was very high.
5. The parties filed written submissions as follows; the appellant submitted that the award of Kshs. 1,200,000 as general damages were inordinately high. The appellant proposed an award of Kshs. 300,000 and relied on the following cases;
 - a. Dora Mwawandu Samuel (Suing on her behalf and on behalf of the Estate of Samuel Muweliani Jumamosi - Deceased) v Shabir M. Hassan [2021] eKLR where the court awarded a global sum of Kshs 400,000/= for loss of earning capacity being a 59 year old farmer.
 - b. Peter Wainaina & another v Lucia Ndulu Muindi & another [2021] KEHC 1986 (KLR) the deceased was 65 year old at the time of death and had the last born child at 18 years, and was awarded a global sum of Kshs. 500,000/= for loss of dependency.
 - c. John Wamae & 2 others v Jane Kituku Nziva & another [2017] KEHC 1111 (KLR), the award given was Ksh. 400,000/- for a 61 years old who was since deceased.
6. The respondent on the other hand submitted that the nature and the extent of the injuries sustained by the respondent are not in dispute. The respondent aligned himself with the lower courts findings on general damages and in support cited
 - a. Twokay Chemicals Limited v Patrick Makau Mutisia & another [2019] KEHC 5339 (KLR) [2019] where an award was Kshs 1,500,000/= was given.
 - b. Christine Mwigina Akonya v Samuel Kairu Chege [2017] KEHC 1484 (KLR) where the plaintiff sustained similar injuries and was awarded Kshs. 4,000,000/=
 - c. Mumias Sugar Company Limited v Francis Wanalo [2007] eKLR an award of Kshs. 2,100,000 was made issued
7. I will not delve to the last cited case since the amount stated does not augur with the amount stated in the submission and one decide on by the court..
8. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at my own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses. In *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally. An appeal to this court from a trial by the High 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. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

9. The sole issue for determination in this appeal is whether the general damages for pain and suffering awarded by the trial court were inordinately high.
10. The trial court found that the respondent suffered permanent disability
11. I have considered the authorities relied on by the trial court. I have also considered the following comparable cases where injuries were similar.
 - a. In *Roba Doti Guyo vs. Jiang Zhongmei Engineering Company* [2015] eKLR, the plaintiff, therein suffered a crushed hand which was amputated leaving him with an ugly stump. In 2015 the plaintiff was awarded Kshs. 2,500,000/= as general damages for his pain, suffering and loss of amenities.
 - b. In *Umoja Rubber Products Limited vs. Bobson Rimba Lewa* [2015] eKLR, the Respondent therein suffered an amputation of the left hand below the elbow. In 2015, he was awarded Kshs 2,200,000/= as general damages for his pain and suffering which sum was upheld on appeal.
 - . In *Kurawa Industries Ltd –Vs- Dama Kiti & Another, Malindi HCCA No. 37 of 2015* where an award of Ksh. 2,000,000/= was upheld for amputation of the left leg at the knee joint.
12. I find that the Kshs. 2,910,000 awarded was reasonable in the circumstances of this case.
13. This court can only interfere with an award of the trial court if the same is inordinately high or low as to warrant interference of where the trial court applied the wrong principles. In *Butt vs= Khan* [1982] 1 KAR. 5, the court correctly said;

An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low".

14. Following from the above, in my view, though the appellants have come to this court on appeal claiming that the trial court's award of damages is excessive, there are no factors demonstrated by them of such excess to justify this court to interfere with the amount of award. Also the fact of children of the deceased being adults, alone does not mean that there can be no dependency, as a wife and even adult children, can still be dependents, and the award for dependency herein cannot thus be faulted.

I am persuaded to dismiss the appeal with costs to the Respondent.

30 days stay of execution is granted.

Orders accordingly.

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

Mwangi for the Appellant

N/A for the Respondent



Siele/Mark (Court Assistants)

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J.K. NG'ARNG'AR

JUDGE

