



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Muchiri (Civil Appeal E030 of 2023)  
[2025] KEHC 11052 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11052 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E030 OF 2023**

**TW OUYA, J**

**JULY 24, 2025**

**BETWEEN**

**STANLEY MUGO MWANGI ..... APPELLANT**

**AND**

**RUTH NJOKI MUCHIRI ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon. S.A Atambo (CM) at the Chief Magistrate's court in Thika CMCC no. E513 of 2022, delivered on 31st October, 2023)*

**JUDGMENT**

1. This appeal emanates from the judgement and decree of the lower court in which the respondent, Ruth Njoki Muchiri, was awarded general damages for pain, suffering and loss of amenities in the sum of Kshs.1,700,000; as well as special damages amounting to Kshs.11,500, plus costs of the suit and interest.
2. The above damages were awarded in a suit instituted by the respondent against the appellant, following personal injuries sustained in a road traffic accident which occurred on 10<sup>th</sup> February, 2022, along Thika-Gatanga road, involving her as a lawful passenger on board motor vehicle Reg. No. KBL 117T and Motor Vehicle Reg. No. KBY 973T (the subject vehicle) which was allegedly being negligently driven by the appellant.
3. The court record shows that although the appellant initially denied liability, parties subsequently entered into a consent on liability in the ratio of 85: 15 in favour of the respondent against the appellant. Thereafter, the trial court proceeded to assess damages payable to the respondent resulting into the awards contested in this appeal.
4. In his memorandum of appeal dated 8<sup>th</sup> November, 2023, the appellant complained that the learned trial magistrate misunderstood the applicable principles and law in assessing quantum, thereby arriving at an award that is so manifestly high as to constitute an entirely erroneous estimate of the damages



in the case; that the general damages awarded to the respondent was manifestly excessive in the circumstances; and that the learned trial magistrate failed to consider his submissions in writing the judgement.

5. The appellant also faulted the learned trial magistrate for the misapprehending the principle applicable in assessment of damages in personal injury claims, thus occasioning a miscarriage of justice; and for disregarding the important elements of evidence, principles and practice, thereby arriving at an award of quantum that is inordinately high in the circumstance.
6. On the above grounds, the appellant urged this court to allow his appeal, set aside the trial court's judgement on quantum and revise the same to commensurate levels as per the evidence on record.
7. By consent of the parties, this court on 8<sup>th</sup> of July, 2024, directed that the appeal be prosecuted by way of written submissions. The appellant's appeal was filed on his behalf by his learned counsel Mwangagi Nzisa & Associates; while those by the respondent were filed by Kanyi Kiruchi & Company Advocates.
8. In his written submissions, the appellant alleged that the award of Kshs.1,700,000 by the trial court as general damages for pain, suffering and loss of amenities was excessive in the circumstance and the same should be substituted instead with an award of Kshs.500,000, which is commensurate to the injuries suffered by the respondent. The appellant in his submissions also urged this court to award him the costs of this appeal.
9. The respondent on the other hand, submitted that she still experiences pain on her left leg and she is unable to step on it fully, as such, the award of Kshs. 1,700,000, by the trial court as general damages for pain, suffering and loss of amenities was adequate compensation, considering also the rate of inflation. The respondent, in her written submissions urged this court to dismiss the appellant's submission with costs.
10. This being a first appeal, it is an appeal on both facts and the law. Considering also that the appeal only challenges the quantum of damages awarded by the trial court, it is important to set out the parameters within which an appellate court can interfere with awards made by the lower court.
11. As a general rule, an appellate court should be slow to interfere with an award of damages made by the trial court basically because such awards depend on the trial courts discretion. An appellate court can only interfere with an award made by the trial court, where it is shown that the learned trial magistrate acted on wrong principles, or that he or she misapprehended the evidence on record on some material aspect, and so arrived at a figure that was either inordinately high or low.
12. This principle was reiterated by the Court of Appeal, in the case of *Mariga v Musila* [1984] KLR; as follows:

“The assessment of damages is more like an exercise of discretion and an appellate court is slow to reverse a lower court on the question of the amount of damages unless it is satisfied that the judge acted on a wrong principle of law or has for these or other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court judge acted on the wrong principle...”

13. Similarly, the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1978] eKLR; stated that:

“... 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. It is trite that in assessing damages for personal injuries, the general method of approach is that comparable injuries should be compensated by comparable awards but regard must be had to the fact that no two cases can be exactly similar. Each case therefore must be decided on its own merits.
15. This position was restated by the court of appeal in *Stanley Maore v Geoffrey Mwenda* [2004] eKLR; as follows: “Having so said, 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 method of approach should be that comparable injuries should as far as possible be compensated by comparable award keeping in mind the correct level awards in similar cases.”
16. In this case, the injuries sustained by the respondent following the road traffic accident are not disputed. According to Paragraph 4 of the plaint, the respondent sustained a fracture of the left mid third tibia and laceration wounds on both legs.
17. These injuries were confirmed by the Medical report by Dr. George Karanja dated 7<sup>th</sup> March, 2022, which was produced in court as evidence without calling the maker of the document; as well as the P3 form dated 15<sup>th</sup> February 2022.
18. The learned trial magistrate indicated in her judgement that she took into account decided cases as well as inflation, in arriving at a sum of Kshs. 1,700,000 as general damages for pain and suffering, she did not however indicate which authority she relied on or that guided her to arrive at the said amount.
19. On my independent appraisal of the authorities cited by the respondent both in this court and at the trial court, I find that the authorities she has cited involved claimants who had more severe injuries than those that she sustained. For instance, in *Damaris Wamucii Kagechu v Joseph Kirui & another* (2019) eKLR; which the respondent has relied on in this appeal, the claimant in that case sustained bilateral compound fractures of the tibia and fibula to both the right and left legs; and it was stated that the claimant in that case would suffer 10% permanent disability should corrective surgery not be carried out.
20. I also find that the authorities relied on by the appellant do not contain claimants who have suffered injuries that are comparable or similar to those sustained by the respondent in this case.
21. On my part, I find the following authority relevant, *Kiama v Mutiso (Civil Appeal 40 of 2023)* [2024] KEHC 5135 (KLR) (13 May 2024) (Judgment); in this case, the respondent sustained a fracture of the upper 1/3 of the left tibia bone and related soft tissue injuries. It was also noted that the respondent’s injuries had healed well without any disability. On appeal, the high court set aside the award of Kshs. 700,000 by the trial court and substituted it instead with an award of Kshs. 400,000.
22. Guided by the above authority, and considering also the inflationary trends, as the aforementioned case was decided about a year before the impugned award was made, and considering also the purchasing power of the Kenyan shilling, I am of the view that an award of Kshs. 600,000 would be sufficient compensation in this case.
23. In the end, the appellant’s appeal succeeds, to the extent that the award of Kshs. 1,700,000 awarded by the trial court was excessive and inordinately high given the circumstance. The same is hereby set aside and substituted with an award of Kshs. 600,000.
24. As regards costs, it is trite that costs follow the event and are awarded at the discretion of the trial court. Given that the appellant’s appeal has succeeded, he shall have the costs of this appeal.



25. Given that the award of special damages was not contested, the award now payable to the respondent is as follows:

i. General damages for pain, suffering and loss amenities- Kshs. 600,000;

ii. Special damages-Kshs 11, 500

Total- Kshs. 611,500

Less 15% respondent's consent contribution to liability

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 24<sup>TH</sup> JULY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

