



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Mutu (Civil Appeal E199 of 2024)
[2025] KEHC 10687 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E199 OF 2024
FN MUCHEMI, J
JULY 17, 2025**

BETWEEN

SAMUEL KIMANI MWANGI APPELLANT

AND

SAMUEL KIMANI MUTU RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. S. Atambo
(CM) delivered on 2nd August 2022 in Thika CMCC No. 396 of 2017)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Chief Magistrate in CMCC No. 396 of 2017 arising from an assault whereby the trial court found the appellant fully liable and awarded the respondent general damages of Kshs. 500,000/- for pain and suffering as well as loss of amenities and special damages of Kshs. 11,370/- and costs.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 8 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact in the apportionment of liability contrary to the evidence adduced in court.
 - b. The learned trial magistrate erred in law and in fact in awarding damages that were inordinately high.
 - c. The learned trial magistrate erred and failed to consider the appellant's submissions dated 15th November 2019 and defence dated 8th June 2017.
3. Parties put in written submissions to dispose of the appeal.



Appellant's Submissions

4. The appellant submits that the trial magistrate erred by basing her judgment on liability on evidence in Gatundu Criminal Case No. 190 of 2012 which was not on record. Furthermore, the respondent admitted that he did not have the criminal proceedings as they were with his advocates.
5. The appellant submits that the award of Kshs. 500,000/- as general damages is excessive and is not comparable to the injuries sustained by the respondent which are classified as soft tissue injuries.
6. The appellant argues that the trial magistrate failed to consider his defence and submissions thus occasioning him a miscarriage of justice.

The Respondent's Submissions

7. The respondent submits that the appellant did not file any defence or submissions in the trial court thus the trial magistrate could not consider what was not filed. The respondent further submits that he produced proceedings and judgment of the criminal case in Gatundu being Criminal Case No. 190 of 2017, P3 Form, discharge summary and medical report to support his contentions.
8. The respondent submits that he sustained the following injuries:- deep cuts on the scalp (left temporal region measuring 8 cm); cut on the right parietal frontal and laceration on the right arm which injuries were provided in the medical report he produced. The respondent relies on the cases of Charles Oriwo Odeyo v Appollo Justus Andabwa & Another [2017] eKLR; Penina Waithira Kaburu v LP [2019] eKLR and Julius M'Ringer v George Muthithia & Another (2005) eKLR and submits that the sum of Kshs. 500,000/- is reasonable compensation for the injuries he sustained and is comparable to other awards for the injuries sustained.

Issues for determination

9. The main issues for determination are:-
 - a. Whether the liability apportioned by the trial court was against the weight of the evidence adduced.
 - b. Whether the award of general damages was inordinately high.

The Law

10. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....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 into account of particular circumstances or probabilities materially to estimate the evidence.”
11. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR the Court of Appeal stated that:-

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.

12. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-
 - a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
 - c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the finding of liability was against the weight of the evidence adduced.

13. The principles guiding the appellate court's power to interfere with the trial court's finding on liability are well settled. In *Khambi & Another v Mahithi & Another* [1968] EA 70 it was held that:-

It is well settled that where a trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save in exceptional circumstances, as where there is some error in principle or the apportionment is manifestly erroneous and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.
14. According to the respondent, on 18th February 2018, eleven strangers entered his land and started picking tea leaves. At around 11.30am as he found them trespassing on the land. He then encountered the appellant who was armed with a panga and an axe. The appellant cut him with the panga on his head severally and cut his right wrist as the group assaulted him. The witness further testified that he filed a complaint with the police and the appellant was arrested, charged and convicted of the offence of assault causing actual bodily harm.
15. The defence called one witness, DW1 a brother to the respondent who testified that he was picking tea on the suit land when the incident occurred. He further stated that all of his siblings had a right to enjoy the tea leaves and thus they did not assault the respondent.
16. On perusal of the record, the trial court retired to write the judgment on 14th January 2020 but noted that DW1 who had adopted his statement in evidence was not in the court file and deferred the date of judgment. The matter was mentioned severally however on five occasions, there was no appearance by the defendants. On further perusal of the record, the defendants filed their statement of defence on 8th June 2017 which consists of mere denials of the occurrence of the assault. The defendants also filed their submissions on 15th November 2019 which although the trial magistrate did not mention whether they were considered are subject to perusal and consideration by this court of appeal.
17. The record shows that the appellant was charged in Gatundu Criminal Case No. 190 of 2017 for the offence of assault causing actual bodily harm whereby he was convicted and sentenced to fine of Ksh.20,000/= in default six (6) months imprisonment. The said proceedings were availed by the appellant through his further list of documents dated 9th April 2018 which he sought to rely on. Based on conviction in the criminal case, the appellant instituted the present case seeking compensation for injuries sustained. He produced the P3 Form, discharge summary and the medical report in support of his case. Notably, the appellant did not dispute the contents of the medical report, discharge summary



or P3 Form which the magistrate relied on in assessing the damages. It is my considered view that the respondent proved that the appellant was liable to compensate him for the injuries he inflicted.

Whether the award of general damages was inordinately high

18. The Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tele Civil Appeal No. 284 of 2001* [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would awarded different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

19. Similarly, in *Sheikh Mustaq Hassan v Nathan Mwangi Kamau Transporters & 5 Others* [1986] KLR 457 that:-

“The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own.”

20. According to the plaint, the respondent suffered the following injuries:-

- a. Deep cuts on the scalp (left temporal region measuring 8cm)
- b. Cut on the right parietal frontal
- c. Laceration on the right arm.

21. The trial magistrate awarded a sum of Kshs. 500,000/- for general damages for pain and suffering. The appellant submits that the said award is manifestly excessive and is not justifiable in comparison to the injuries sustained by the respondent. The respondent submits

that the award is justifiable and comparable to the injuries he sustained.

23. I have perused the record of appeal and noted that the injuries sustained by the respondent were confirmed by Dr. Mary Gichagua in her medical report dated 6th April 2017. The doctor further indicated that the respondent after being reviewed was fairing on well with the scalp wound healing well and resolving hematoma lateral to his right eye.

24. Looking at the decisions relied on by the respondent, they contain injuries that are more severe than the injuries he sustained. The appellant did not cite any authorities in his submissions but stated that an award of Kshs. 8,000/- would suffice as reasonable compensation.



25. The learned trial magistrate when arriving at the award of Kshs. 500,000/- took into account the severity of the injuries which the doctor noted were as a result of assault by persons known to him.
26. Taking into consideration the severity of the respondent's injuries, the pain suffered, psychological impact and the inflationary trends, it is my considered view that Kshs. 500,000/- is reasonable compensation as general damages for pain, suffering and loss of amenities.

Conclusion

27. It is therefore my opinion that the appeal lacks merit and is hereby dismissed with costs.
28. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 17TH DAY OF JULY 2025.

F. MUCHEMI.

JUDGE

