



REPUBLIC OF KENYA



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Muchiri & another v Mogere aka Michael Ongete Mogere (Civil Appeal E062 of 2023) [2025] KEHC 10619 (KLR) (15 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E062 OF 2023
SM MOHOCHI, J
JULY 15, 2025**

BETWEEN

JOSEPH MUCHIRI 1ST APPELLANT

DAVID KIMEMIA 2ND APPELLANT

AND

**MICHAEL ONGECHI MOGERE AKA MICHAEL ONGETE
MOGERE RESPONDENT**

*(Being an appeal from the judgment of Hon. I Oreng'e in
Nakuru CMCC No. 47 of 2020 delivered on 8th March, 2023)*

JUDGMENT

1. This is an Appeal initiated by the Memorandum of Appeal dated 4th April, 2023 seeking to set aside the decision of the Trial Court on quantum of general damages of Kshs. 1,800,000. The Appellants seek that the appeal be allowed with costs and judgement on general damages be set aside and or varied with the damages payable being reassessed as well as such further or other orders to be made to meet the ends of justice.
2. By a Plaint dated 24th January, 2020 the Respondent sued the Appellants herein for general damages for pain and suffering, damages for loss and or diminution of future earning capacity, loss of income/ earnings at Kshs. 1,000 per day, costs of future medication/treatment, special damages of Kshs 36,840 costs of the suit, and interest.
3. The Respondent claimed that on 4th July, 2019, he was at Store ya Makaa Area along the Nakuru-Nyahururu road when the driver of Motor Vehicle Registration Number KCP 158 U hit him causing him to sustain serious injuries.



4. The Appellants in their joint Statement of Defence dated 30th June, 2020 denied the particulars of negligence and or recklessness attributed to them or the injury or loss and stated that if the accident occurred the same was wholly caused by the negligence of the Respondent.
5. A consent was adopted on 24th October, 2022 in favour of the Respondent as against the Appellants at the ratio of 80:20%. With liability being settled, the Trial Court then proceeded to award the following:
 - a. General damages Kshs. 1,800,000
 - b. Future medical expenses at Kshs. 200,000
 - c. Special damages Kshs 36,840
 - d. Costs and interest at Court rates.

Appellants' Submissions

6. As to, whether the award of general damages that was manifestly excessive in the circumstances the Appellant submitted that the award was is not only excessive but also inconsistent with the prevailing jurisprudence on similar injuries. The Appellants relied on the case of Stanely Maore v Geoffrey Mwenda [2004] eKLR, which held that comparable injuries should attract comparable awards.
7. The Appellants in proposing an award of Kshs. 700,000 relied on inter alia the following decisions and submitted that the injuries in the authorities herein are equal if not greater to the ones sustained by the Respondent herein are equal if not greater: -
 - a. Pestiny Limited & Another, v Samuel Itonye Kagoko [2022] eKLR where an award of Kshs. 1,400,000 was reduced to Kshs 800,000 for fracture of the mid shaft left femur and soft tissue injuries
 - b. Obare & 2 Others vs Ochieng [2024] KEHC 1077 (KLR) where an award of Kshs. 1,450,000 was reduced to Kshs 800,000 for fractures of the proximal femur (left leg), lower limb pai and hip pain.
 - c. Mwangi alias Luke Wambugu Mwangi v Irungu [2022] KEHC 14346 (KLR) an award of Kshs. 3,000,000 was reduced to Kshs 800,000 for head injury, soft tissue injuries to the left shoulder and leg, blunt dental injury, fractures of the right humeral head and neck and left tibia-fibula
 - d. Daneva Heavy Trucks & Another v Chrispine Otieno [2022] eKLR for fractures of the pelvis and the left tibia and fibula the award was reduced to Khs 800,000
 - e. David Mutembei v Maurice Ochieng Odoyo[2019] eKLR an award of Kshs. 1,600,000 was reduced to Kshs 800,000 on appeal for fracture of the right femur ad a proximal fracture of the left tibia.

Respondent's Submissions

8. The Respondent in opposing the appeal and while relying in Wandera George T/A Odindiko Investments vs Harrison Shida Thoya & another 2019] eKLR submitted that the award was correct and the Court has no reason to interfere with it.



9. Counsel argued that, the Appellants have failed to factor in the seriousness of the injuries sustained to the extent that the Respondent is pre-disposed to developing skin cancer, has to cover his head while exposed to sunshine, his scars developed keloids and his leg was shortened.
10. It was submitted that the Appellants at the trial relied on old cases which were not in tandem with the jurisprudence of comparable injuries. Further that the Appellants have introduced new authorities to challenge the decisions of the Court which were not presented at the time of making the award and relied on the case of Sila Tiren & another v Simon Ombati Omiambo [2014] eKLR to submit that the it is only fair that parties challenge the award within the context that the learned Magistrate dealt with the matter.

Analysis and Determination

11. I have considered the pleadings and the submissions by the parties' counsel on record. It is settled law that the duty of the first Appellate Court is to re-evaluate the evidence on both on points of law and facts and come up with its own findings and conclusions. While at it, the Court must take into consideration that it had no opportunity to hear and see witnesses and therefore make due allowance for that. See Peters v Sunday Post Limited [1958] EA 424] and Selle & Another v Associated Motor Boat Co. Ltd & Another [1968] E.A. 123.
12. The main issue for determination is, whether the Trial Court's assessment of general damages for pain and suffering was excessive in the circumstances so as to warrant interference by this Court.
13. On quantum of damages, the applicable principles were propounded by the Court of Appeal decision in Bashir Ahmed Butt V Uwais Ahmed Khan [1982-88] (KLR) where the Court held 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. Further, in the case of Savanna Saw Mills Ltd Vs Gorge Mwale Mudomo [2005] eKLR the Court stated as follows: -

“It is the law that the assessment of 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 simply because it would have awarded a different figure if it had tried the case at the first instance ...”
15. The Respondent suffered the following injuries: -
 - a. Displaced fracture of the left tibia and fibula
 - b. Mild head injury
 - c. Deep cut wood to the scalp
 - d. Soft tissue injuries of the neck
 - e. Soft tissue injuries of the chest
 - f. Cut wound and multiple bruises on the left scapula region
 - g. Soft tissue injuries



- h. Deep cut would to the right femoral region
 - i. Soft tissue injuries on the 4th and 5th toes.
16. He was admitted on 5th July, 2019 and was discharged ten days later on the on 15th July, 2019. Dr. Kiamba's medical report dated 19th November, 2019 opined that the Respondent's wounds had healed with prominent permanent disfiguring scars, the fractures had united but would require physio therapy. He classifies the degree of harm as grievous.
 17. The Report of 30th July, 2020 by the same doctor had a different view as he opined that the Respondent had loss of hair on head scar making him prone to skin cancer, he classified incapacity at 30%.
 18. The keloids could be removed with laser surgery and the doctor put the cost of future treatment of Kshs 200,000 which the Respondent was awarded and has not been challenged.
 19. The report by Dr. Thuita dated 22nd March, 2021 considered by the Trial Court is not on record and what is on record is a medical report dated 22nd March, 2021 by Dr. Kahuthu for one Millicent Wanjiru Ngingi, a stranger to the proceedings.
 20. I have considered the impugned judgment of the Trial Court. In arriving at the award, the Trial Court relied on the case of Mwaura Muiruri v Suera Flowers & Another [2014] eKLR where the Plaintiff was awarded Kshs. 1,750,000 for comminuted fractures of the right humerus upper and lower thirds of the tibia and compound double fractures of the right upper and lower 1/3 tibia and fibula.
 21. The Trial Court also relied on the case of Geoffrey Mwaniki Mwinzi v Ibeero (K) Limited and another [2014] eKLR where the Plaintiff was awarded Kshs. 2,000,000 for sustaining extensive fractures of the left tibia and fibula with extensive damage to the soft tissues of the left leg and fracture collar bone. The Plaintiff had an internal fixation of the fracture with metallic plate and subsequent amputation of the left leg.
 22. Looking at the decisions relied on by the Trial Court, the injuries sustained therein are quite severe and in the second one, it led to an amputation with metal fixation on the legs. The first decision too had more serious fractures than the ones sustained by the Respondent herein.
 23. I have considered the injuries sustained herein and the medical records availed and taken into account of the authorities cited by both parties at the trial stage, as well as those cited in this appeal. In assessment of an award of damages the injured person is entitled to a fair compensation. The same fairness is extended to the tortfeasor in order to avoid unjust enrichment.
 24. Awards should also reflect previous trends and must be in tandem with comparable awards while considering extent of injuries and the sequence of treatment and period of recovery. Inflation trends and the value of the currency is also a factor for consideration.
 25. In looking at awards made in similar injuries, I have examined other relevant decisions and the following recent decisions resonate more with this case:
 - a. In Wilson Matu & another v Stanley Muriuki Wamugo [2021] KEHC 6967 (KLR) where the Respondent sustained a fracture of the right midshaft femur and fracture of the right proximal tibia and fibula bones. The High Court reduced and award of Kshs. 1,800,000 awarded him general damages to Kshs 800,000 in May of 2021
 - b. Mbae (Suing as the Legal Representative of the Estate Koome Mbae) v Kinya [2024] KEHC 2285 (KLR) the Plaintiff suffered compound fracture tibia and fibula involving distal third; closed fracture right femur; and closed fracture right radius and soft tissue injuries, was



admitted for 74 days in hospital, she also had metal implants in her leg and that she. The Court on appeal reduced an award of Kshs. 1,750,000 for pain and suffering to an award of Kshs. 600,000 in March of 2024

- c. *Mugacha v Kyenza* [2024] KEHC 10651 (KLR) an award of Ksh 1,300,000 was reduced to Kshs. 800,000 on appeal for Blunt injuries to the forehead and nasal bridge with tenderness and bruises, Blunt injuries to the left wrist/elbow with tenderness and bruises, Blunt injuries to the left knee/ankle with lacerations, fractured left distal fibula, Fractured pelvis-pubic rami, blunt injuries to the pubic region, Dislocation to the left elbow in September of 2024.
26. Guided by the above cited recent decisions of similar injuries I find that considering that the Respondent was awarded the sum of Kshs 200,000 for future medical treatment for the scarring which resulted in keloids, the award by the Trial Court of Kshs. 1,800,000 was manifestly excessive and presented an erroneous award.
27. From the medical records the Trial Court failed to take into consideration that there were no surgeries or metal fixations or amputations and therefore the award was not based on comparable decisions nor injuries. I am of the view this a matter ripe for the exercise of discretion of this Court to interfere with the Trial Court's finding.
28. I substitute the award to the Respondent to an award of Ksh. 700,000/- as general damages for pain and suffering. I will not disturb the awards on the other heads as they have not been challenged.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 15TH DAY OF JULY, 2025

MOHOCHI S.M.

JUDGE

