Mwangi aka Joseph Mwangi Mwati & 2 others v Njuguna Gitau aka Henry Njuguna (Civil Appeal E115 of 2023) [2025] KEHC 10654 (KLR) (15 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10654 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL APPEAL E115 OF 2023

SM MOHOCHI, J

JULY 15, 2025

BETWEEN

JOSEPH MWATI MWANGI AKA JOSEPH MWANGI MWATI ... 1ST APPELLANT

2NK SACCO COOPERATIVE SAVINGS & CREDIT SOCIETY LIMITED .... 2ND APPELLANT

ERASTUS WACHIRA .... 3RD APPELLANT

AND

HENRY NJUGUNA GITAU AKA HENRY NJUGUNA .... RESPONDENT

(Being an appeal against the judgment of Honourable Prisca Nyota (SRM) delivered on 29th May, 2023 in Nakuru CMCC No. 1121 of 2019)

JUDGMENT

1. This Appeal is against the Trial Court's determination on the assessment of quantum of general damages of Kshs. 1,500,000 awarded to the Respondent for pain and suffering which according to the Appellants Memorandum of Appeal dated 16th June, 2023 was excessive. The Appellants thus seek that the appeal be allowed, judgment on quantum be set aside and substituted with a fresh award as well as costs of the Trial Court and on appeal be awarded to the Appellants.

2. By Plaint dated 23rd October, 2019 and subsequently amended on 20th February, 2023 the Respondent sued the Appellants seeking general damages for pain and suffering, damages for diminished/loss of future earning capacity, costs of future medication/treatment, loss of income at Kshs. 50,000 per month costs of domestic help at Kshs. 10,000, special damages of Kshs. 311,200, costs of the suit and interest.

3. That on 27th August, 2018, the Respondent was a lawful passenger aboard Motor Vehicle Registration No. KCK xxx while on the Nakuru Naivasha road the driver of the said motor vehicle so carelessly,

negligently drove, controlled or managed the motor vehicle that he caused the same to be involved in an accident as a result of which the Respondent sustained injuries for which she blamed the Appellants.

4. The Appellants in their joint amended statement of defence dated 5th October, 2020 denied any blame or the particulars of negligence or occurrence of the accident and asserted that the Respondent and the driver of the other motor vehicle KCP xxxH were to blame for the accident. The Appellants also claimed fraud, forgery and misrepresentation of facts by the Respondent.

5. The trial court vide its Judgement found in favour of the Respondent as against the Appellants and awarded as follows: -

    a. Liability at 100%

    b. General damages for pain and suffering Kshs. 1,500,000

    c. Costs of future treatment Kshs. 140,000

    d. Special damages Kshs. 34,300

    e. Loss of income/earnings Kshs. 200,000

    f. Costs of the suit

    g. Interests on b-f above at 12%

6. The Appeal was admitted to be ripe for hearing on the 18th March 2025 by way of written submissions. On the 8th of May 2025 neither party had filed written submissions and counsel for both the Appellants and the Respondent were granted a further opportunity to file written submissions.

7. At the time of this judgment the Appellants had failed to file their written submissions while the Respondent filed his belated written submissions on the 17th June 2025.

Respondents Case

8. That this is an Appeal on Quantum of award only.

9. The Respondent submits that, the entire Appeal stands abandoned as was held in the cases of *Kathini Titus v Almicdad Parcel Services Limited & another* [2014] eKLR and *Michael Kariuki Murage v Republic* [2018] KLR and hence a ripe candidate for dismissal with costs to him.

10. That the applicable principles in an Appeal on quantum are well settled and can be summarized as follows as captured in the Plethora of cases and learned treatise among them *Judicial Hints on Civil Procedure* by R. Kuloba at page 250 and 251: -

    a) A court of appeal does not readily interfere with the estimate of damages made by the trial judge as assessment of damages is necessarily an estimate, and an estimate is necessarily a matter of degree, and unless an appeal court comes to the conclusion that the judge below took an erroneous view of the evidence as to the damage suffered by the Plaintiff, or made some mistake in giving weight to evidence that ought not to have affected his mind, or in leaving out of consideration something that ought to have affected his mind, it ought not to interfere;

    b) Therefore and in order to justify reversing a trial court's finding on quantum, it will generally be necessary that the appellate court should be convinced either that the judge at the trial acted upon some upon some wrong principle of law, or that the amount was so extremely high or so very small as to make it an entirely erroneous estimate of the damage to which the Plaintiff is entitled and therefore the fact that the appeal court itself might feel disinclined to agree with

an amount since it would have given a different award if it was the one trying the case will not justify the court of appeal in making any amendment of the trial's judge award;

c) It should not be supposed that because an appellate court is hearing such a case by way of rehearing, therefore it would be ready to reassess damage according to what the court of appeal, if it had been trying the case, might have given as damages, and not what the judge below gave and therefore it is incumbent on the parties wishing to disturb the damages awarded to satisfy the court of appeal that the judge at the trial had acted upon an

11. That, it is also not true that the award made herein was erroneous/excessive as the trial magistrate was properly guided by the nature, extent and severity of Respondents injuries, both parties' submissions, decided case, inflation and the relevant principles of law for awarding damages including fairness when arriving at the award herein as reflected from Paragraph 7 to 10 of her judgement. Reliance is placed on the case of *John Wambua v Mathew Makau Mwololo & another* [2020] eKLR where the court held that;

> " in an Appeal, the question is not what the appellate court would have awarded if it was the one trying the case at the first instance but whether the trial court acted on wrong principles and thus where an award is supported by authorities, there can be no basis for interfering with the same even if the Appellate court would have awarded a different figure if it was the one hearing the case at the first instance".

12. Further reference on the learned treatise Kemp and Kemp, *The Quantum of Damages* Volume 1 Para 19-004: -

> " It is not the function of an Appellate court to substitute it's opinion for that of the trial judge... Before an Appellate court interferes with an award of damages, it should be satisfied that the Judge has acted on a wrong principle of law, or has misapprehended the facts, or has for other reasons made a wholly erroneous estimate of the damages suffered. It is not enough that there is a balance of opinion or preference of one award over the other. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency. As such and where there are different awards for similar injuries in decided cases and the trial court's award is within the range/both limits set by the decided cases, the Appellate court will not interfere with the trial courts award. A preference of $10,000/= over $7,000/- is a matter of opinion, but not by itself evidence of error (Emphasis supplied)".

13. That the trial court award of Kshs.1,500,000/=is within the limits set by decided cases for comparable/similar injuries, the said award cannot be said to be inordinately high, erroneous and or excessive. Reliance is placed upon the case of *Wanyonyi v Kikuvi & another* (Civil Case 13 of 2020) [2022] KEHC 12686 (KLR) (21 July 2022) (Judgment):-

> " The appellant's counsel has complained about the figure awarded for loss of expectation of life under the *Law Reform Act* of Kshs.250,000/-, Counsel proposed an amount of Kshs. 100,000/-in the trial court, while the respondents' counsel proposed Kshs.300,000/-. They both relied on decided court cases. The magistrate awarded Kshs. 250,000/= which in my view, is within the range that had previously been awarded by trial courts for persons within that age range. I will not interfere with this award on loss of life expectancy."

14. Further Reference is made to the case of *[Municipal Council of Nakuru & another v David Mburu Gathlaya]* [1993] eKLR where The Court of Appeal 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 respects, and so arrived at a figure, which was inordinately high or low. The question is this was the award of Kshs. 1,200,000/- inordinately high or disproportionate to the injuries suffered by the respondent to warrant disturbance by this Court? We think not... The comparable current awards show an upward trend. The award in this case is within the range of the up-ward trend, This upward trend is explained by the inflationary trend and the decline of the value of the Kenya Shilling. The award of Kshs. 1,200,000/ was not inordinately high to warrant our disturbing it... Ground 6 of the appeal also fails."

15. And in the case of *[Afro Sugar Co. Limited & Another v Levi Juma Eliud]* [2009] eKLR where the court held as follows while buttressing the need to take into account inflation when awarding damages and also acknowledging that inflation could sometimes necessitate or justify a higher award than what is provided for within the range of decided cases:

> " It is trite law that in awarding damages, the Court has to take into consideration comparable awards and effect of inflation. The awards should not be too low, so as not to reasonably provide the injured person with something for pain, suffering and loss of amenities. The bracket set by decided cases for similar injuries does not fix a sum certain to which, like a prosecution bed, all awards for similar or almost similar injuries must fit. The bracket only provides a range. In the instant case the cases cited by both Counsel are within the same bracket. They range between KShs.80,000/- and KShs. 180,000/-, My understanding of the bracket is that it does not fix a sum certain to which, like a prosecution bed, all awards for similar or almost similar Injurios must fit. The bracket only provides a range Accordingly, the award of general damages is reduced to KShs. 210,000/- and not Kshs. 180,000/- on account of inflation (emphasis added.)"

16. Lastly, the Respondent submits that, the award of Kshs.300,000/= proposed by the Appellants herein in the lower court was not only inordinately low, undeserving but also unmerited and untenable taking into account the Respondent's injuries and their resulting effects (as properly held by the trial court) since the injuries that attract awards in the region of Kshs.300,000/= are minor less serious than those suffered by the Respondent, as can be demonstrated by case of *[Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo]* [2021] eKLR where the Respondent sustained blunt injury to the chest, bruises to the lower abdomen; bruises of the right hip joint, bruises of the thigh and bruises on the knee and The High Court refused to interfere with an award of Kshs,350,000/= in general damages: The case of *[Ochieng & another v Kariuki]* (Civil Appeal E073 of 2023) [2024] KEHC 11930 (KLR) (Civ) (4 October 2024) (Judgment where the Respondent sustained blunt soft tissue injuries to the head. chest, back and pelvis(trunk) and The High Court equally refused to interfere with an award of Kshs.400,000/- in general damages: The case of *[Platinum Credit Ltd & another v Erick Oloo Okello]* [2022] eKLR where the Respondent suffered Dislocation and Soft tissue injuries and The High Court refused to interfere with awards of Kshs.600,000/= under this head. As such, the Appellants proposed award of Kshs.300,000/= is untenable in view of the fact that the Respondent suffered multiple fractures of Left femur right tibia and fibula which resulted into permanent disability.

17. The Respondent urges the court to find the Appeal to be without merit and dismiss the same with an adverse costs order.

Analysis and Determination

18. I have considered the record of appeal and in determining this appeal I have factored in the duty of the Court on first appeal as was stated by the Court of Appeal in the case of *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, as follows: -

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

19. The widely recognized principle in the context of personal injury claims and damages is that comparable injuries should as much as possible attract comparable awards. See *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR.

20. On whether this Court can interfere with the quantum of general damages for pain and suffering awarded by the Trial Court, the general principle is that an Appellate Court would only interfere with the Trial Court's discretion pertaining to the assessment of an award of damages if it is so inordinately high or low as to represent an entirety erroneous estimate.

21. In *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR) the Court of Appeal held that; -

> "...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v Khan* [1981] KLR 349 when it held as per Law, J.A that:
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> > "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."

22. The Respondent as a result of the accident pleaded that he suffered: -

    a. Comminuted fracture of the left femur

    b. comminuted displaced fractures of the right tibia and fibula in the distal one third

    c. Fracture of the right head of fibula and tibia plateau

    d. Fracture of the left ulna in the distal part

    e. Loss of 4 upper incisor and 1 canine

f. Deep cut would on the chin.

23. The medical report by Dr. W. Kiamba dated 28th May, 2019 classified the degree of injury as grievous harm with a permanent disability of 40%. The Respondent will not be able to drive due to the stiffness of the left knee, hip joint and right ankle joint.

24. However, by consent of 8th March 2023 the parties agreed to rely on the injuries highlighted by the medical report of Dr. Kahuthu which were left mid shaft femur fracture and right distal tibia/fibula fractures, assessment of 10% permanent disability and future medical expenses assed at Kshs. 140,000.

25. The Court in *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & another* [2017] eKLR set out the principles to be considered in guiding Courts in the assessment of damages which are: -

a. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

b. The award should be commensurable with the injuries sustained.

c. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

d. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

e. The awards should not be inordinately low or high.

26. The Trial Court in making the award was of the view that: -

> "The authorities cited by the Defendant were more recent but the injuries of the Plaintiff were more sever. Despite the age of the authorities cited by the Plaintiff they are more comparative save for the fact that the Plaintiff's leg did not shorten and healed adequately as per Dr. Kahuthu's findings of 9th January, 2020. He sustained a higher degree of permanent disability. Taking the circumstances of this case into consideration, the loss of shilling purchasing per, doing the best to fairly compensate the Plaintiff for the injuries without unjustly enriching him, I award Kshs. 1,500,000 as damages for pain and suffering."

27. In considering the injuries suffered by the Respondent and the evidence adduced, the Respondent was first taken to Naivasha County Referral Hospital for stabilization, wound cleaning and first aid then transferred to Nakuru Provincial General Hospital where he was admitted from 27th August, 2018 and was discharged on 1st October, 2018.

28. The Respondent fractured both lower limbs and as per the discharge summary he was admitted to hospital for over a month. He testified that he had a helper for 18 months. PW3 testified that the Respondent had metal plates implanted on both legs with the femur having two implants on two places. He further testified that fractures take three months to heal.

29. In analyzing those injuries, it safe to say the Respondent suffered severe injuries and having fractured both legs was incapacitated physically for some time with minimal to no movement.

30. The Appellants failed to file submissions in support of their appeal but nonetheless in the grounds of appeal faulted the Trial Court for failing to consider authorities cited by the Appellants, relied on wrong principles of law, failed to consider the nature and extent of the injuries sustained, failed to consider the consent adopted and that the assessment was not supported by facts of law.

31. The Trial Court in making the award was of the view that: -

> "The authorities cited by the Defendant were more recent but the injuries of the Plaintiff were more sever. Despite the age of the authorities cited by the Plaintiff they are more comparative save for the fact that the Plaintiff's leg did not shorten and healed adequately as per Dr. Kahuthu's findings of 9th January, 2020. He sustained a higher degree of permanent disability. Taking the circumstances of this case into consideration, the loss of shilling purchasing per, doing the best to fairly compensate the Plaintiff for the injuries without unjustly enriching him, I award Kshs. 1,500,000 as damages for pain and suffering."

32. Looking at the impugned judgement the Trial Court did consider the submissions of the parties, addressed the authorities cited by the parties in the judgment as well as the nature of injuries in the consented medical records. I am of the view that all relevant factors were considered.

33. In *Ngare v Kiai* [2023] KEHC 24212 (KLR) the Respondent suffered Compound bilateral fracture of tibia/fibula, compound fracture of the proximal end of the right tibia, Compound fracture of the left distal tibia and an award of Kshs 2,000,000 was reduced to Kshs 1,600,000 in October of 2023.

34. In *George & another v Babu* [2024] KEHC 5986 (KLR) Fracture of the left tibia, Fracture of the left fibula, Fracture of the right femur, Bruises to the left leg, Recurrent pains, Inability to lift heavy load, Surgical scar, the award of damages was Kshs. 1,300,000 and maintained on appeal in May, of 2024.

35. Due to the foregoing reasons and the authorities cited, the Appellants have failed to demonstrate any irrelevant factor taken into account in making the award or any relevant factor left out. The Appellants have also failed to demonstrate how the award is inordinately high and erroneous. I decline to interfere with the decision of the Trial Court on the award of general damages.

36. I therefore find that the Appeal is not merited and it is hereby dismissed with costs to the Respondent.

It so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU

ON THIS 15TH DAY OF JULY, 2025

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MOHOCHI S.M.

JUDGE