



REPUBLIC OF KENYA



KENYA LAW
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**Muriithi & another v Mburugu (Civil Appeal E045 of 2024)
[2025] KEHC 9891 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E045 OF 2024
SM GITHINJI, J
JULY 8, 2025**

BETWEEN

FREDRICK CHOMBA MURIITHI 1ST APPELLANT

MARTIN CHOMBA MURIITHI 2ND APPELLANT

AND

FRIDAH NAITO MBURUGU RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. E. O. Wambo
(PM) in Nkubu CMCC No. E034 of 2023 delivered on 29th February, 2024)*

JUDGMENT

1. This Appeal arises from the judgment of the learned Principal Magistrate Hon. E. O. Wambo delivered on 29.02.2024 in Nkubu Civil Suit No. E034 of 2023 wherein judgment was entered in the following terms;
 1. Liability 80:20%
 2. General Damages for pain, suffering and loss of amenities Ksh. 1,200,000
 3. Future Medical Expenses Ksh. 100,000
 4. Special Damages Ksh. 10,550
2. Aggrieved by the said Judgment, the Appellants set forth the following grounds in the Memorandum of appeal dated 25th March, 2024;
 1. The Learned Trial Magistrate erred in law and fact by warding inordinately high general damages of Kshs. 1,200,000/= to the Respondent constituting a miscarriage of justice in the circumstances of the case.



2. The Learned Trial Magistrate misdirected himself by failing to rely on contemporary comparative decisions and authorities in awarding general damages based on comparable injuries sustained by the Respondent.
 3. The Learned Trial Magistrate erred in law and fact by awarding Kshs. 100,000/= in Future medical costs that were contradictory to the 2nd Medical report tendered by the Appellants/ Defendants leading to a miscarriage of justice.
 4. The Learned Trial Magistrate's judgment was wholly not supported in law by evidence (especially the Medical reports) tendered in court by the parties and legal principles.
 5. The Learned Trial Magistrate erred in law and fact by failing to consider the Appellants' submissions and authorities on liability and quantum hence arriving at an erroneous decision.
3. The parties recorded a consent on liability at the ratio of 80:20 in favour of the Appellants against the Respondent and the documents by both parties were produced by consent.

Appellants' Submissions

4. The Appellants through the firm of Kiruki & Kayika Advocates filed submissions dated 30/1/2025 citing *Ainu Shamsi Hauliers Limited v Moses Sakwa & another* (suing as the Administrator of the Estate of Ben Siguda Okach (Deceased) [2021] eKLR and *Mkube v Nyamuro* (1983) LLR at 403 on the principles guiding appellate jurisdiction. Counsel urged the court to substitute the award of Ksh. 1,200,000 with Ksh. 450,000, and cited *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* (2020) eKLR and *Jitan Nagra v Abidnego Nyandusi Oigo* (Civil Appeal 74 of 2016) [2018] KEHC 3078 (KLR) (12 October 2018) (Judgment). Counsel cited *Transcom Ltd & Anor v Hassan Mohammed Adan* (2009) eKLR, where the court held that future medical expenses ought to be proved and pleaded. Counsel asserted that there was no basis for awarding future medical expenses because the Respondent's injuries had since resolved with no residue injury or disability.
5. The Respondent through the firm of Kiogora Arithi & Associates Advocates filed submissions dated 18/1/2025. Counsel lauded the trial court for following the principles and formula of assessing damages for bodily injuries in awarding Ksh. 1,200,000, which was fair, reasonable and equitable, and cited *Morris Mugambi & Silas Imanene (Jashid) v Isaiah Gitiru* (2004) eKLR, *Kemfro Africa Ltd v Meru Express Service Gathogo Kanini v A.M Lubia & Olive Lubia* (1987) KLR 30 and *Silas Muthuri Muraga & Anor v Margaret Mwangwa Munene* (2015) eKLR. Counsel submitted that the Appellants' authorities were duly considered and the injuries therein found to be incomparable to those sustained by the Respondent.

Analysis and Determination

6. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
7. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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."



8. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsel.
9. From the grounds of appeal, the issues for determination are whether the awards of Ksh. 1,200,000 and Ksh. 100,000 were excessive and whether the Appellants' submissions and authorities were considered.
10. The principles to be considered by an appellate court in deciding whether to disturb the trial court's assessment of damages were set out by the Court of Appeal in the locus classicus case of *Butt v Khan* [1978] eKLR thus; "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 misapprehended the evidence in some material respect, or that he made an entirely erroneous estimate of the damages."
11. In order to properly gauge whether the awards made by the trial court were indeed excessive, it is imperative to internalize the seriousness or otherwise of the injuries the Respondent sustained. The Respondent was admitted at Jekim Hospital Nkubu on 12/10/2022 and discharged on 19/10/2022. The Respondent sustained a painful right upper limb, bleeding laceration on the lateral aspect of the left knee, swollen and tender left distal leg and fractures of the left tibia and fibula. When Dr. John K. Macharia examined the Respondent on 24/2/2023, approximately 4 months after the accident, her complaints then were residual pains over the right shoulder and left ankle with difficulties in walking. The doctor noted that there was appreciable alignment of the Tibia and healing process of the fracture was evident. He opined that the post trauma pains were expected to abate with time and the surgical implants would require removal at an estimated cost of Ksh. 100,000.
12. When Dr. Wambugu P. M examined the Respondent on 14/7/2023, he observed that the fracture had united and the metal implants would electively be removed after one year at an estimated cost of Ksh. 85,000. He further noted that there was residual mild stiffness of the ankle joint and assessed the degree of permanent incapacitation at 2%.
13. With the concession by both Dr. Macharia and Dr. Wambugu that the Respondent's fractures and the skeletal soft injuries had since completely healed save for residual pains, I find that, on the test of *Butt v Khan* (supra), the trial court's award of Ksh. 1,200,000 was manifestly excessive as to represent an entirely erroneous estimate of the pain suffered by the Respondent.
14. Both doctors further conceded that the metal implants would require surgical removal at an estimated cost of between Ksh. 85,000 – Ks. 100,000. I find that the Respondent proved on a balance of probabilities that she would require future medical intervention of having the metal implants surgically removed, and the trial court's award of Ksh. 100,000 under that head was justified.
15. In *Kimita v Travel Budget Express & another (Civil Appeal E042 of 2022)* [2024] KEHC 6435 (KLR) (4 June 2024) (Judgment), the court (G.L. Nzioka J) upheld the trial court's award of general damages of Ksh. 800,000 for a claimant who sustained a fracture distal end of the left tibia and fibula, severe soft tissue injury of the left leg, a deep cut wound on the forehead leading to severe soft tissue injuries, a cut wound on the zygomatic area leading to severe soft tissue injuries, a deep cut wound on the left arm leading to soft tissue injuries, a fracture of the right tibia, a compound fracture of the left tibia and a deep cut wound on the chin.
16. In *Kiama v Mutiso (Civil Appeal 40 of 2023)* [2024] KEHC 5135 (KLR) (13 May 2024) (Judgment), the court (O.A Sewe J) substituted an award of general damages of Ksh. 700,000 with Ksh. 400,000 for a claimant who sustained a single fracture of the upper 1/3 of the left tibia bone and related soft tissue injuries.



17. I respectfully find that a sum of Ksh. 700,000 would adequately compensate the Respondent who sustained fractures of the left tibia and fibula coupled with mild soft tissue injuries.
18. I find that trial court aptly juxtaposed the Respondent's authorities against those cited by the Appellants before reaching the decision it did, and the fault that it failed to consider the Appellants' submissions and authorities is clearly unfounded.
19. Consequently, I find the appeal merited and it is hereby allowed in the following terms.
 1. The award of Ksh. 1,200,000 is set aside and substituted with an award of Ksh. 700,000.
 2. The other awards remain undisturbed. Each party to bear own costs of the appeal.

DATED AND DELIVERED AT MERU 8TH THIS JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Mr. Omari holding brief for Mr. Kiogora Arithi for the Respondent.

Miss Oteko for the Appellant (absent).

