



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maina & another v Esiromo (Civil Appeal E493 of 2021)  
[2025] KEHC 9700 (KLR) (Civ) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E493 OF 2021**

**WM MUSYOKA, J**

**JULY 1, 2025**

**BETWEEN**

**JOHN GITHINJI MAINA ..... 1<sup>ST</sup> APPELLANT**

**BODIC MWANIKI OGEKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MAUREEN MALELE ESIROMO ..... RESPONDENT**

*(Appeal from judgement and decree of Hon. DO Mbeja, Principal  
Magistrate, PM, of 16th July 2020, in Milimani CMCCC No. 903 of 2020)*

**JUDGMENT**

1. The suit, at the primary court, was by the respondent, as against the appellants. It was for compensation for loss and damage, arising from a road traffic accident. The allegation was that the respondent was travelling in a motor vehicle registration mark and number KCS 384L, owned and controlled by the appellants, when the same had an accident, on 8<sup>th</sup> May 2019, along Waiyaki Way, Nairobi. The respondent attributed the accident to negligence on the part of the appellants; in the manner they drove and controlled the subject motor vehicle.
2. The appellants entered appearance and filed a defence. They denied the allegations against them, and attributed contributory negligence on the part of the respondent.
3. A trial was conducted. The respondent testified and called two witnesses. The appellants did not testify nor call witnesses. Judgment was delivered, on 16<sup>th</sup> July 2021, in favour of the respondent. Liability was assessed at 100%, against the appellants; general damages were awarded at Kshs. 2,000,000.00; Kshs. 5,650.00 was awarded for special damages; and Kshs. 300,000.00 for removal of metal implants; plus, costs and interests.



4. The appellants were aggrieved, hence the appeal. Their memorandum of appeal is dated 9<sup>th</sup> August 2021. The grounds are that the award of general damages was manifestly excessive, and the submissions were treated superficially.
5. The record is not clear on whether directions were taken for disposal of the appeal, but the parties did file their respective written submissions.
6. The appellants argue that an award of Kshs. 100,000.00 would suffice, and they base the submissions on *Van Den Bey (K) Ltd vs. Charles Osewe Osodo* [2022] KEELRC 773 (KLR)(Nderitu, J), where Kshs. 1,000,000.00, was awarded; *Alphonza Wothaya Warutu & another vs. Joseph Muema* [2017] eKLR (C. Kariuki, J), where Kshs. 800,000.00, on future medical expenses. They cite *Forwarding Company Limited & Another vs Kisilu; Gladwell (Third Party)* [2022] KECA 96 (KLR) (Musinga, Murgor & Sichale, JJA), where it was held that where two doctors do not agree on future medical expenses, then the court should settle for the average. It is submitted that one doctor proposed Kshs. 300,000.00, while the other proposed Kshs. 80,000.00, and the average should be Kshs. 190,000.00.
7. The respondent supports the decision of the trial court and submits that the trial court should even have awarded a higher figure of Kshs. 3,200,000.00, based on the decisions in *Sabina Nyakenya Mwangi vs. Patrick Kigoro & Another* [2015] eKLR (Muchemi, J) and *Alex Wachira Njagua vs. Gathuthi Tea Factory & Another* [2010] eKLR (Sergon, J), where awards of Kshs. 3,000,000.00 were given. On future medical expenses, the respondent cites *Pascal Iha Garama vs. Jackson Njeru Njoka* [2019] eKLR [2019] KEHC 7249 (KLR) (W Korir, J) for the point that future medical expenses required specific pleading and specific proof. She argues that the court should not be swayed by submissions, but rather it should depend on pleadings and the law, and cites *Peter Namu Njeru vs. Philemone Mwangi* [2016] eKLR (PJ Otieno, J).
8. The injuries pleaded were fractures of the midshaft of the right humerus, left radius and pelvis, with multiple soft tissue injury. The medical report by Dr. Okere mentions the fractures and mild head injury; and so does that by Dr. PM Wambugu.
9. I have looked at several decisions on comparable injuries. In *Wurano Tosha & another vs. DMK* (2021) eKLR (Chitembwe, J), where there was a fracture of the pelvis and fractures of other bones, the court awarded Kshs. 2,500,000.00. In *Penina Waithira Kaburu vs. LP* [2019] eKLR [2019] KEHC 10833 (KLR) (Ngaah, J), there was a pelvic fracture, together with fractures of the bones, and Kshs. 2,000,000.00 was awarded. In *John Mutuga Kamau vs. Kanini Haraka Enterprises Ltd* [2019] KEHC 1107 (Mwongo, J), the injuries were fractures of the distal radius, femur, acetabulum and the right wrist, and Kshs. 2,400,000.00 was awarded. In *Mary Wanjah Gachombah vs. Josinta Adhiambo Ogana* [2021] KEHC 6082 (Kiarie, J), it was a fracture of the right humerus, left tibia and left fibula, plus soft tissue injuries, and Kshs. 2,000,000.00 was awarded.
10. On general damages, I am persuaded that the award made was within range. There would be no reason to disturb it.
11. On future medical expenses, I note that Dr. Okere proposed Kshs. 300,000.00, and he attended court and testified, and produced his medical report as an exhibit. The appellants did not testify. They did not present any witness. So, Dr. Wambugu did not testify, and his medical report was not produced as evidence. It was neither placed on record by consent of the parties. It was only introduced into the record by way of written submissions. That was an attempt to sneak in the medical report through the backdoor. As it is, it was not part of the evidence that was before the trial court. The trial court only had the evidence of Dr. Okere, and was justified, therefore, to rely on it to make the award on future medical expenses.



12. Consequently, I find no merit in the appeal herein. I, accordingly, dismiss the same. The respondent shall have the costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA, ON THIS 1<sup>ST</sup> DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi

Advocates

Mr. Omagwa, instructed by Munga Kibanga & Company, Advocates for the appellants.

Ms. Odhiambo, instructed by Musili Mbiti Advocates LLP, Advocates for the respondent.

