



REPUBLIC OF KENYA



KENYA LAW
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**Ratemo & another v Muyuka (Civil Appeal E025 of 2022)
[2025] KEHC 10600 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E025 OF 2022**

RC RUTTO, J

JULY 17, 2025

BETWEEN

THOMAS RATEMO 1ST APPELLANT

MUNGE ELIZABETH 2ND APPELLANT

AND

JOHNSTONE BYRUM MUYUKA RESPONDENT

*(An appeal from the judgment and decree of the Chief Magistrate's Court at Mavoko
(S. Jalang'o, PM.) delivered on 10th February 2022 in CMCC No. 273 of 2018)*

JUDGMENT

1. This is an appeal on quantum parties agreed on liability at the ratio of 80:20 in favour of the respondent against the appellant. Through an amended plaint dated 1st October 2019, the respondent sought general damages, special damages amounting to Kshs.203,550.00, costs, and interest against the appellants arising out of a road traffic accident. The suit named the 1st appellant as the driver and the 2nd appellant as the owner of motor vehicle KCE 702W (Mitsubishi Bus/Coach). The facts were that on 5th April 2017, the respondent was a paying passenger aboard motor vehicle KCC 760D. While traveling along Namanga Road, the appellants' vehicle, driven recklessly and at excessive speed, lost control while overtaking and collided with motor vehicle KCC 760D. The respondent sustained bodily injuries, prompting him to file this claim.
2. In a judgment delivered on 10th February 2022, the trial magistrate apportioned 80% liability to the appellants and 20% to the respondent. The respondent was awarded the following, general damages: Kshs.2,000,000.00, future medical expenses: Kshs.150,000.00 Special damages: Kshs.3,550.00. After applying the 20% contributory negligence, the total award stood at Kshs.1,722,840.00. The respondent was further awarded costs of the suit together with interest.



3. Dissatisfied with the judgment the appellants filed a memorandum of appeal dated 21st February 2022, raising seven grounds. In summary, they alleged: the trial magistrate erred in finding that the respondent had proved his case on a balance of probabilities; the awards were exorbitantly high against the height and weight of the evidence; the decision of the trial magistrate was unjust and based on misguided points of facts and wrong principles of law thereby occasioning a miscarriage of justice; and the trial court did not consider their submissions. For those reasons, the appellants proposed that the appeal be allowed, the award on quantum be interfered with and costs of this appeal. They urged the appellate court to allow the appeal, review the quantum, and award costs of this appeal
4. The appeal was disposed of by way of written submissions. However, the court notes that as at the time of writing this judgment the appellants had not filed their submissions. The respondent in his submissions dated 19th June 2024 submitted that the trial court's awards was justifiable, reasonable and commensurate with the injuries suffered. He argued that there was no reason to fault the trial court for it carefully considered the evidence, submissions, and supporting authorities before delivering a well-reasoned judgment. He urged the court to dismiss the appeal with costs.
5. I have considered the respondent's written submissions, examined the record of appeal and analyzed the law. A first appellate court, my primary role is to re-evaluate, re-assess and reanalyze the evidence on the record and draw my own conclusions bearing in mind that I did not have the advantage of seeing or hearing the witnesses. [See *Peters v Sunday Post Limited* [1985] EA 424.]
6. The assessment on quantum was heard on the basis of viva voce evidence During the hearing on quantum, the respondent testified as PW1. He narrated that due to the accident, he sustained multiple injuries as follows; injuries on the foot and a fracture below the knee of his right leg, the pelvic part of his left leg and left hand. All victims of the accident were rushed to Athiriver Shalom Community Hospital for treatment. PW1 was later referred to Kenyatta National Hospital for further treatment. Surgery was done and internal fixation on his right leg and left side of his pelvis. PW1 was admitted in hospital for eight days. He produced his treatment notes, medical records, P3 form, motor vehicle search and receipt in support of his evidence
7. PW2 Dr. Titus Ndeti testified that on 7th September 2020, he examined the respondent. From the documents supplied by PW1, PW2 he observed that the respondent sustained injuries following a road traffic accident. He confirmed that PW1 suffered a deep cut wound on the forehead, tenderness and swelling on the forehead, fracture of the left acetabulum left hip, tenderness and swelling of the left hip, fracture of the right tibia/fibula bones, tenderness and swelling on the right lower limb, deep cut wound on the right lower limb, tenderness and swelling on the right foot, fracture of the right talus and a dislocation of the right sub-talar and talonavicular joints.
8. PW2 confirmed that the respondent underwent, open reduction and fixation using implants, debridement of the right leg. He was also given crutches and painkillers to manage the pain He observed that the respondent still experienced pain and had visible scars, and that his routine duties were interrupted for about a year. Furthermore, he opined that there was a possibility that the respondent would develop osteoarthritis.
9. PW2 also recommended future medical intervention to remove the implants, estimating costs at Kshs.200,000.00. He assessed his degree of permanent incapacity at 8% because of the fractures he sustained. He also confirmed that PW1 had weakness on his right leg. His findings were captured in his medical report that was produced in evidence. He confirmed that he charged PW1 Kshs.3,000.00 for the medical report and Kshs.10,000.00 to court attendance. He also produced the receipt for Kshs.3,000.00 in evidence



10. DW1, Dr. Jenipher Kahoto, testified that she examined PW1 on 30th October 2017. She confirmed that PW1 had sustained fracture injuries to the left acetabulum, a fracture-dislocation of the right talus, and a fracture of the right tibia/fibula. He had been admitted to Kenyatta National Hospital, where he underwent debridement of the right leg, reduction of the talus, and open reduction and internal fixation (ORIF) of the left acetabulum, talus, and tibia.
11. At the time of the examination, PW1 was walking with the assistance of crutches. He had normal movement in his right ankle and joint but experienced pain in his right leg upon exertion. Dr. Kahoto also observed that PW1 had fractures and internal fixations in place. She assessed that PW1 would require future surgery to remove the implants, estimating the cost of such a procedure at Kshs.120,000.00 at Kenyatta National Hospital. Her medical report was duly produced and marked in evidence.
12. It is well established that an appellate court will not interfere with an award of general damages by a trial court unless the trial court acted under a mistake of law, or, where the trial court acted in disregard of principles, or, where the trial court took into account irrelevant matters or failed to take into account relevant matters, or, where the trial court acted under a misapprehension of facts, or, where injustice would result if the appellate court does not interfere; and, where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage. [See *Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa)* [2022] KEHC 282 (KLR).]
13. From the medical evidence comprehensively presented, the respondent suffered deep cut wound on the forehead, tenderness and swelling on the forehead, fracture of the left acetabulum left hip, tenderness and swelling of the left hip, fracture of the right tibia/fibula bones, tenderness and swelling on the right lower limb, deep cut wound on the right lower limb, tenderness and swelling on the right foot, fracture of the right talus and a dislocation of the right sub-talar and talonavicular joints. The injuries were confirmed by both PW2 and DW1.
14. Contrary to the appellant's grounds of appeal, the trial court carefully considered the authorities supplied by both parties in assessing general damages for the injuries that the respondent had sustained. The trial magistrate considered the authorities placed before him and concurred with the findings of this court in Kisumu HCCA No. 173 of 2011; *Easy Coach Limited v Dinah Habwe Omutsali*. Taking into account the current market inflation and the severity of the respondent's injuries, the trial court awarded Kshs.2,000,000.00 in general damages. I find that the learned magistrate applied the correct principles and I see no reason to disturb those findings
15. As for future medical expenses, both PW2 and DW1 confirmed the presence of metal implants requiring removal. PW2 estimated the cost at Kshs.200,000.00, while DW1 proposed Kshs.120,000.00. The trial court reasonably balanced these figures and awarded Kshs.150,000.00, which I find fair and appropriate. I see no reason to interfere with that finding.
16. The receipts for Kshs.3,000.00 (medical report) and Kshs.550.00 (motor vehicle search) were properly produced in evidence. I therefore find that both amounts were sufficiently pleaded and proved.
17. Based on the above findings, it is my determination that the appeal is devoid of merit. It is accordingly dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025

RHODA RUTTO

JUDGE



In the presence of;

.....for Appellant

.....for Respondent

Selina Court Assistant

