



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaura v Wanjiku (Civil Appeal 250 of 2023)  
[2025] KEHC 12550 (KLR) (9 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12550 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 250 OF 2023  
RC RUTTO, J  
SEPTEMBER 9, 2025**

**BETWEEN**

**PAUL KAMAU MWAURA ..... APPELLANT**

**AND**

**RICHARD MUIRURI WANJIKU ..... RESPONDENT**

*(An appeal from the judgment and decree of the Chief Magistrate's Court at Ruiru (D. Orago, SRM.) delivered on 25th July 2023 in CMCC No. E625 of 2022)*

**JUDGMENT**

1. In CMCC No. E625 of 2022, the appellant filed a suit against the respondent through a plaint dated 14<sup>th</sup> September 2022. He alleged that on 17<sup>th</sup> November 2021, while riding motor cycle registration number KMFF 037X along Kamiitu area, the respondent or its driver negligently and carelessly drove motor vehicle registration number KBD 845N at a high speed that he lost control and collided with the appellant's motor cycle. As a result of the accident, the appellant averred that he sustained a degloving injury on his right knee, a right tibia plateau fracture and soft tissue injuries on his chest and abdomen. For those reasons, the appellant sought special damages of Kshs.5,500.00, general damages, costs and interest.
2. In its judgment delivered on 25<sup>th</sup> July 2023, the trial court found that the respondent was 100% liable for the accident. Accordingly, the appellant was awarded general damages in the sum of Kshs.180,000.00, special damages of Kshs.5,500.00, costs and interests of the suit.
3. Dissatisfied with the award of quantum, the appellant filed a memorandum of appeal dated 25<sup>th</sup> July 2023 raising two grounds. He urged that the general damages awarded were manifestly low, the trial court failed to apply the correct legal principles applicable in the award of general damages and overlooked comparable awards for similar injuries. That in the assessment of damages the trial court



failed to consider the authorities cited in his submissions on the issue of damages. For those reasons, the appellant prayed that his appeal be allowed and that this court be pleased to reassess the quantum sum.

4. The appeal was canvassed by way of written submissions. The appellant's written submissions and list of authorities, are both dated 28<sup>th</sup> June 2024, while the respondents are dated 14<sup>th</sup> January 2024.
5. The appellant reiterated that the injuries he sustained as set out in the plaint were not in dispute. . He explained that following the accident, he was admitted at Gatundu Level 5 Hospital for 8 days due to the severity of his injuries. He relied on the P3 form and a medical report by Dr. Siboko which classified his injuries as grievous harm. The degree of permanent incapacity was assessed at 3% as the injuries maimed him for life.
6. Based on this evidence, the appellant submitted the trial court had applied incorrect principles resulting in an inordinately low sum. He urged that the court failed to give sufficient weight and consideration to the evidence presented at trial, the submissions and authorities in support thereof. Relying on the decisions in *Barchia Leonard Mbaabu & another vs. Angeline Ngesa Rambim* [2019] eKLR, *Patrick Kinyanjui Njama vs. Evans Juma Mukweyi* [2017] eKLR and *Kimathi Muturi Donald vs. Kevin Ochieng' Aseso* [2021] eKLR, the appellant urged this court to award the sum of Kshs.1,200,000.00.
7. In response, the respondent submitted that the assessment of general damages is a matter of judicial discretion, which must be exercised judicially with wise circumspect. They urged that the court had properly exercised this discretion and that the award of kshs 180,000/- was commensurate with the injuries sustained by the appellant. While agreeing with the principle that comparable injuries should attract comparable awards, they maintained that the trial court decision fell within the acceptable limits and should not be disturbed.
8. To support their position, the respondent cited several authorities including; *Isaac Muriungi Mbataru v Silas Kalumani* (2017)eKLR; *Naomi Momanyi vs G4S Security Services Kenya Limited* (2018) eKLR; *Wakim Sodas Limited vs Sammy Aritos* (2017)eKLR; *Gladys Lyaka Mwombe v Francis Namatsi & 2 others* (2019)eKLR.

They contend that these cases demonstrated that the award granted was reasonable and within the range typically awarded for similar injuries. As such, they urged that there was no justification for increasing the amount.

The respondent urged the court to dismiss the appeal with costs, on grounds that the trial court's award was fair and that costs should follow the event.

9. I have carefully considered the record of appeal, the parties submissions, and applicable. It is undisputed that an accident occurred on 17<sup>th</sup> November 2022 at 5:00 p.m. along Kamiitu area involving motor cycle registration number KMFF 037X and the respondent's motor vehicle registration number KBD 845N. It is also not contested that the appellant sustained injuries as a result of the accident. The trial court finding on liability was not contested and remains unchallenged. The only issue for determination is on quantum of damages which the appellant contends was inordinately low and not comparable to those of similar injuries.
10. The role of a first appellate court in reviewing an award on quantum was settled by the Court of Appeal in *Kemfro Africa Limited t/a Meru Express Services & Another vs. A.M. Lubia and Another* (1987) KAR 30 where it held as follows:

“It is trite law that the assessment of general 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 below, simply because it would have awarded a different figure if it had tried the case at first instance.

The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

11. In awarding Kshs.180,000.00 in general damages, the trial court stated:

“I have looked at the comparable awards and the fact that the injuries sustained by the plaintiff are grievous injuries. In the case of Beatrice Kaweru vs. Eliud Njuguna HCCC No. 4348 of 1988 where Kshs. 250,000.00 was awarded for injuries that included loss of 2 upper teeth, fracture of the left radius, left femur and acetabulum. It is noteworthy that the injuries sustained by the plaintiff in the above authority are more severe than the one sustained by the plaintiff in the instant suit.”

12. The question before this court is whether the trial court’s assessment of general damages was fair and reasonable in the circumstance. The appellant sustained a degloving injury right knee with right tibial plateau fracture and soft tissue injuries on the chest and abdomen. He was at first treated at Ruiru Hospital and then transferred to Gatundu Hospital where he was admitted for 8 days. It is undisputed that the appellant’s injuries were classified as grievous harm, with a permanent incapacity was assessed at 3%. During his testimony on 19<sup>th</sup> June 2023, the appellant stated as follows:

“I can’t fold my leg...I haven’t fully recovered. My leg is still in pain. I can’t squat... I am yet to resume work due to the injury.”

13. Taking all this into account, I find that the trial court relied on a precedent that was over 30 years old and which involved more severe injuries. This was clearly not comparable with the present case. I also do find that the trial court failed to consider the appellant’s current condition, as at the time of his testimony, that he had been in hospital for 8 days and that his grievous injuries were assessed at 3% permanent incapacity. In so doing the court misapplied the principles governing the assessment of damages in assessing the award on quantum.

14. The appellant cited several authorities in support for his plea to enhance the award to award Kshs.1,200,000.00. upon reviewing these cases it is evident that the injuries in those matters were significantly more severe than those suffered by the appellant.

15. More comparable precedent offers useful guidance. In *Kenyatta University vs. Isaac Karumba Nyuthe* [2014] eKLR, the plaintiff sustained femur fracture, soft tissue injuries and bruises, on the right knee, used crutches one year later, was hospitalized for 2 months for fixation and was awarded 20% permanent incapacity was awarded Kshs.350,000.00 in 2014.

16. In the case of *T A M (a minor suing through her father next friend JOM) vs. Richard Kirimi Kinoti & Another* [2015] eKLR, the plaintiff sustained a fracture of the left femur, lacerations on the left temple and blunt chest injuries. A metal plate was inserted in the fractured leg. He was awarded Kshs.250,000.00 in 2015.

17. In the case of *Bhachu Industries Limited vs. Peter Kariuki Mutura* [2015] eKLR, the plaintiff suffered an injury on the chest, thigh and a fractured femur which was fixed by insertion of a K-nail resulting in him walking with a limping gait. He was awarded Kshs.300,000.00.



18. In Francis Ndungu Wambui & 2 others vs. Benson Maina Gatia [2019] KEHC 2210 (KLR), the respondent lost consciousness for 24 hours, suffered a fracture of the right femur which was later fixed with a metallic plate, soft tissue injuries to the head and trunk. He was awarded Kshs.600,000.00 in 2019.
19. In view of the foregoing, I find that the fair sum that should be awarded to the appellant is a sum of Kshs.600,000.00. I therefore find that this appeal succeeds. The award on general damages set by the trial court on 25<sup>th</sup> July 2023 is set aside and substituted with an award for general damages in the sum of Kshs.600,000.00. The appellant shall have costs of this appeal.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 9<sup>TH</sup> DAY SEPTEMBER, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

