



**Mash East Africa Limited v Kamau (Civil Appeal E309 of 2020)  
[2024] KEHC 2118 (KLR) (Civ) (1 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2118 (KLR)

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

**CIVIL**

**CIVIL APPEAL E309 OF 2020**

**AN ONGERI, J**

**MARCH 1, 2024**

**BETWEEN**

**MASH EAST AFRICA LIMITED ..... APPELLANT**

**AND**

**MWANGI MICHAEL KAMAU ..... RESPONDENT**

*((Being an appeal against the judgment and decree of Hon. D. W. Mburu  
(SPM) in Milimani CMCC No. 7565 of 2018 delivered on 23/10/2020))*

**JUDGMENT**

1. The respondent was the plaintiff in Milimani CMCC No. 7565 of 2018 where he sued the appellant seeking general damages for pain and suffering for injuries sustained on 3/7/2017 involving the appellant's motor vehicle registration no. KCD 500E and the respondent who was a pedestrian along Accra Road, Nairobi.
2. The appellant denied occurrence of the accident and particulars of negligence and put the respondent to strict proof.
3. During the hearing of the case, the respondent testified and produced documents including a police abstract that confirmed occurrence of the accident.
4. The appellants maintained that the motor vehicle was not in Nairobi at the time of the alleged accident.
5. The trial court found that the respondent proved his case and held the appellant 100% liable in negligence.



6. The trial court assessed general damages as follows;

Pain & suffering ksh.500,000

Special damages 3,550

Total ksh.503,550

7. The appellant has appealed against the judgment and decree on the following grounds;

- i. The learned honourable magistrate erred and misdirected himself in law, principle and facts when he misapprehended and misunderstood the extent and severity of the injuries sustained and the evidence tendered thereby arriving at an award on quantum that is so manifestly and inordinately high constitute an entirely erroneous estimate of the damages in the circumstances of the case.
- ii. The learned magistrate erred in law and in fact in his evaluation of evidence before him and disregarded the defendant's case and evidence in his finding that the plaintiff had proved his case against the defendant.
- iii. The learned magistrate erred in law, fact, evidence and principle and disregarded the defendant's case and evidence in its finding the defendant 100% as against the plaintiff in this matter.

8. The parties filed written submissions as follows; the appellant on liability submitted that the accident subject of this case was never reported to the police until after 9 months after its occurrence. The police further took two months to notify the appellant of its occurrence. Only the police abstract was produced and the police officer who testified was not the investigating officer in the accident. the appellant contended therefore that the evidence produced is therefore inadmissible and should be disregarded and in support cited *Kanithi Kimunya V Aden Guyo Haro* [2014] eKLR the Court held that a police abstract is proof that the occurrence of an accident was reported to a particular police station. The same is however not proof of occurrence of the said accident.

9. The Appellant's witness Mr. David Masai testified to the effect that the accident subject of this case was reported to them nine months after its occurrence. The driver who was driving the motor vehicle registration number KCD 500E alleged to have caused the accident denied having been involved in the alleged accident as he was driving to Mombasa and at the material time of the accident, he was driving between Mtito Andei and Voi headed to Voi.

10. On general damages the appellant submitted that the Respondent's medical report by Dr G.K Mwaura, the Respondent is said to have sustained the following injuries; Fracture of the left 2<sup>nd</sup> metatarsal bone, Degloving injury to the left foot, Pain, swelling and bleeding. The appellant proposed that an award of Kshs 250,000 would be adequate and in support cited;

- a. *Silphanus Kumbe Murondo v Lamek Mbaka Motegi & Another* [2013] eKLR, the court awarded Kshs. 220,000 where the most serious injury suffered by the plaintiff was fracture of the 5<sup>th</sup> metacarpal bone of the right hand.
- b. *Richard Kieti Kathuu v Musee Mutemi* [2018] eKLR where the court awarded Kshs 150,000 for blunt trauma to left elbow joint, bruised left elbow, a cut wound and fracture to metatarsal bone of left limb;
- c. *Rivatex v Philip Mochache Nyabayo* [1999] eKLR. There the award was for the amount of Kshs 240,000 where the plaintiff sustained a fracture of metatarsal bone.



11. The respondent submitted that he confirmed to the trial court that he was involved in the said accident whereby he sustained serious injuries. He identified the appellant's motor vehicle as having caused the said accident as captured by the police abstract. He therefore discharged his burden of proof.
12. The respondent contended that the appellant claimed that their motor vehicle was not in Nairobi at the said time and never adduced any evidence as proof of the same or to corroborate those averments making them mere denials. That consequently the trial court was correct in its finding on liability.
13. On general damages the respondent submitted that Kshs 500,000 sufficient and in support cited *Njora Samuel v Richard Nyangau Orechi* [2018] eKLR where the court awarded the plaintiff Kshs. 500,000 for comparable injuries in 2018
14. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and to arrive at its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
15. The issues for determination in this appeal are as follows;
  - i. Whether the respondent proved his case to the required standard.
  - ii. Whether the trial court was right in finding the appellant 100% liable in negligence.
  - iii. Whether the award of damages was inordinately high.
16. On the issue as to whether the respondent proved his case to the required standard, the evidence amounts to the testimony of the plaintiff against that of DW1.
17. I find that the respondent's evidence was supported by a police abstract that confirmed occurrence of the accident.
18. I find that the respondent proved his case in a balance of probabilities.
19. On the issue as to whether the court was right in finding the appellant 100% liable, there is no evidence that the respondent contributed to the accident.
20. On the issue as to whether the award of general damages was inordinately high, I find that the trial court considered the evidence and the authorities relied upon by the parties as reflected in the judgment of the trial court.
21. I have also considered the following authorities where similar injuries were incurred;
  - a. In *Wycliffe Lumula Mmasi v Ernest Waithaka & Another* (2020) eKLR where L. Njuguna J made an award of Kshs. 800,000/= to a claimant who had sustained extensive degloving injury on the right foot and extensive skin loss.
  - b. In *Kiru Tea Factory & Another v Peterson Watheka Wanjohi* (2008) eKLR where the High Court upheld an award of Kshs. 800,000/= for degloving injury on the right hand with extensive skin and muscle loss on the forearm, fractures of the radius, ulna and right iliac bone and generalized pains.
22. I find that the appeal herein lacks in merit and I dismiss it with costs to the respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
1<sup>ST</sup> DAY OF MARCH, 2024.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent

