



REPUBLIC OF KENYA



**Abuga v Car and General (Trading) Limited (Civil Appeal E902 of 2022)  
[2024] KEHC 3176 (KLR) (Civ) (2 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3176 (KLR)

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

**CIVIL**

**CIVIL APPEAL E902 OF 2022**

**AN ONGERI, J**

**APRIL 2, 2024**

**BETWEEN**

**ZABLON ABUGA ..... APPELLANT**

**AND**

**CAR AND GENERAL (TRADING) LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. Caroline Ndumia  
(SRM) in Milimani SCCC No. E2006 of 2022 delivered on 7/10/2022)*

**JUDGMENT**

1. The appeal herein was allowed and the trial court's judgment which dismissed the Appellant's suit was set aside for reasons that the Respondent did not rebut the presumption that it is the registered owner of the motorcycle No. KMFN 514W.
2. The Respondent did not produce a sale agreement and it did not also enjoin the buyer as a 3<sup>rd</sup> party to the suit.
3. The parties filed submissions in respect of quantum of damages as follows; the appellant on general damages proposed Kshs. 1,000,000 under this head and in support cited;
  - a. The case of *David Mutembei v Maurice Ochieng Odouo* [2019] eKLR, the respondent suffered injuries of a fracture of the right femur and a proximal fracture of the left tibia. Musyoka J set aside an award of Ksh 1,600,000/= by the trial court and reduced it on appeal to Ksh 800,000/= in 2019.
  - b. In *Daneva Heavy Trucks & Another v. Chrispine Otieno* [2022] eKLR the respondent suffered fracture of tibia and fibula where Aburili J set aside an award of Kshs. 1,000,000 and substituted the same with an award of Kshs. 800,000.



4. On future medical expenses the appellant proposed an award of Kshs. 80,000 as assessed by Dr Wokabi. On special Damages the appellant contended that he is entitled to Kshs. 11,040 according to the receipts produced before the trial court.
5. The respondent its part submitted on general damages that the medical report of Dr. W. M Wokabi dated 30/6/2022 is exaggerated by indicating that the appellant sustained 4% permanent disability which was not indicated in the discharge summary from the hospital where the appellant was treated. The respondent argued that the appellant having suffered a fracture of the tibia and fibula on the right leg has since fully recovered and resumed normal duties.
6. The respondent proposed Kshs. 250,000 as sufficient and in support cited among others the following cases;
  - a. In *Jitan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR where the respondent was awarded a sum of Kshs. 450,000/= in general damages for lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound, fracture of the right tibia/fibula segmental distal fracture of the right femur.
  - b. In *Rayan Investments Limited v Jeremiah Mwakulegwa Kasha* [2017] eKLR, the court awarded the claimant a sum of Kshs. 300,000 as general damages for a fracture of the right fibula, severe blunt trauma on the left ankle joint, bruises on the right elbow and blunt trauma on the right wrist.
7. The applicant sustained the following injuries;
  - i. Fracture of the right tibia and right fibula
  - ii. 4% permanent disability
8. I rely on the following comparable authorities (2)
  - a. In the case of *David Mutembei v Maurice Ochieng Odoyo* [2019] eKLR, the respondent suffered injuries of a fracture of the right femur and a proximal fracture of the left tibia and was awarded general damages of Kshs. 1,600,000 had the same reduced on appeal to Kshs. 800,000
  - b. In *Pauline Gesare Onami v Samuel Changamure & another* [2017] eKLR, the plaintiff sustained fractures of the tibia and fibula bones of both legs in addition to laceration on the neck area, blunt trauma to the chest and deep cut wound on both legs mid shaft. Omondi J. upheld an award of Kshs 600,000.
  - c. In *John Njenga Maina v Humphrey Kinyua Rukeria* [2016] eKLR, the appellant sustained fractures of the tibia and fibula of both legs in addition to laceration of the scalp, friction burns on the left hand and elbow, bruises on the left knee and blood loss, physical and psychological pains. Njuguna J awarded the appellant Kshs. 750,000 in general damages
9. In view of the above cases which are comparable, I award general damages of ksh.600,000 and special damages of Kshs.11,040 making a total award of Kshs.611,040.
10. Judgment is entered in favor of the appellant against the respondent in the sum of ksh.611,040 together with costs and interest at court rates from the date of the judgment of the Trial court until payment in full.



**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
2<sup>ND</sup> APRIL, 2024.**

.....

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent

