



REPUBLIC OF KENYA



**Wangui & another v Mbugua (Civil Appeal E829 of 2023)
[2024] KEHC 5417 (KLR) (Civ) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5417 (KLR)

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

CIVIL

CIVIL APPEAL E829 OF 2023

WM MUSYOKA, J

MAY 6, 2024

BETWEEN

DANIEL MUKUNDI WANGUI 1ST APPELLANT

ABEL KIPKOECH KIBET 2ND APPELLANT

AND

ZAKAYO MUKOMA MBUGUA RESPONDENT

*(An appeal arising from the judgment of Hon. MW Murage, Principal Magistrate,
PM, delivered on 17th March 2023, in Milimani CMCCC No. E9800 of 2021)*

JUDGMENT

1. The suit at the primary court was initiated by the respondent, against the appellants, for compensation, arising from a road traffic accident, which allegedly happened on 22nd May 2021, when the respondent was a passenger in a motor-vehicle, cruising along the Northern Bypass, at Marurui, when the same collided with another. The appellants herein were the alleged owners of the 2 vehicles. The respondent attributed negligence on the appellants, or their agents or servants. The 1st appellant filed a defence, in which he denied liability.
2. A trial was conducted, wherein 3 witnesses testified for the respondent, while the appellants did not call any witness. A judgement was delivered on 17th March 2023. Liability was assessed at 100% against both appellants. Damages were awarded at Kshs. 180,000.00.00, for pain and suffering; and Kshs. 9,000.00, for special damages.
3. The appellants were aggrieved, hence the instant appeal. The grounds in the memorandum of appeal, dated 19th August 2022, revolve around the trial court erring in the assessment of the quantum of damages; failing to consider their submissions; the decision being unjust, against the weight of evidence



- and based on wrong principles; and the evidence was not analysed and submissions and authorities were not considered.
4. Directions were given on 16th February 2024, for disposal of the appeal by way of written submissions. There has been compliance, by the respondent. The respondent supports the findings and holdings by the trial court.
 5. Appeal herein is at the instance of the appellants. Directions were given in February 2024, for filing of written submissions, and by the time the same was placed before me on 8th April 2024, no written submissions had been filed by the appellants, and I only have the case stated by the respondent, who has no issue with the judgement. When an appellant fails to file written submissions, it means that their case is unargued, and it is left to the appellate court to go through the record, and draw its own conclusions.
 6. I have gone through the trial record. I note that the trial court, in the judgement, recited the pleadings filed, the plaint by the respondent and the defence by the 1st appellant. The court also recited the testimonies of the 3 witnesses presented by the respondent. The submissions filed by both the respondent and the 1st defendant were also recited, complete with some of the authorities cited in them. There was an analysis, not so detailed though. On liability, it was noted that both appellants did not present witnesses, on how the accident happened, hence the court found them equally to blame, and apportioned liability at 100% against both of them. On quantum of damages, it was considered that the injuries complained of were to the soft tissues, and an assessment followed. To a large extent, the trial court handled the matter well.
 7. The only issue that I have is with how the trial court arrived at the quantum. What guided the court to conclude that Kshs. 180,000.00 was adequate compensation? No authorities were cited, where comparable injuries had been suffered. PW1 was the doctor who prepared the medico-legal report relied on. He did not testify on the injuries sustained, for he merely produced the medico-legal report and some receipts. The injuries pleaded in the plaint were captured from the said medico-legal report, being a deep wound on the frontal scalp, head concussion, blunt injury to back and chest, blunt injury to the shoulder and blunt injury to the left hip.
 8. I have considered the following authorities, on comparable injuries. In Francis Omari Garo vs. JAO [2021] eKLR (Maina, J), the appellant had suffered bruises on the occipital region; a deep cut on the forehead; bruises to the chest, elbow, both hands; and broken teeth, and Kshs. 180,000.00 was awarded. In Elizabeth Wambui Gichoni vs. Benard Ouma Owuor [2019] eKLR (Aburili, J), the injuries sustained were cut wounds on the orbital region of the scalp; bruises on the left upper limb and the gluteal region; blunt injuries to the knees and chest; and head concussion, and an award of Kshs. 175,000.00 was given. In Anthony Nyamwaya vs. Jackline Mora Nyandemo [2022] eKLR (F. Ochieng, J), an award of Kshs. 250,000.00 was made, with respect to cut wounds on the temporal region of the head; tenderness on the neck, chest, back, shoulders, right hand and both legs; and bruises on the right index finger and both legs. In Michael Okello vs. Priscilla Atieno [2021] eKLR (Aburili, J), an award of Kshs. 225,000.00 was made for blunt injuries to the head, neck, chest, left upper limb, right upper limb, right lower limb and shoulder; bruises to the left shoulder, left upper limb and right upper limb; and a cut wound on the right lower limb. In Patrick vs. Ajak [2022] KEHC 612 (Sewe, J), the appellant had sustained blunt injuries to the upper 1st incisor tooth, neck, left shoulder, left chest and left hip; a cut wound to the inner aspect of the upper lip; and bruises on both knees, and Kshs. 300,000.00 was awarded. Comparatively, the injuries were similar to those sustained by the respondent herein, and the award made of Kshs. 180,000.00 fell within acceptable range.



9. In view of the above, I find and hold that there is no merit in the appeal herein, and I hereby dismiss the same. The respondent shall have the costs. The appeal herein is disposed of in those terms. Orders accordingly.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 6TH DAY OF MAY 2024

WM MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Mwangi, instructed by BW Kamunge & Company, Advocates for the respondent.

