



**Mwangi v Kahoro (Civil Appeal E360 of 2023)  
[2024] KEHC 10577 (KLR) (23 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10577 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E360 OF 2023  
CJ KENDAGOR, J  
JULY 23, 2024**

**BETWEEN**

**PHYLIS MUTHONI MWANGI ..... APPELLANT**

**AND**

**MICHAEL GICHANGA KAHORO ..... RESPONDENT**

*(Being an appeal from the Judgment delivered by the Learned Senior  
Principal Magistrate Hon. Meresia Opondo in CMCC Civil Suit No. 487  
of 2021 in the Chief Magistrates Court, Kiambu on 6th September, 2023)*

**JUDGMENT**

1. This Appeal arises from the trial court judgment delivered on 06<sup>th</sup> September, 2023 in Kiambu CMCC No.20 of 2020.
2. The Respondent sustained injuries from a road traffic accident on 15<sup>th</sup> April, 2019 involving Motor Vehicle Registration Number KAY 569B. The trial court entered judgment on liability at 100% against the defendant and awarded general damages for pain, suffering, and loss of amenities at Ksh. 300,000/= plus special damages of Ksh. 3,850/=.
3. The Appellant has appealed against the judgment on quantum and raised the following grounds in the memorandum dated 19<sup>th</sup> September, 2023;
  - a. That the learned Magistrate erred in awarding Kshs.300,000 by way of general damages for the injuries sustained by the appellant.
  - b. The learned Magistrate's award of Kshs.300,000 for general damages is so inordinately low that it must be a wholly erroneous estimate of the loss and damage sustained by the appellant.



- c. That the learned trial Magistrate erred in law and fact in not taking into account the submissions before her on the issue of quantum and particularly on the award of general damages and the authorities in support.
4. The Appellant prays for orders that the appeal be allowed with costs and that the judgment delivered on 6<sup>th</sup> September, 2023 be substituted with a higher assessment.
5. The appeal was canvassed through written submissions.
6. The Appellant submitted that the learned trial magistrate failed to consider the nature of the injuries she sustained as a result of the accident.

### **Analysis and determination**

7. The main issues that arise for determination are whether the award of general damages was excessive to warrant interference by this court and who should bear the costs of the appeal.
8. This being the first appeal, this court must re-evaluate and assess the evidence and make its conclusions. This duty was set out in *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR, as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

9. According to the Medical report by Dr. George Karanja dated 9/10/2020, supported by the appellant’s evidence given in court, the P3 form, the general outpatient records from Kiambu Level 5 hospital, and the X-ray images, the appellant was admitted to hospital and plaster of Paris was applied. She was in plaster for 3 months and in a wheelchair for another 3 months after the plaster was removed. She suffered the following injuries;
  - a. Fracture of mid 1/3 right tibia fibular
  - b. Fracture of lower 1/3 left fibular
  - c. Bruises on both legs

Dr. G.K Karanja noted there was an inward deviation of the right leg.

10. As a general principle, assessing damages for personal bodily injuries requires exercising court discretion. Still, the said discretion must be exercised judiciously, considering the facts of each case, particularly the injuries sustained and comparable awards previously made for similar injuries.
11. In *Bashir Ahmed Butt v Uwais Ahmed Khan* (1982-88) KAR 1, the Court of Appeal stated as follows in this regard:

“An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.”



12. In *Mbaka Nguru And Another V James George Rakwar* [1998] eKLR, the Court of Appeal stated that;

“The award must however reflect the trend of previous, recent, and comparable awards. Considering the authorities cited and also considering all other relevant factors, this court has to take into account, and keeping in mind that the award should fairly compensate the injured within Kenyan conditions.”

13. The Appellant submitted that an award of Ksh. 1,500,000/= as general damages is appropriate considering the injuries and the authorities relied upon.

14. The appellant relied on several authorities, which had the findings below;

*Joash M. Nyabicha Vs Kenya Tea Development Authority & 2 others* [2013] eKLR – In this case, the appellant was cycling and was hit by a motor vehicle. He was awarded Ksh. 1,000,000/= for a fracture to his right leg, and the history given was admission for over a month, and he could not walk for a while. He had been in and out of the hospital over the injury and was eventually terminated at his workplace. The impact of the accident and the resultant effect is higher than the case before the court.

*Robert Mwaniki Ndwiga V Agatha Kaugi Riungu* [2018] eKLR; The Plaintiff sustained a fracture of the right tibia bone, which healed with malunion and subsequent contractures, and a fracture of the right medial malleolus, which healed with deformity. The award was Ksh. 1,050,000/= in 2018. The injuries were more severe than the Appellant’s.

*Geoffrey Mwaniki Mwinzi V Ibero (k) Ltd & Another* [2014] eKLR: The plaintiff sustained extensive fractures of the left tibia and fibula, collar bone, and soft tissue injuries. The doctor assessed permanent disability at 60%, and he was awarded Ksh. 2,500,000/=.

*James Gathirwa Ndungi V Multiple Hauliers (EA) Limited & Another* [2015] eKLR, the plaintiff sustained a refracture and chronic bone infection and could not work for seven years because of the injury. The court awarded him general damages of Ksh. 1,500,000/=.

*Mutisya V Demamoe (civil Appeal E033 Of 2021)* [2023] KEHC 24470. Similar to the other authorities, they all had more severe injuries than the appellant in this case.

15. In awarding the sum of Ksh. 300,000/=-, the learned magistrate relied on three authorities;

*Haron Cheron v Eastern Produce (K) Limited*, High Court, Eldoret, Civil Appeal 92 of 2013 [2014] eKLR, the plaintiff suffered a fracture of the right radius distal third, double fractures of the right ulna, and a fracture of the right olecranon of the right ulna at the elbow joint—an award of Ksh. 350,000 was upheld on appeal.

*Rayan Investments Limited v Jeremiah Mwakulegwa Kasha* [2017] eKLR, where the court awarded the claimant a sum of Ksh. 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.

*Morris Miriti v Nabashon Muriuki and Another MRU HCCA No. 43 of 2014* [2018] eKLR, the plaintiff sustained a tender chest on the anterior and posterior, multiple bruises on the posterior chest, post-traumatic fracture of the 3rd and 4th ribs with bilateral thorax, left lung contusion and fracture of the right scapula. The court affirmed an award of Ksh. 300,000/-.



16. I have evaluated the trial court's findings vis-a-viz the authorities relied upon and the appellant's submissions. Each case is always different, and the authorities relied on may never have the same injuries as those sustained in the case in issue. The courts are expected to consider comparative analysis, the age of the authorities, and inflationary trends.
17. I have examined additional authorities with injuries similar to those sustained by the appellant. In Joseph Mwangi Thuita v. Samuel Changamure & Another [2017] eKLR, the court awarded Ksh. 600,000/= for pain and suffering where the Plaintiff had suffered a fracture of right tibia and fibula bone, fracture of left tibia and fibula bone, laceration on the neck area, and deep cut wound on both legs mid shaft. In Derrick Mwenda Ngaine & Another v. Dennis Mwenda [2021] eKLR, the Plaintiff therein sustained a fracture of both tibia and fibula with a degree of permanent disability assessed at 7%, and the court vacated the award of Ksh. 900,000/= and awarded Ksh. 600,000/=.
18. The award of KES. 300,000/= was inordinately low considering the nature of the injuries sustained by the appellant and warrants interference by this court.
19. Considering the injuries sustained, the doctor's assessment of the right leg's inward deviation, and the inflationary trends, I award general damages at Ksh.750,000/=.
20. The lower court's award of Ksh.3,850 /- as special damages is as pleaded and proved. The same remains as awarded.
21. In light of the preceding, the appeal on quantum is merited and is allowed. The issue of liability was not in question. The lower court award of Ksh. 300,000/= as general damages is substituted with an award of Ksh. 750,000/=. The total award is Ksh. 753,850/=.
22. The appellant shall have the costs of this appeal.
23. It is so ordered.

**DELIVERED, DATED, and SIGNED at NAIROBI on 23<sup>RD</sup> JULY 2024.**

Judgment delivered through microsoft teams online platform.

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**C. KENDAGOR**

**JUDGE**

In the presence of;

Court Assistant – Ahmed

Advocate for the Appellant – Mr. Kungu

