



REPUBLIC OF KENYA



**Mwangi v Mucheni (Civil Appeal E88 of 2020)  
[2024] KEHC 9405 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9405 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E88 OF 2020**

**AB MWAMUYE, J**

**JULY 11, 2024**

**BETWEEN**

**PATRICK WERU MWANGI ..... APPELLANT**

**AND**

**COLLINS ERICK MWANZA MUCHENI ..... RESPONDENT**

*(Being an Appeal against the Judgment and Decree of the Hon. E. Olwande  
(SPM) delivered on 22nd June, 2020 in Limuru SPM Civil Suit No. 80 of 2016)*

**JUDGMENT**

1. The Appellant’s Memorandum of Appeal dated 7<sup>th</sup> July, 2022 raises six grounds of appeal that the Appellant canvasses in his written submissions dated 6<sup>th</sup> February, 2024 under three headings, which are that:
  - a. The Learned Magistrate did not appreciate the severity of the injuries suffered;
  - b. The Learned Magistrate ignored the Respondent’s medico-legal report; and
  - c. The Trial Court disregarded the authorities submitted by the Appellant and proceeded to grant an award that was inordinately low in light of the injuries suffered.
2. The Respondent’s Written Submissions dated 26<sup>th</sup> April, 2024 traverse the same three headings within its text as a single issue. The Respondent opposes all three assertions made by the Appellant; and concludes by urging this Court not to interfere with the Trial Court’s Judgment.
3. It is correct that the three limbs set out by the Appellant in his written submissions are essentially a single point; that the Trial Court erred in law and fact by arriving at an inordinately low award for general damages based on a misapprehension of facts, evidence, and applicable law and authorities.



4. While the Appellant describes the injuries as ‘massive’ the Respondent takes the position that they were not aggravated and did not result in any external injury or neurological report. Both parties are relying on the same document, the Medical Report of Dr. Ashwin Madhiwala dated 17<sup>th</sup> October, 2014 which was stamped filed before the lower court on 28<sup>th</sup> March 2019 by virtue of being the sole document in the Defendant’s List of Documents dated 27<sup>th</sup> March, 2019.

5. Curiously, the Learned Magistrate at Page 3 of the impugned Judgment states as follows:

“No medico-legal report was filed to show how far the Plaintiff has recovered and whether or not he would recover fully. I find that the Plaintiff suffered injury as detailed above.”

6. However, Dr. Madhiwala’s report concludes with his opinion as follows:

“The above named suffered from severe head injury with multiple fractures, cut wound, dental and ENT injuries which has mostly healed well, left with mild weakness over the right side of the face, weakness over the body. All the scars over the face have a cosmetic significance. We can consider permanent disability of 20% and temporary disability of four months only.”

7. It is instructive to note that at the hearing of the suit the parties recorded a consent in these terms:

“By consent judgment be entered on liability in the ratio of 90:10 in favour of the Plaintiff against the Defendant, By further consent parties to address the issue of quantum by written submissions. By further consent all claim supporting documents to be filed with the submissions without calling their makers.”

At this appellate stage, both parties have canvassed the medical report of Dr. Madhiwala. The Respondent has stated in his written submissions that the Appellant did not prove any disability arising from the injuries he sustained, and that those injuries were not aggravated injuries based on that report. On his part, the Appellant contends that the injuries were far more serious than the Learned Magistrate found them to be.

8. I agree with the Appellant that Trial Court erred in finding that the authorities cited by the Appellant were not comparable to the injuries he suffered. The Respondent can also not claim that the injuries were not serious and aggravated when the Respondent’s own medical report speaks to a 20% permanent disability and “severe head injuries.”

9. Accordingly, I find that the award by the Trial Court for general damages for pain and suffering in the amount of Kes. 750,000.00 was inordinately low and that the Trial Court misapprehended the evidence by not citing and considering the Medical Report dated 17<sup>th</sup> October, 2014 which supported the Appellant’s claim. The Appellant has prayed for an award of Kes. 5,000,000.00 but I find that the same would be excessive and an award of Kes. 4,000,000.00 in line with Nairobi HC Civil Case No. 75 of 2012 which had comparable injuries and which had been cited by the Trial Court but erroneously distinguished from the present case.

10. Thus, I set aside the finding of General Damages in the amount of Kes. 750,000.00 and substitute it with General Damages in the amount of Kes. 4,000,000.00. The Liability Ratio of 90:10 was by consent of the parties at the lower court stage and was not appealed against, neither was the award of Special Damages as calculated by the Trial Court. Those aspects remain unchanged.

11. The Appellant shall also have the costs of this Appeal.



**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11<sup>TH</sup> DAY OF JULY, 2024.**

**BAHATI MWAMUYE**

**JUDGE**

**In the presence of:**

Ms. Wandia h/b for Mr. Kagunda Counsel for the Appellant

Ms. Njenga Counsel for the Respondent

Mr Guyo, Court Assistant

