Njuguna & another v Juma (Civil Appeal E297 of 2022)
[2024] KEHC 9593 (KLR) (Civ) (15 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9593 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E297 OF 2022

CW MEOLI, J

JULY 15, 2024

BETWEEN

ROBERT MACHARIA NJUGUNA ..... 1ST APPELLANT

JOEL JUMA ..... 2ND APPELLANT

AND

EVERLINE JUMA ..... RESPONDENT

(Being an appeal from the judgment of P. Muholi, PM, delivered on 3rd November, 2021 in Nairobi Milimani CMCC No. 662 of 2019)

JUDGMENT

1. This appeal derives from the judgment delivered on 3rd November, 2021 in Nairobi Milimani CMCC No. 662 of 2019. The suit was commenced via the plaint dated 6th February, 2019 by Everline Juma being the plaintiff in the lower court (hereafter the Respondent) against Robert Macharia Njuguna and Joel Juma, the 1st and 2nd defendants in the lower court (hereafter the 1st and 2nd Appellants). The claim was for general and special damages arising out of a road traffic accident which occurred on or about the 5th of May, 2018.

2. It was alleged that the 1st Appellant was at all material times the registered owner of the motor vehicle registration No. KAP 077B (hereafter the first motor vehicle) while the 2nd Appellant was its beneficial/ actual owner and/or driver. It was further averred that the Respondent was travelling as a lawful passenger aboard the first motor vehicle on the material day along Eastern Bypass Road, when the said motor vehicle was so negligently, carelessly driven, controlled and/or managed that it veered off the road and rammed into the motor vehicle registration No. KBS 307A (hereafter the second motor vehicle), causing extensive damage to the second motor vehicle as well as severe bodily injuries to

the Respondent herein. The Respondent attributed the accident to negligence on the part of the Appellants as particularized in the plaint.

3. Upon service of summons, the 1st and 2nd Appellants entered appearance and filed their joint statement of defence dated 27th March, 2019, denying the key averments in the plaint and liability. Alternatively, the Appellants pleaded contributory negligence against the Respondent as particularized in the statement of defence.

4. The suit proceeded to hearing, with the Respondent as the sole witness. The Appellants did not call any evidence.

5. In its judgment, the trial court found in favour of the Respondent thereby holding the Appellants jointly and severally liable for the accident. Judgment was thus entered against the Appellants in the sum of Kshs. 728,950/- made up as follows:

   a. General damages for pain and suffering Kshs. 700,000/-;

   b. Special Damages: Kshs. 28,950/-.

6. Aggrieved by the outcome, the Appellants preferred this appeal by way of the memorandum of appeal dated 9th May, 2022 which is premised on the following grounds:-

> " 1. That the Learned Magistrate in this matter delivered judgment on 19th November, 2021 in favour of the Respondent.
>
> 2. That the Learned Magistrate erred in fact and in law in finding that the Respondent was entitled to General damages of Kshs. 700,000/= being that were too high compared to the injuries suffered by the Respondent.
>
> 3. That the Learned Magistrate erred in Law and Fact in failing to appreciate the long established principle of stare decisis, precedent law thus bringing law into confusion and thereby deriving an erroneous finding/conclusion, in particular relating to damages.
>
> 4. That the Learned Magistrate erred in Law and Fact in failing to appreciate that the Respondent's pleadings and evidence tendered in support thereof was incapable of sustaining the award of General damages of Kshs. 500,000/=.
>
> 5. That the Learned Magistrate erred in Law and in fact by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
>
> 6. That the Learned Magistrate erred in Law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very high.
>
> 7. That the Learned Magistrate erred in Law and Fact in entering Judgment in favour of the Respondent against the Appellant in spite of the Respondent's miserable failure to establish her case more specifically on quantum." (sic)

7. The appeal was canvassed by way of written submissions. Counsel condensed the Appellants' grounds of appeal into twin issues of liability and quantum. Addressing the first issue, counsel briefly contended that liability had not been proved against the Appellants to the required standard, citing Section 107

of the *Evidence Act* as to the bearer of the burden of proof in civil cases. The court was therefore urged to disturb the trial court's finding on liability.

8. Regarding quantum, counsel urged the court to consider the decisions in Power Lighting Company Limited & Another v Zakayo Saitoti Naingola & Another (2008) eKLR and Jennifer Mathenge v Patrick Muriuki Maina [2020] eKLR on the guiding principles for consideration in assessing damages. Counsel proceeded to submit that the sum of Kshs. 700,000/- awarded as general damages by the trial court was manifestly excessive, and therefore proposed an award in the sum of Kshs. 400,000/- , relying on the following cases:

    a. In Jitan Nagra v Abidnego Nyandusi Oigo [2018] eKLR the High Court sitting on appeal, found an award of Kshs. 1,000,000/- as general damages for various injuries including a compound fracture of the right femur, to fall on the higher side. Consequently, the High Court revised the award downwards to a sum of Kshs. 450,000/-.

    b. In the case of Herbart Otara Marube v Dankan Ochora [2022] eKLR the court awarded a sum of Kshs. 450,000/- to a plaintiff who had sustained a fracture of right tibia, right ankle dislocation, chest contusion, laceration and cut wounds on the right lower limb.

    c. Similarly, in the case of *Atunga v Mogambi (Civil Appeal E009 of 2021*) [2022] KEHC 9854 (KLR) (3 June 2022) (Judgment) an award in the sum of Kshs. 550,000/- made by the trial court under a similar head and at the instance of damages particularized as dislocation of the right hip joint and right wrist, soft tissue injuries and a fracture of the right tibia and fibula, was upheld on appeal.

9. In conclusion, it was contended that the trial court's judgment ought to be disturbed in the manner set out hereinabove. It was further urged that the Appellants be awarded costs of the appeal, pursuant to Section 27(1) of the *Civil Procedure Act* (CPA).

10. The Respondent naturally defended the trial court's findings in their totality, though counsel's submissions were rivetted on the issue of quantum. In that respect, counsel argued that the awarded sum of Kshs. 700,000/- in general damages, was reasonable in the circumstances and upon the trial court's proper consideration of the injuries sustained coupled with the degree of permanent incapacity assessed.

11. Counsel therefore urged this court to uphold the award, citing inter alia the decisions in Joseph Mwangi Thuita v Joyce Mwole [2018] eKLR where the court awarded a similar sum of Kshs. 700,000/- for injuries in the nature of fractures to the right femur, compound fractures right tibia and fibula, shortening right leg, episodic pain in the right thigh with inability to walk without support; Pauline Gesare Onami v Samuel Changamure & another [2017] eKLR where the High Court on appeal, upheld an award made in the sum of Kshs. 600,000/- for a fracture of the right tibia and fibula bone, fracture of the left tibia and fibula bone, laceration of the left neck area, blunt trauma to the chest and deep cut wound on both legs shaft; and Alex Wanjala v Pwani Oil Products Limited & another [2019] eKLR where a plaintiff who had sustained a closed head injury leading to loss of consciousness for several weeks, and closed fractures of the right humerus and right femur, was awarded a sum of Kshs. 600,000/- on appeal.

12. Consequently, it was asserted that the appeal lacks merit, and it ought to be dismissed with costs and the trial court judgment upheld.

13. The court has considered the record of appeal, the pleadings and original record of the proceedings as well as the submissions by the respective parties. This is a first appeal. The Court of Appeal for East

Africa set out the duty of the first appellate court in Selle v Associated Motor Boat Co. [1968] EA 123 in the following terms:

> " An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.
>
> An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.
>
> In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

14. An appellate court will not ordinarily interfere with a finding of fact made by a trial court unless such finding was based on no evidence, or it is demonstrated that the court below acted on wrong principles in arriving at the finding it did. See Ephantus Mwangi & Another v Duncan Mwangi Wambugu [1982 – 1988] IKAR 278.

15. Based on the submissions by the respective parties before this court, it is evident that the appeal turns on the issues of liability and quantum. Pertinent to the determination of issues are the pleadings, which form the basis of the parties' respective cases before the trial court. Hence a review thereof is apposite before dealing with evidentiary matters. In Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91, the Court of Appeal stated the following in this regard:-

> " We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail." (Emphasis added).

16. The Respondent by her plaint averred at paragraphs *3*, *4*, *5* and *6* thus:

> " 3. At all material times in question the 1st Defendant was the registered owner while the 2nd defendants was the beneficial owner and or owner in possession of Motor Vehicle Registration Number KAP 077B which was at all material times was being driven by the defendants authorized driver, agent, servant and or employee.

4. On or about the 5th May 2018, the Plaintiff was lawfully travelling as a passenger in motor vehicle registration number KAP 077B along Eastern By Pass Road when the Defendants by their authorized driver, agent and or servant so negligently recklessly and carelessly drove motor vehicle KAP 077B that he caused it to veer of its correct lane and violently collide/ram onto motor vehicle KBS 307A extensively damaging it and also causing the plaintiff to sustain sever bodily injuries, endured and continues to endure pain and has suffered loss and damages.

   Particulars of Negligence of the Part of the Defendants Authorized Driver, Servant, Agent and or Employee

   a. Failing to keep any or any proper outlook.

   b. Failed to have any or any proper control of the motor vehicle registration number KAP 077B.

   c. Drove without any due regard and attention.

   d. Failed to have any or any sufficient regard for the safety of other road users and in particular the plaintiff herein.

   e. Drove recklessly, carelessly and dangerously.

   f. Caused motor vehicle registration number KAP 077B to collide onto motor vehicle registration number KBS 307A.

5. The plaintiff will further rely and pleads the doctrine of Res Ipsa Loquitor on the true facts and circumstances of the accident subject matter.

6. By reasons of the matters aforestated, the Plaintiff herein sustained severe injuries and has suffered loss and damage and he claims both general and special damages against the Defendants.

Particulars of Injuries

a. Compound fracture of the right tibia and fibula." (sic)

17. The Appellants filed their statement of defence denying the key averments in the plaint and liability. Alternatively, the Appellants pleaded contributory negligence against the Respondent by stating at paragraphs *3*, *4*, *5* and *7* that:-

   " 3) Of Paragraph 4 of the Plaint, the Defendants deny that on or about 5th May 2018 the Plaintiff was travelling in motor vehicle registration number KAP 077B along Eastern By Pass Road when the Defendant's authorized driver, agent, servant and or employee so negligently drove, controlled, and or managed motor vehicle registration number KAP 077B causing it to veer off its correct lane and rammed onto motor vehicle registration number KBS 307A extensively damaging it and also causing the Plaintiff serious bodily harm. And the Plaintiff is put to strict proof thereof.

   4) The particulars of negligence set out in paragraph 4 of the Plaint and marked as (a)-(f) are denied as if the same were herein set out verbatim and traversed seriatim. And the Plaintiff is put to strict proof thereof.

5. Strictly without prejudice and in the alternative to the foregoing the Defendants aver that any such occurrence as the Plaintiff may prove was caused solely and/or substantially contributed to by the Plaintiff's own negligence.

   Particulars of Plaintiff's Negligence

   The Plaintiff was negligent in:

   a. Failing to take any or any adequate precaution for her own safety.

   b. Failing to heed the instructions on safety precaution for her own safety.

   c. Failing to heed the traffic rules and regulations when travelling.

7. Further and/or in the alternative and without prejudice to the foregoing, the Defendants aver that any such occurrence as the Plaintiff may prove occurred without any negligence on their part and the said collision was solely and/or substantially contributed to by the negligence of the driver of motor vehicle KBS 307A who hit Motor vehicle registration number KAP 077B from the rear.

   Particulars of Negligence of the Driver of Motor vehicle KBS 077B

   The driver of motor vehicle KBS 077B was negligent in:

   i. Hitting Motor Vehicle Registration Number KAP 077B from the rear.

   ii. Driving Motor Vehicle Registration Number KBS 077B at a speed that was high and excessive in the circumstances.

   iii. Failing to stop, break instantly, and/swerve in order to avert an accident.

   iv. Encroaching onto the lane of motor vehicle KBS 077B in a dangerous manner.

   v. Endangering the lives of other road users in his manner of his driving.

   vi. Causing the accident

   ..."(sic)

18. The Respondent was the sole witness at the trial. In her oral testimony as PW1, the Respondent identified herself as a business lady, and adopted her signed witness statement dated 11th April, 2019 as her evidence-in-chief and further produced her bundle of documents of like date as P. Exhibits 1-10. No cross-examination took place.

19. The trial court upon restating the said evidence in its judgment stated the following in arriving at a finding in favour of the Respondent and against the Appellants:

   " 1. Who is to blame for causing the accident.

   The plaintiff testified and told court that she was a passenger in motor vehicle registration number KAP 077B which was negligently driven that it hit motor

vehicle KBS 307A and as a result she sustained injuries. She produced a copy of police abstract which indicates that motor vehicle KBS 307A is to blame. The abstract findings are confecting with the circumstances as stated by the plaintiff. The plaintiff blames motor vehicle KAP 077B, where the abstract which is the only corroborating evidence blames the other.

...

Though the defendant in their statement of defence blame the motor vehicle KAP 077B, there is no factual evidence to support the allegations in the defence.

Consequently, I will find that the driver of motor vehicle KAP 077B is 100% to blame for causing the accident, the owner is vicariously liable.

2. Whether the plaintiff is entitled to damages.

The plaintiff pleaded to have sustained the following injury;

a. Compound fracture of the right tibia and fibula.

The treatment note from Shalom community hospital dated 28/9/201 confirms the fracture, the discharge. Same also confirm the fracture. She was also treated and examined by doctor Okere who confirmed the injury and awarded a 30% incapacity.

...

I have considered the injuries sustained, the opinion of the doctor, the authority cited and the rate of inflation and I am of the view that an award of Kshs. 700,000/- general damages for pain and suffering is an adequate compensation.

Special damages

The plaintiff pleaded Kshs. 28,950/- and proved the same which I hereby award.

The plaintiff will also get costs of the suit and interest at court rates from date of judgment till payment in full

... " (sic).

20. The applicable law as to the burden of proof is found in Sections 107, 108 and 109 of the *Evidence Act*. The Court of Appeal in Mumbi M'Nabea v David M.Wachira [2016] eKLR while discussing the standard of proof in civil liability claims in our jurisdiction had this to say:-

" In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not. Section 107(1) of the *Evidence Act*, Cap 80 Laws of Kenya provides as follows:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." The above provision provides for the legal burden of proof.

However, Section 109 of the same Act provides for the evidentiary burden of proof and states as follows:

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

The position was re-affirmed by the Court of Appeal in Maria Ciabaitaru M'mairanyi & Others v. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000 [2005] 1 EA 280 where it was held that:

"Whereas under section 107 of the *Evidence Act*, (which deals with the legal evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence."

21. The legal burden of proof, unlike the evidentiary burden of proof, does not shift. In reiterating the standard of proof, the Court of Appeal in Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another [2015] eKLR held that:

" Denning J, in Miller –vs- Minister of Pensions [1947] 2 All ER 372 discussing the burden of proof had this to say;-

"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties... are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."

22. Therefore, the duty of proving the averments contained in the plaint lay squarely with the Respondent, notwithstanding the fact that the Appellants did not summon any witness to controvert the Respondent's evidence. In Karugi & Another v Kabiya & 3 Others (1987) KLR 347 the Court of Appeal stated that:

" [T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof. We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendants' failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant...--. The plaintiff must adduce evidence which, in the absence of

rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim." (Emphasis added)

23. From the pleadings and the material tendered before the trial court, it is not in dispute that an accident occurred on the material date, involving a collision between the first and second motor vehicles, resulting in bodily injuries to the Respondent, who averred that she was aboard the first motor vehicle at the time. The police abstract dated 8th August, 2018 and tendered as P. Exhibit 9, confirms the above facts and that the 2nd Appellant herein was the driver of the first motor vehicle at the material time.

24. The more pertinent question was whether the Respondent proved the particulars of negligence against the Appellants, to the required standard. In this regard, the Court of Appeal held in Eastern Produce (K) Ltd v Christopher Atiado Osiro [2006] eKLR that the onus of proof lies upon him who alleges and where negligence is alleged, some form of negligence must be proved against the defendant(s). The court in that case cited the famous decision of Kiema Mutuku v Kenya Cargo Hauling Services Ltd [1991] 2KAR 258 where the Court of Appeal, while reiterating the foregoing, stated that:

> " There is, as yet no liability without fault in the legal system in Kenya and a plaintiff must prove some negligence against the defendant where the claim is based on negligence."

25. The Appellants did not cross-examine the Respondent or call any evidence. The total sum of the Respondent's testimony was that the driver of the first motor vehicle, namely the 2nd Appellant, caused the accident by negligently and/or carelessly driving the said motor vehicle at a high speed, thus losing control and ramming into the second motor vehicle. The police abstract (P. Exhibit 9) confirmed the occurrence of the accident involving the two motor vehicles.

26. According to the police abstract, driver of the second motor vehicle was to blame for the material accident. That notwithstanding, neither the registered owner nor the driver of the second motor vehicle was identified and/or enjoined in the suit by the Appellants, who in their statement of defence blamed the driver of the second motor vehicle for the accident, in alternative.

27. The Respondent being a passenger aboard the first motor vehicle, was an eyewitness to the events leading up to and resulting in the accident. No contrary evidence was tendered to controvert her eyewitness account. Furthermore, as a passenger aboard the first motor vehicle, the Respondent had no control whatsoever in the way the said motor vehicle was being managed at any time. According to her testimony, the accident resulted from negligence on the part of the 2nd Appellant being the driver of the first motor vehicle and that the 1st Appellant was vicariously liable by virtue of being the owner thereof.

28. No evidence was tendered to rebut or discredit her narration of events. The police abstract while useful cannot in the circumstances of this case displace the direct eyewitness account by the Respondent which in this case was unchallenged. While the Respondent was an eyewitness to the accident, the police abstract was prepared by a police officer who visited the scene after the fact. The said officer did not testify to explain how he arrived at his conclusions. The court is satisfied that the Respondent had proved her case to the required standard, as the trial court correctly found.In the premises, the court is satisfied that the Respondent made her case against the 1st and 2nd Appellants and hence the trial court acted correctly by finding them jointly and severally liable. Consequently, the appeal on liability automatically fails.

29. Proceeding to address the second limb of the appeal on quantum, the challenge relates to general damages for pain, suffering and loss of amenities, which the Appellants viewed as inordinately high in comparison to the injuries sustained by the Respondent herein.

30. In this regard, the court draws guidance from the principles enunciated by the Court of Appeal in several cases, including Kemfro Africa Limited t/a as Meru Express Service, Gathogo Kanini v A.M Lubia and Olive Lubia (1987) KLR 30. It was held in that case that:-

> " The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages."

31. The same court stated in Bashir Ahmed Butt v Uwais Ahmed Khan [1982 – 1988] I KAR 5 that:-

> " An appellate court will not disturb an award of 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".

See also Lukenya Ranching and Farming Co-operative Society Limited v Kavoloto (1979) EA 414; Catholic Diocese of Kisumu v Sophia Achieng Tete Kisumu Civil Appeal No. 284 of 2001; (2004) eKLR.

32. In the latter case, the Court of Appeal reiterated the discretionary nature of general damage awards and exhorted that:

> " An appellate court is not justified in substituting a figure of its own for that awarded by the court below, simply because it would have awarded a different figure if it had tried the case in the first instance".

33. In Tayib v Kinany (1983) KLR 14, the Court exhorted inter alia that:

> " By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said and done, it still must be that amounts which are awarded are to a reasonable extent conventional." (Emphasis added)

34. The Respondent particularized her injuries in the plaint as comprising a compound fracture of the right tibia and fibula. The injuries were confirmed by the medical report prepared by Dr. Cyprianus Okoth Okere and dated 4th November, 2018 (P. Exhibit 1). The doctor noted that the Respondent complained of recurring pains on the right lower leg as well as an inability to walk very fast or carry heavy loads. The doctor further noted that the Respondent walks with a limp and that her injured leg was swollen and tender on a deep palpitation. Consequently, the doctor classified the injuries as grievous harm in nature and assessed permanent incapacity arising from the injuries at 30%.

35. In her submissions, the Respondent proposed an award of Kshs. 1,800,000/- as general damages for pain, suffering and loss of amenities, whilst placing reliance on the decision in George William Awuor v Beryl Awuor Ochieng [2020] eKLR where a plaintiff who had suffered a compound and communited fracture of the right distal tibia and fibula, among other injuries, was awarded a sum of Kshs. 1,200,000/-

36. In the absence of authorities by the Appellants, the trial court upon considering the injuries sustained, the medical evidence on record and the above authority as cited in the Respondent's submissions, proceeded to award a sum of Kshs. 700,000/- as general damages.

37. Reviewing the case of George William Awuor v Beryl Awuor Ochieng (supra) which was relied upon by the Respondent, the court is of the opinion that it related to injuries of a more severe nature, in addition to the skeletal injuries sustained. Considering the respective authorities cited by the parties on appeal, the court is of the view that those cited by the Appellants entail injuries of a less serious nature and therefore not comparable to the present case . On the other hand, the cases of Joseph Mwangi Thuita v Joyce Mwole (supra) and Pauline Gesare Onami v Samuel Changamure & another (supra) cited by the Respondent appear more comparable in terms of injuries sustained by the plaintiffs therein.

38. In addition, this court has considered the case of Aloise Mwangi Kahari v Martin Muitya & another [2020] eKLR where the High Court sitting on appeal considered injuries comprising a compound fracture of right tibia and fibula, bleeding from left lower limb and a swollen leg, and proceeded to enhance the award of general damages from the sum of Kshs.300,000/ to Kshs.500,000/ and the case of Daniel Otieno Owino & another v Elizabeth Atieno Owuor [2020] eKLR in which an award in the sum of Kshs.600,000/- was made to a plaintiff who suffered a compound fracture of the tibia/fibula bones on the right leg inter alia.

39. In the circumstances, the court is satisfied that the trial court awarded a reasonable sum by way of general damages for pain, suffering and loss of amenities. There is therefore no justification for interfering with the said award.

40. Finally, the Appellants' complaint that the trial court did not take into consideration their submissions and authorities filed before it has no basis. From the record and impugned judgment, it is apparent that no submissions were filed by the Appellants, for the consideration of the trial court.

41. In the result, the appeal is without merit and is hereby dismissed with costs to the Respondent.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 15TH DAY OF JULY 2024.

C.MEOLI

JUDGE

In the presence of:-

For the Appellant: N/A

For the Respondent: Mr. Kuyoh

C/A: Erick