



**Ndavi v Mwangangi (Civil Appeal 764 of 2019)  
[2024] KEHC 8106 (KLR) (Civ) (3 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8106 (KLR)

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

**CIVIL**

**CIVIL APPEAL 764 OF 2019**

**REA OUGO, J**

**JULY 3, 2024**

**BETWEEN**

**JOSEPH MUTUKU NDAVI ..... APPELLANT**

**AND**

**ZIPPORAH SYOMBUA MWANGANGI ..... RESPONDENT**

*(Being an appeal from the whole of the judgment of the Honourable Magistrate  
D.O Mbeja (SRM) delivered on 21/11/2019 from CMCC No 9219 of 2017)*

**JUDGMENT**

1. The trial magistrate, following the plaint filed by the respondent and the subsequent defence and a full hearing, entered the following judgment in favour of the respondent:

“ Given... the injuries suffered by the plaintiff, the evidence so far adduced together with the submissions filed coupled with the authorities cited, judgment is entered in favor of the plaintiff against the defendant for Kshs.700,000, general damages for pain and suffering, plus a further sum of Kshs 430,000/- made up of future medical costs for removal of K-nail and skin grafting coupled with a sum of Kshs 2,000 for the medical report, Kshs 500 for copy of records and Kshs 132,750 special damages as pleaded and proved less 20% contribution on liability as agreed by consent of the parties all circumstances of this case considered. The above award shall carry costs plus interest at court rates.”

2. A brief background of this matter is that on 21/6/2017 the respondent was walking as a pedestrian along Agoi Road near Pangani Heights, Nairobi when the appellant who was driving KBX xxxS veered off the road into the pedestrian path, and knocked down the appellant. The appellant sustained a



fracture of the right femur; a large degloving injury on the inner aspect of the right leg; abrasions on the right hand and back; and multiple cut wounds on the left leg.

3. The appellant has now appealed against the decision of the subordinate court on the following grounds:
  1. That the Learned Trial Magistrate misdirected himself in treating the submissions of the appellant very superficially thereby arriving at a wrong conclusion of the quantum.
  2. That the Learned Trial Magistrate erred in law and fact in not making an award which was within the limits of already decided cases of a similar nature.
  3. That the Learned Trial Magistrate erred in law and fact in awarding judgment of Kshs 1,012,184/- without showing how he arrived at the figure.
  4. That the Learned Trial Magistrate erred in law and fact in finding that the appellant did not lay basis for the proposed award if quantum in the appellant's submissions.
  5. That the Learned Trial Magistrate erred in law and fact in awarding future medical costs of Kshs 430,000/- to the respondent which was not pleaded in the plaint.
4. The appellant seeks that the judgment of the trial magistrate be set aside and the same be assessed afresh.

#### **Analysis and Determination**

5. This appeal being solely against the decision on damages, I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held 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”
6. The appellant submits that the original treatment notes from Mercy Light Hospital indicate that the respondent sustained only a femur fracture, however, the treatment notes from Nairobi Women's Hospital show that the respondent also sustained degloving injuries.
7. The respondent in his submissions argues that Dr W.M. Wokabi confirmed that a K-nail metal had been implanted in the respondent and would cost Kshs 130,000/- to remove. It will further cost Kshs 300,000/- to perform surgery to minimize the scars on the right leg.
8. I have looked at the discharge summary from Mercy Light Hospital and it notes that the respondent sustained a fracture of the femur and the fact that it notes that stitching was done indicates that the respondent sustained soft tissue injuries. The report by Dr. Wokabi reveals that she sustained a fracture of the right femur, degloving injury on the inner aspect of the right leg, abrasion on the right hand and back as well as multiple cut wounds on the left leg. The respondent therefore proved that she sustained the injuries listed in his plaint.
9. The appellant further submits that a sum of Kshs 400,000 will be adequate compensation together with Kshs 40,000/- for the removal of the implant. He cited the cases of *Jackson Mbaluka Mwangangi v Onesmus Nzioka & Another* [2021] eKLR; *Jitan Nagra v Abednego Nyandusi Oigo* [2018] eKLR, and *Reamic Investment Limited v Joaz Ameyna Samuel* [2021] eKLR where the courts awarded the plaintiff's with broken femur Kshs 600,000/-, Kshs 450,000/- and Kshs 600,000/- respectively.



10. The respondent submits that the award by the trial court should be upheld as the appellant has not demonstrated just cause for the court to interfere with the finding of the trial court.
11. The court in *Kihara & another v Mutuku* (Civil Appeal 27 of 2018) [2022] KEHC 15626 (KLR) (17 November 2022) (Judgment) affirmed the trial court's award of Kshs 700,000 as general damages for a fractured femur and soft tissue injuries. The award on general damages was therefore not excessive considering decisions with comparable injuries. The respondent adduced the medical report by Dr W.M Wokabi which confirmed that it would cost Kshs 130,000/- to remove the metal implant and a further Kshs 300,000/- to perform surgery to minimize the scars on the right leg.
12. In conclusion, I find that the appeal lacks merit and is consequently dismissed. The respondent shall have the costs of the appeal.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT BUNGOMA ON THIS 3<sup>R</sup> DAY OF JULY 2024.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Appellant - Absent

Miss Muturi h/b for Mr. Wanjohi -For the Respondent

Wilkister/ Diana - C/A

