



**Rukaria v Ngulamu (Civil Appeal E030 of 2022)  
[2024] KEHC 9539 (KLR) (3 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E030 OF 2022  
GMA DULU, J  
JULY 3, 2024**

**BETWEEN**

**HARISSON KIMATHI RUKARIA ..... APPELLANT**

**AND**

**HANNINGTON MWAMSINDO NGULAMU ..... RESPONDENT**

*(From the judgment in Civil Case No. E0131 of 2021 delivered by  
Hon. A. M. Obura (Mrs.) (CM) on 30th June 2022 at Voi Law Courts)*

**JUDGMENT**

1. In a judgment delivered on 30<sup>th</sup> June 2022 the learned trial Magistrate entered judgment for the plaintiff (now respondent), and awarded damages, costs and interest against the defendant (now appellant).
2. Dissatisfied with the decision of the trial court, the appellant who was the defendant in the trial court, has come to this court on appeal through counsel Kimondo Gachoka & Company Advocates on the following grounds:-
  1. The learned trial Magistrate erred and misdirected himself by relying on wrong principles when assessing damages that were awarded to the respondent.
  2. The learned trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of law applicable in assessing damages.
  3. The learned trial Magistrate erred and misdirected himself in awarding a sum in respect of damages which was inordinately high in the circumstances occasioning a miscarriage of justice.
  4. The learned Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.



5. The trial Magistrate erred and misdirected himself by ignoring the defendant's submissions on record and hence arriving (at) a wrong decision in awarding damages.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the appellant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondents.
4. This is an appeal against the quantum of damages awarded by the trial court, and as such I have to be guided by the principles re-stated in the case of Kenfro Africa Ltd t/a Meru Express Services & Another =Versus= A. M. Lubia & Another (1982 – 88) 1KLR 727 at page 730, wherein Kneller J.A stated as follows:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal for Eastern Africa to be 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 high or low that it must be a wholly erroneous estimate of the damage.”
5. In the present case, the respondent who was the plaintiff called three (3) witnesses. PW1 was PC Bernard Mwangi of Voi Police Station who testified to the occurrence of the traffic accident involving motor cycle KMDC 862M and bus KBX 012S, and produced police reports in evidence.
6. PW2 was Hannington Mwamsindo Ngulamamu the plaintiff who was on the motor cycle in question and testified on how he was injured, while PW3 was Dr. Darius Wambua Kiema who testified to the injuries suffered by the respondent and produced the medical examination report (P3 form). The appellant did not call any evidence, and after closure of the respondent's evidence, parties counsel filed and relied upon written submissions in which they cited decided cases.
7. The injuries suffered by the respondent were not disputed. The doctor PW3 Darius Kiema described the injuries suffered. The learned counsel for the appellant Kimondo Gachoka & Company also described the injuries suffered in submissions before the trial court as tri-malleols fracture with dislocation of right ankle joint, and cut wound on the right ankle and stated that Dr. Kiema had confirmed this in his medical report dated 28<sup>th</sup> July 2018, in which it was indicated that the plaintiff had a post traumatic deformity and assessed the disability degree as 15%.
8. Counsel for the appellant also suggested in submissions to the trial court an amount of Kshs. 200,000/= for general damages, and for special damages, pleaded as Kshs. 52,899/=, asked that only what was proved be awarded, and that no damages for loss of earning capacity be awarded.
9. I note that the trial Magistrate awarded Kshs. 270,000/= as general damages and special damages of Kshs. 2,400/=
10. On appeal however, after referring to a number of decided court cases, the appellant's counsel has urged this court that the award of Kshs. 270,000/= as general damages be reduced, but has not given any proposed figure to this court for award under this head. Counsel has also asked to be awarded costs of the appeal.
11. In my view, considering the parameters or principles set out in the case of Kenfro Africa Ltd above, this appellate court is not entitled to interfere with the quantum of damages awarded by the trial court, as I have not been shown that the trial Magistrate erred in exercising her discretion to determine the damages awarded herein.



12. The mere fact that a different court or Magistrate could possibly have awarded a slightly higher or slightly lower amount in damages, is not a reason or justification for this court on appeal to interfere with the trial court's exercise of discretion in assessing damages.

13. I thus dismiss this appeal, and award costs of the appeal to the respondent.

**DATED, SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Njuguna holding brief for Mr. Kiwinda for appellant

Mr. Kazungu for respondent

