



**Kimani v Njuki alias David Kinyua (Civil Appeal E559 of 2021)  
[2024] KEHC 16994 (KLR) (Civ) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16994 (KLR)

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

**CIVIL**

**CIVIL APPEAL E559 OF 2021**

**AB MWAMUYE, J**

**OCTOBER 17, 2024**

**BETWEEN**

**DAVID KABAA KIMANI ..... APPELLANT**

**AND**

**DAVID NAMU NJUKI ALIAS DAVID KINYUA ..... RESPONDENT**

*(Being an Appeal against the Judgment and Decree of the Hon. A.N Makau  
(PM) delivered on 6th August, 2021 in Milimani CMCC No. 8337 of 2019)*

**JUDGMENT**

1. The Appellant herein has approached this Court via the Memorandum of Appeal dated 3<sup>rd</sup> September, 2021 together with the Record of Appeal dated 3<sup>rd</sup> April, 2024. The Appellant is challenging the Trial Court's findings on both liability and quantum; and he is aggrieved with the Trial Court for apportioning 100% liability to the Appellant and also the Trial Court's decision of awarding the Respondent herein Kes. 2,500,000.00 as general damages for pain and suffering.
2. The parties filed and exchanged Written Submissions. The Appellant filed his Written Submissions dated 3<sup>rd</sup> June, 2024 while the Respondent filed his Written Submissions dated 30<sup>th</sup> May, 2024. The parties' Written Submissions are in agreement that the three issues for determination in this Appeal are as follows;
  - a. Whether the Trial Court erred in its findings on liability
  - b. Whether the Trial Court erred in its findings on general damages
  - c. Who should bear the costs of the Appeal?



3. On the issue of liability, the Appellant in his Written submissions, has cited numerous authorities in support of his contention that the Trial Court acted without any legal or evidential justification and thus erred in both law and in fact by apportioning 100% liability against him. The Appellant faults the Respondent wholly for the occurrence of the accident. The Appellant faults the Trial Magistrate for in his view not taking into consideration that the Respondent failed to use designated crossing areas and pedestrian sidewalks. The Appellant faults the Respondent for running into oncoming traffic in a dual carriage way on a busy highway. The Appellant also blamed the Respondent for being intoxicated.
4. Unsurprisingly, the Respondent through his written submissions dated 30th May, 2024 takes the view that the Trial Court properly considered the evidence tendered by the Parties in arriving at the conclusion that the Appellant was entirely at fault for the accident. The Respondent underscored that he was indeed at a pedestrian crossing when he was struck by the motor vehicle registration number KBL xxx belonging to the Appellant.
5. On liability, the Appellant's defence that the Respondent was intoxicated and that he ran into the road causing the accident was never corroborated. The Respondent's evidence was corroborated that the Appellant's vehicle was driven at a high speed at a pedestrian crossing causing the accident. Moreover, the Appellant's claim that the Respondent was drunk was never proved. It is now settled that he who alleges must prove. I find no reason to interfere with the Trial Court's findings on liability. I find that the Appellant was 100% liable for the accident.
6. The Trial Court had apportioned liability at 100% against the Appellant, and also awarded him costs as follows; General Damages of Kes. 2,500,000 Special Damages of Kes. 21,580 Interest and Costs
7. The Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR that:

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
8. The Respondent herein suffered the following injuries as a result of the accident;
  - a. Compound fracture of the left tibia
  - b. Compound fracture of the left fibula
  - c. Fracture of the mandible
  - d. Fracture of the right zygomatic bone
  - e. Head injury
  - f. Lacerations on the face
  - g. Left hepatic lobe contusion
  - h. Recurrent headaches
  - i. Pain on the left lower leg
  - j. Inability to perform a heavy duty
  - k. Pain on the mandible
  - l. Recurrent abdomen pain
  - m. Lacerated scars on the face



- n. The right mandible palpable is tender on the palpation.
  - o. Lacerated scars on the left lower leg
  - p. Healed fracture sites are palpable and tender on palpation
  - q. He walks with a limp
  - r. 30% permanent incapacity of the left leg
9. Taking into account comparable case law, in the case of *[Ndung'u & Another v Mbau \(Civil Appeal E002 of 2022\)](#)* [2023] KEHC 26167 (KLR), the Plaintiff suffered multiple injuries to the head, chest and lower right limb. The Plaintiff was left with a permanent limp as a result of shortening of his leg. The Court made an award of Kes. 2,000,000/- in November, 2023. Taking a cue from the above, I find that the award of quantum by the trial magistrate was properly awarded and that the Trial Court took into consideration the fact that the Respondent sustained multiple soft and deep tissue injuries and injuries to his left leg that left him with 30 % permanent incapacity, and a permanent limp.
10. I find no basis to interfere with the lower court decision as the trial magistrate properly identified and applied the relevant law to the facts and evidence. The Appeal is dismissed with costs to the Respondent.

**DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**

**BAHATI MWAMUYE**

**JUDGE**

