



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mbula v Gatwiri (Civil Appeal E949 of 2022)  
[2024] KEHC 11734 (KLR) (2 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11734 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E949 OF 2022  
JM NANG'EA, J  
OCTOBER 2, 2024**

**BETWEEN**

**KIMEU LILIAN MBULA ..... APPELLANT**

**AND**

**VIVIAN GATWIRI ..... RESPONDENT**

*(Being an appeal from the judgement and decree of the Chief Magistrate's  
Court at Milimani, Milimani Commercial Courts, (Hon. G.M  
Gitonga (PM) delivered on 25/10/2022 in CMCC NO. E8243 of 2021)*

**JUDGMENT**

**Grounds of Appeal and reliefs sought.**

1. By a Memorandum of Appeal dated 14/11/2022, the appellant faults the above trial court's judgment in respect of assessment of general damages on grounds that may be summarized into two as hereunder:
  1. That the Learned Trial Magistrate erred in law and fact in making an award of general damages in the sum of Ksh. 900,000 that is grossly excessive and unsupported by evidence.  
and
  - 2) That the learned trial magistrate misdirected himself by departing from applicable principles and relevant case law guiding assessment of damages and thus arrived at an erroneous overall figure.
2. The appellant therefore seeks the following orders:
  - a. That the appeal be allowed with costs.
  - b. That the judgement and decree of the magistrate's court as against the appellant be set aside.



- c. That alternatively, this court does evaluate the evidence and make a correct assessment of damages.
- d. That the appellant be awarded the costs of the appeal.
- e. That the court does grant any other relief deemed fit.

### **Analysis and determination.**

3. Learned Counsel for the parties filed submissions which I have perused together with the trial court's record. In the impugned judgment, the trial magistrate awarded the respondent Ksh. 800,000 in general damages for pain and suffering for fractured lower 2 incisor teeth; broken 2 right incisor teeth; deep cut wound to the right shoulder; deep cut wounds on the upper lip and deep cut wound above the right eye according to a medico-legal report by Dr G. K Mwaura dated 14/6/2018. A second medical examination report dated 24/5/2022 by the appellant's doctor ( Dr. P.M Wamugu) confirmed the injuries. The doctor, however, opined that the respondent had made adequate recovery albeit with remnant scars that were "of cosmetic concern for this fine young lady".
4. The appellant's advocates submit that an award of Ksh. 300,000 is reasonable in the circumstances, placing reliance on two decisions to wit; *Fast Choice Company Ltd & Another V. Joseph Wanyiri Mwangi* (2011) eKLR and *Justine Nyamweya Ochoki & Another V. Prudence Anna Mwambu* (2020) eKLR. In the former case, the claimant suffered soft tissue injuries to the forehead, gum of the right jaw, right wrist and joint, left thigh and the chest. He also sustained a broken left incisor jaw and loose incisor teeth of the upper jaw. The court assessed Ksh. 150,000 general damages.
5. In the latter case the claimant was granted Ksh. 300,000 general damages for loss of the upper front incisor tooth; deep cut on the chin; cut on the lips; loosening of the upper teeth; blunt object injury to the right forearm and loss of consciousness.
6. Learned Counsel for the respondent insist that the trial court rightly assessed general damages in the sum of Ksh. 800,000. The court is told that the respondent's evidence in support of both liability and the quantum of damages was not rebutted and that the lower court applied the correct principles in arriving at the decision.

### **Guiding Principles**

7. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters V Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time."



8. It is not disputed that the respondent suffered the injuries as noted above . The trial court assessed general damages for pain, suffering and loss of amenities in the sum of Ksh. 800,000 in in his favour. I have perused the decisions in Bungoma Civil Appeal No. 6 of 2012 (Paul Kipsang Koech & Global Trucks Ltd V. Titus Osule Osore; Alexander Mutati V. Attorney General & Another ( HCCC No. 629 Of 1982); Francis Ochieng V. Gabriel Ongele Ogolla ( 2015) eKLR and Eddah Wangui Muremi V. Nairobi Sports House Ltd ( HCCA No. 11 of 2003) the respondent relied upon in the lower court in which Ksh 200,000, Ksh. 120,000, Ksh. 350,000 and Ksh. 100,000 general damages respectively were granted to the claimants. The cases of Paul Kipsang Koech , Francis Ochieng and Eddah Wangui Muremi supra are more relevant to the instant case compared to the case of Alexander Mutati given that they involve loss of and/or injury to teeth.
9. The appellant relied on case law in Easy Coach Ltd V. Emily Nyangasi (2017) eKLR and Joseph Mutua Nthia V. Fredrick Moses M. Katuva (2019)eKLR before the lower court. In the former case, the claimant suffered non-dental injuries that included cuts to the right leg which led to grafting and was granted Ksh. 700,000 general damages. The latter case is more relevant as it involves facial injuries, loss of 2 teeth and loosening of 1. The claimant therein was awarded Ksh. 400,000 in general damages for pain and suffering.
10. The trial court in its judgement observed that the respondent’s injuries were severe and immobilized him. The learned trial magistrate further rendered himself thus: “And guided by settled principles in award of damages, the comparable cited legal authorities and taking into account the monetary inflationary trends of the Kenya currency I do hereby award the plaintiff the sum of Ksh. 800,000 on general damages for pain, suffering and loss of amenities”.
11. It must be noted that general damages are damages at large and no case is exactly the same as the other. The general method of approach in assessing general damages ought to be “that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases (see the often cited case of Kemro Africa Ltd & Another V. Lubia & Another (1982-88) KLR). The trial court’s award of Ksh. 800,000 in general damages is on the higher side considering that the respondent’s injuries healed although the court has to consider the scars that must concern the respondent as a young lady.

### **Determination**

12. I will disturb the trial court’s award of Ksh. 800, 000 general damages for pain an suffering and substitute it with a sum of Ksh 600,000 having considered all the relevant factors including the incidence of inflation. The grounds of the appeal thus largely succeed.
13. The appeal succeeds to the extent that the trial court’s judgement on quantum of general damages in the said sum of Ksh. 800,000 is substituted with a sum of Ksh. 600,000.
14. The parties will bear their own costs of the appeal while the costs in the court below will remain as directed in the trial court’s judgement.
15. Judgement accordingly.

**J. M. NANG’EA , JUDGE**

**JUDGEMENT DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF OCTOBER 2024 IN THE PRESENCE OF :**

The appellant’s Advocate,

The respondent’s advocate,



The Court Assistant,  
**J. M. NANG'EA , JUDGE.**

