



**Kariithi & another v Munyoro (Civil Appeal E009 of 2021)  
[2023] KEHC 17707 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E009 OF 2021**

**J WAKIAGA, J**

**MAY 18, 2023**

**BETWEEN**

**JAMES MUTURI KARIITHI ..... 1<sup>ST</sup> APPELLANT**

**JAMES GITHINJI NDEGWA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SIMON KAGICHIRI MUNYORO ..... RESPONDENT**

*(Being an Appeal from the Judgement and Orders of the Honourable Senior  
Principal Magistrate Hon. K. Sambu delivered on the 17th September 2020 in the  
Senior Principal Magistrates Court at Kigumo Civil Cause Number 91 of 2019)*

**JUDGMENT**

1. This Appeal arose out of the Judgement of the trial Court dated September 17, 2020 in which the general damages was assessed at the sum of Kenya shillings Eight Hundred Thousand (Kshs 800,000) liability having agreed upon by consent at 20%: 80 % in favour of the Respondent and the matter proceeded for assessment of damages by way of Written Submissions.
2. Being aggrieved by the said award, the Appellant filed this Appeal and raised the following grounds:
  - a. The trial Court did not consider the Appellant's pleadings thereby arriving at a wrong conclusion of law and facts.
  - b. The trial Court did not consider the nature of the injuries sustained by the Respondent and grossly misdirected himself in ignoring the principles and relevant authorities and the doctrine of *stare decisis* on quantum.
  - c. The award of damages had no basis in law and fact and was therefore punitive excessive and or inordinately high.



## Submissions

3. Directions were issued on the determination of the Appeal by way of Written Submissions and on behalf of the Appellant it was submitted that the trial Court proceeded to award the Respondent cost of future medical expenses which was not supported by the second medical report and therefore in making the award there was an error in the degree of incapacitation and it follows that the award was inordinately and prejudicially high as it was not based on similar cases.
4. It was contended that an award of Kshs 400,000 would have been an adequate compensation based on the following similar cases in respect of fracture of the left tibia:
  - a. *James Muriithi Ireri v Cyrus Mugendi Igonya & 2 others* [2016] eKLR where the Court awarded Kshs 400,000.
  - b. *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] eKLR where the Court awarded Kshs 400,000 down from Kshs 600,000 which had been awarded by the lower Court.
5. It was submitted that the Court relied upon the case of *Moses Kirimi & another v GKJ* [2019] eKLR wherein the victim was a minor and doing so proceeded on wrong principles in support of which the case of *Hussein Ali Sharif Alias Hussein Ali v ALL* [2018] eKLR.
6. The Court was therefore urged to interfere with the award in damages by substituting the same with an award of Kshs 400,000.
7. For the Respondent, it was submitted that the Appellant had not met the threshold set out in *Butt v Khan* [1977] 1 KAR 1 for the Court to interfere with the award in damages as the cases relied upon by the Appellant were outdated and that the authority relied upon by the Court was relevant as the injuries were similar.
8. This being a first Appeal the Court is under a duty to re-evaluate the record of the trial Court and to come to its own decision thereon as was stated in *Selle & another v Associated Motor Boat Co Ltd and another* [1968] EA 123.
9. In this cause, the parties recorded consent Judgement on liability and the matter proceeded for assessment of damages by way of Written Submissions supported by documentary evidence produced by consent. The Respondent's injuries were supported by the medical report by P.K Mwangi in which the injuries were indicated as fracture of the left tibia/fibula and blunt soft tissue injuries to the leg. It was indicated that the affected limb could improve if open reduction internal fixation operation was undertaken at a cost approximately Kshs 150,000 and the cost of removal at Kshs 100,000.
10. To the Appellant's Submissions was attached a medical report by Dr Wambugu which stated that the Respondent sustained open fracture of the left fibula and that X ray taken revealed middle third transverse fracture of the fibula, with no fracture of tibia noted, he awarded the same 2% degree of permanent incapacitation with no future medical expenses envisaged.
11. In arriving at the award herein the Court relied on the medical report by Dr. Wambugu to dismiss the claim for future medical expenses and relied on the case of Moses Karimi where the Plaintiff was awarded Kshs 800,000 an awarded the same herein.



## Determination

12. From the submissions, pleadings and proceeding herein, the only issue for determination is whether the award herein was inordinately so high so as to be amenable for interference with by the Appellate Court?
13. Having believed the medical report by Dr. Wambugu, it follows that the injury sustained by the Respondent then was fracture of the fibula while the authority used in support of the award was in respect of the fracture of tibia/fibula and in respect of a minor and would therefore agree with the submissions by the Appellant that the Court acted on wrong principles in reaching at the award and would therefore interfere with the same by setting aside the said award.
14. Being the first Appellant Court, I have looked at the following relevant cases;
  - a. *Daniel Otieno Owino (supra)* where an award of Kshs 600,000 was reduced to Kshs 400,000.
  - b. *Nabason Nyandega v Peter Nyakweba Omboga* [2021] eKLR where the Plaintiff on Appeal was awarded Kshs 650,000 in respect of compound fracture of the right tibia bone.
  - c. *Hussein sambur Hussein v Shariff A. Abdulla Hussein & 2 others* [2022] eKLR where the Plaintiff who sustained fracture of tibia and fibula bones, dislocation of the right ankle among other injuries was awarded Kshs 600,000 on Appeal.
15. Guided by what the Court stated in *Boniface Waite & another v Michael Kariuki Kameo* [2007] eKLR that an award of damages was not meant to enrich the Plaintiff but to compensate such victims for the injuries suffered and therefore should be commensurate with the said injuries, I find and hold that an award of Kshs 450, 000 (Four Hundred and Fifty Thousand) would be an adequate compensation to the Respondent herein.

## Disposition

16. I would therefore allow the Appeal on quantum and reduce the award of Kshs 800,000 to Kshs 450,000 subject to the consented order on liability. The Appellant is entitled to the cost of this Appeal. And it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 18<sup>TH</sup> DAY OF MAY 2023**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

Ms Maina for Mr. Kosgei for Applicant

No appearance by Nyamu for Respondent

Jackline – Court Assistant

