



REPUBLIC OF KENYA



**M’Inyingi v Mutura (Civil Appeal E163 of 2022)  
[2023] KEHC 22522 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22522 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E163 OF 2022  
TW CHERERE, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MIRITI M’INYINGI ..... APPELLANT**

**AND**

**ISAAC MUTURA ..... RESPONDENT**

*(Being an appeal from the judgment and decree in Maua CMCC  
No. 33 of 2016 by Hon. T.Gesora (CM) on 24th November, 2022)*

**JUDGMENT**

1. On 27<sup>th</sup> January, 2021, Miriti M’inyingi (Appellant) unlawfully assaulted Isaac Mutura (Respondent) as a result of which he suffered bodily injuries. Subsequently, Appellant was charged in Maua Criminal Case No. 1486 of 2011 and was on 07<sup>th</sup> May, 2015 convicted for the offence of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#). Consequently, Respondent filed Maua CMCC NO. 33 of 2016 seeking damages.
2. By a judgment dated 24<sup>th</sup> November, 2022, the trial court found Appellant liable and awarded the Respondent damages in the sum of KES. 60,0000/- plus costs and interest.

**The Appeal**

3. I have considered the appeal in the light of the trial court record, submissions for both parties and cited authorities. This being a first appeal, I am reminded of my primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. (See [Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates](#) [2013] eKLR).



4. Appellant challenges the judgment on the grounds that the sum of KES. 500,000/- awarded by the trial court is excessive. Respondent opposed the appeal and the appeal was argued by way of submission which both advocates duly filed.
5. Before I delve into the issues in this appeal, I wish to state the obvious that any advocate representing a client in court, especially on appeal, has a duty to analyze the proceedings and the impugned ruling or judgment to understand the essential facts and ascertain the legal issues.
6. In considering those matters, the advocates have a duty to bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of an appeal, in the sense of whether it is an arguable one and the scarcity and optimum utilization of judicial time.
7. Unfortunately, the advocates in this matter do not appear to have read the judgment of the trial court for the reason that whereas the judgment is for KES. 60,000/-, the advocates proceeded on the mistaken believe that the judgment was for KES. 500,000/-.
8. From the foregoing therefore, I find that the appeal as presented is devoid of merit the orders that commend to me and which I hereby issue are as follows:
  1. This appeal is dismissed
  2. Each party shall bear its own costs

**DATED AT MERU THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Morris Kinoti

For Appellant - Ms. Mukaburu for Kiogora Arithi & Associates

For Respondent - Mr. Mwendwa for Maitai Rimita & Co Advocates

