Musyoka v DNW (Minor suing through mother and next friend CMN) (Civil Appeal E165 of 2022) [2025] KEHC 13729 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13729 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CIVIL APPEAL E165 OF 2022

EN MAINA, J

SEPTEMBER 25, 2025

BETWEEN

TIMOTHY MUSYOKA ..... APPELLANT

AND

DNW (MINOR SUING THROUGH MOTHER AND NEXT FRIEND CMN) ..... RESPONDENT

(Being an Appeal against the Judgement of the Honourable B Luova (Small Claims Court Machakos Law Courts in SCCC no. E220 of 2022 delivered on 27/10/2022)

JUDGMENT

1. This appeal is against the quantum of damages awarded to the Respondent for personal injuries sustained in a motor vehicle accident which occurred along the Machakos – Wote Road on 18th February 2022.

2. Briefly, the Respondent's case was that the Plaintiff, a minor was a lawful passenger in motor vehicle registration number KTWB 221X belonging to the Appellant when the said motor vehicle lost control and veered off the road causing the accident. The accident was self-involving. The Respondent blamed the driver of the tuktuk (three wheeler) for the accident.

3. According to CW1, PC Gedion Kipruto the accident occurred at around 0615 hours at Katoloni area near Legend along the Machakos –Wote road. He testified that Timothy Musyoka the appellant herein was driving the tuktuk Reg. No. KTWB 222 X from Katoloni heading towards Machakos. Upon reaching the scene of the accident he lost control of the tuktuk as a result of which it overturned and the passengers sustained injuries. He confirmed that the DW was a passenger in the tuktuk and that he sustained injuries.

4. CW2 CMN testified that she is the mother of D who is 12 years old and that he was involved in the traffic accident. She stated that she did not witness the accident but that her son sustained injuries. She

produced a medical report which sets out the injuries sustained by her son as being a blunt head injury, blunt injury right wrist joint and blunt injury on both legs. He was treated with analgesics.

5. The Appellant did not adduce any evidence in the lower court. After considering the Respondent's evidence and the submissions by both sides the learned Adjudicator found judgment in favour of the claimant and awarded him general damages in the sum of Kshs. 257,000/-, special damages of Kshs.7,100/- and costs of the suit.

6. Aggrieved by the Judgment, the Appellant appealed on grounds that:-

> " a. The learned adjudicator erred in fact and in law by disregarding the established legal precedents and thereby erroneously arriving at the wrong conclusion on quantum.
>
> b. The learned adjudicator erred in law and in fact in not making an award which was within limits of already decided cases of similar nature.
>
> b. The learned adjudicator erred in fact and in law in awarding judgement without showing how she arrived at those figures and in total disregard of the defendants' submissions on the issue of quantum.

7. The appeal was canvassed by way of written submissions.

Submissions

8. Learned Counsel for the Appellant submitted that the award was excessive and proposed a sum of Kshs. 30,000.00/- which according to Counsel would be sufficient and reasonable compensation for the injuries.

9. Counsel for the appellant relied on the following cases: Ndungu Dennis v Ann Wangari Ndirangu & another [2018] eKLR where Kshs.100,000/= was awarded for similar injuries. HB (Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another [2021] eKLR where the Appellant sustained a blunt injury on the head and neck, thorax, abdomen and limbs and was awarded Kshs.60,000/-. The said award was upheld by the High Court on 6th April, 2021. Counsel also relied on the case of Eva Karemi & 5 others v Koskei Kieng & another [2020] eKLR where similar injuries attracted awards ranging between Kshs. 40,000 -70,000/-.

10. For the Respondent, reliance was placed on the cases of Selle v Associated Motor Boat Co. Limited and others (1968) EA123 and the case of Peters v Sunday Post limited [1958] EA 424 to emphasis the duty of a first appellate court. On the quantum of damages Counsel submitted that the Appellant had not demonstrated how the court erred in assessing the damages of Kshs.250,000/- and that this court should find the award was reasonable in view of the injuries sustained by the Respondent. Counsel cited the case of Lake Naivasha Growers v Muigai Thuka (2020) eKLR. Counsel urged this court to dismiss this appeal.

Analysis and determination

11. The Respondent's evidence as to the manner which the accident occurred was not rebutted and this court is satisfied, after considering the evidence before the trial court, that the accident which was self-involving occurred as a result of negligence on the part of the driver of the tuktuk (three wheeler).

12. The Trial court awarded Kshs. 250,000/- which the Appellant took issue with terming it high considering the injuries sustained by the Respondent were soft tissue injuries and were expected to heal

with no disability. The Appellant submitted that the sum of Kshs.30,000/- would be sufficient and reasonable compensation.

13. In Woodruff vs. Dupont [1964] EA 404 it was held by the East African court of appeal that:

> " The question as to quantum of damage is one of fact for the trial Judge and the principles of law enunciated in the decided case are only guides. When those rules or principles are applied, however, it is essential to remember that in the end what has to be decided is a question of fact. Circumstances are so infinitely various that, however carefully general rules are framed, they must be construed with some liberality and too rigidly applied. The court must be careful to see that the principles laid down are never so narrowly interpreted as to prevent a judge of fact from doing justice between the parties. So to use them would be to misuse them...The quantum of damages being a question of fact for the trial Judge the sole question for determination in this appeal is not whether he followed any particular rules or the orthodox method in computing the damage claimed by the plaintiff, but whether the damages awarded are "such as may fairly and reasonable be considered as a rising according to the usual course of things, from the breach of the contract itself." The plaintiff is not entitled to be compensated to such an extent as to place him in a better position than that in which he would have found himself had the contract been performed by the defendant."

14. On the quantum of damages, I am guided by the case of Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2KLR 55 where the Court of Appeal stated:

> " It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."

15. Similarly in the case of Jane Chelagat Bor vs. Andrew Otieno Onduu [1988 92] 2 KAR 288; [1990-1994] EA 47, the Court of Appeal held that:

> " In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

16. The other principles that guide this court are set out in the case of Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja [1986] KECA 21 (KLR) where the Court of Appeal stated:-

> " The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a trial judge.
>
> (1) Each case depends on its own facts;

(2) Awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);

(3) Comparable injuries should attract comparable awards.

(4) Inflation should be taken into account; and

(5) unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone."

17. In this case, the Respondent sustained blunt head injury, blunt injury right wrist joint and blunt injury both legs. I have considered the authorities relied upon by the respective parties and it is my view that the case that comes closest to the instant one is that of Lake Naivasha Growers v Muigai Thuka [2020] KEHC 2064 (KLR) where the Court maintained the award of Kshs 250,000/- awarded by the court below for soft tissue injuries. The authorities cited by the appellant presents awards that are far much on the lower side considering the passage of time. Accordingly, I do not find any basis for interfering with the award.

18. The upshot is that the award of the Adjudicator is upheld and this appeal is unsuccessful and is hereby dismissed with costs to the respondent save to state that the general damages shall attract interest from the date of judgment and the special damages from the date of filing suit.

It is so ordered.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF SEPTEMBER, 2025.

E.N. MAINA

JUDGE

In the presence of:

Mr. Wekesa for Respondent

No appearance for Kimondo Gachoka for Appellant

Geoffrey – Court Assistant