

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 190 OF 2020**

**MORGAN AMULAVU ANDANDE.....APPELLANT**  
**VERSUS**  
**WYCLIFFE MIKA ESOLIO.....RESPONDENT**

(Appeal from judgement and decree of Hon. DO Mbeja, Senior  
Resident Magistrate, SRM, of 29<sup>th</sup> January 2019, in Nairobi CMCCC No.  
1567 of 2018)

**JUDGMENT**

1. The suit, at the primary court, was initiated by the respondent, against the appellant. The respondent sought damages, for injuries and loss occasioned on him, following a motor traffic accident, on 3<sup>rd</sup> July 2017, along Arboretum Drive, Nairobi, involving him and a motor vehicle registration mark and number KBU 080U, owned or controlled by the appellant. The respondent was, at the material time, riding his motor cycle, registration mark and number KMCV 700K. He attributed the accident to negligence on the part of the appellant.
2. The appellant resisted the claim. He denied all the allegations made against him in the plaint. He averred that the respondent had negligently attempted to overtake a vehicle, in the face of an oncoming vehicle, at a very narrow section of the road. He pleaded that the accident was caused by the negligence of the respondent.
3. An oral hearing was conducted. 2 witnesses testified for the respondent. The appellant did not call any witness. Judgement was delivered, on 30<sup>th</sup> April 2020. Liability was assessed at 100%, against the appellant. Kshs. 1,000,000.00

was awarded, as general damages; and Kshs. 53,800.00 as special damages, plus costs and interests.

4. The appellant was aggrieved, hence the instant appeal. The grounds are that the award of general damages was excessive and founded on wrong principle, the award was not aligned to comparable awards for analogous injuries, and the trial court did not consider the submissions and authorities by the appellant.
5. Directions were given, on 26<sup>th</sup> May 2023, for canvassing of the appeal, by way of written submissions. Both sides have complied, by filing written submissions.
6. The appellant cites *Civicone Limited vs. Scooby Enterprises Limited* [2011] eKLR, where the court awarded, allegedly, general damages between Kshs. 450,000.00 and Kshs. 500,000.00, for comparable injuries. The respondent supports the award by the trial court.
7. The medical report, placed on record, was by Dr. Maina Ruga, dated 24<sup>th</sup> January 2019. The injuries reflected were fractures of the right femur and right fibula/tibia. Those were the injuries pleaded in the plaint. In its judgement, the trial court did not express itself as being guided by any decision of a superior court, on comparable awards for similar injuries.
8. I note that the appellant relies on a decision of 2011. That would be dated, given that the accident happened in 2017, and the impugned award of the court was made in 2020.
9. I have scoured the Kenya Law website, on more recent awards for comparable injuries, and I have come up with the following results. In *Charles Kipkoech Leting vs. Express (K) Ltd & another* [2018] eKLR [2018] KECA 187 (KLR) (Nambuye, Sichale & Kantai, JJA), the claimant sustained a

degloving injury and compound fracture of the left tibia, and Kshs. 600,000.00 was awarded on 31<sup>st</sup> August, 2005, by the trial court, which award was upheld by the Court of Appeal, on 18<sup>th</sup> October 2018. In *Alphonse Muli Nzuki vs. Brian Charles Ochuodho* [2014] eKLR [2014] KEHC 1408 (KLR) (Kasango, J), the injury was a compound comminuted fracture right tibia and fibula, with a degloving injury of the right leg and foot. The trial court awarded Kshs. 800,000.00, on 4<sup>th</sup> November 2011, which was upheld by the High Court, in its judgement of 20<sup>th</sup> November 2014.

10. In *Kiama vs. Mutiso* [2024] KEHC 5135 (KLR) (Majanja, J), the injury sustained was a fracture of the left tibia bone (upper 1/3) and a blunt injury to the left leg and thigh, and the trial court awarded Kshs. 700,000.00 general damages, which was reduced, by the High Court, to Kshs 400,000.00, on 13<sup>th</sup> May 2024. In *Musyoka vs. Kaguora & another* [2022] KEHC 15038 (KLR) (Limo, J), the injuries were fracture of right tibia and fracture of right fibula bones, and the trial court awarded Kshs. 300,000.00 as general damages, on 2<sup>nd</sup> April 2019, which the High Court enhanced to Kshs. 400,000.00, on 3<sup>rd</sup> November 2022. In *Daniel Oduor Shieuda vs. Christopher Wambugu* [2021] eKLR [2021] KEHC 13483 (KLR) (Chitembwe, J), the injury was a fracture of the left leg tibia and left fibula. The trial court awarded Kshs. 450,000.00, which the High Court enhanced to Kshs. 800,000.00, on 10<sup>th</sup> November 2021.

11. In *Otieno vs. Mega Wholesalers Limited* [2025] KEHC 13569 (KLR) (Nyakundi, J), the claimant sustained fractures of the tibia and fibula, with multiple soft tissue injuries. The trial court awarded Kshs. 1,200,000.00 general damages, which the High Court reduced to Kshs. 800,000.00, on 30<sup>th</sup> September 2025. In *George William Awuor vs. Beryl Awuor Ochieng* [2020] eKLR [2020] KEHC 1103 (KLR) (Aburili, J), the injuries were fractures of the right femur and left tibia/fibula. The trial

court awarded Kshs 2,000,000.00, which the High Court reduced to Kshs. 1,200,000.00, on 15<sup>th</sup> December 2020.

12. The review has not left me any wiser, for there are wide variations in the awards, for comparable injuries. They range from Kshs. 400,000.00 to Kshs. 1,200,000.00. The trial court, in this case, awarded Kshs. 1,000,000.00. That would appear to be within the range. Consequently, I shall not interfere with the award of the trial court. I shall find and hold that the appeal has no merit, and I hereby dismiss it. Each party to bear its own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 14<sup>TH</sup> DAY OF OCTOBER 2025.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.**

**Advocates**

**Mr. Muma, instructed by Muma Nyagaka & Company, Advocates for the appellant.**

**Mr. Kulecho, instructed by Kulecho & Company, Advocates for the respondent.**