



**Awale v Shitambasi (Miscellaneous Application E830 of 2023)
[2025] KEHC 13879 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E830 OF 2023

LP KASSAN, J

OCTOBER 2, 2025

BETWEEN

BASHIR ABDI AWALE APPELLANT

AND

PROTUS SHITAMBASI RESPONDENT

JUDGMENT

1. This is an appeal against the award of general damages awarded by the lower Court only. The parties recorded a consent to admit all medical documents and in fact no oral evidence was tendered in Court and so essentially this Court is called upon to determine quantum only by looking at the admitted medical documents, submissions and relevant authority. To dispose off this appeal, I wish to note the following;

Injuries sustained

2. Doctor Mwaura stated that the Plaintiff sustained laceration of the right leg 10cm long and fracture of the right leg. In his report, he said that he relied on the P3 form and medical summary from Mary Immaculate Hospital. His report is dated the 27th day of June 2022. His assessment of permanent degree of injury is 5%. On the other hand, Doctor Wokabi said in his report that the X ray did not show any fracture. This Court must balance the weight of documentary evidence between on one side Dr Mwaura medical report, medical summary and the P3 vis a vis Dr Wokabi Medical report. The plaint clearly indicated that the Plaintiff sustained a fracture and if there was adverse evidence, the Defendant ought to have produced it in Court. The P3 that is said not to have shown any evidence of a fracture or the alleged X-ray alluded by Doctor Wokabi could then have been produced to defray the Plaintiff evidence and this being a civil matter, I agree with the trial Court that the balance of probability tilts to the side if the plaintiff. Consequently, it is my finding that the Plaintiff suffered a fracture of tibia.



Quantum

3. I have looked at the authorities quoted by the parties and it is clear that each party quoted an authority favourable to their clients. The Injuries sustained in Damaris Wamuvii CC 80//08 are more severe than the present injuries. In Ndwiga and another, CA E006/ 22, the injuries are almost the same as in this case. I have compared the present case with other case Laws and taken into account inflation and other relevant facts. It is my finding that the award in quantum by the lower Court was excessive for a single fracture of a leg and laceration. Consequently, the award of quantum is reduced to Ksh 900000. The rest shall remain as per the lower Court finding. Each party shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER 2025.

HON. L. P. KASSAN

JUDGE

In the presence of:

Mwangi for Applicant

Kiptanui for Respondent

Carol – Court Assistant

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