



REPUBLIC OF KENYA



**Koskei v Mwalo (Civil Application E111 of 2023)
[2025] KEHC 14201 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPLICATION E111 OF 2023
RN NYAKUNDI, J
OCTOBER 13, 2025**

BETWEEN

MOSES KOSKEI APPLICANT

AND

ABRAHAM OCHIENG MWALO DEFENDANT

RULING

1. On 22nd day of June 2023 the law firm of Kimondo Gachoka & Co. Advocates filed a memorandum of appeal arising out of the judgment delivered on 16th day of June 2023 in Eldoret CMCC No. 621 of 2021 which comprised of the following grounds:
 - a. That the learned trial magistrate erred in law and in fact by awarding Kshs.250,000/=as general damages which award is inordinately high in view of the injuries sustained by the Respondent.
 - b. That the learned trial magistrate misdirected himself by failing to take into account the well-established principle requiring comparable awards to be made for comparable injuries sustained thereby falling into an error by awarding Kshs.250,000/=which award is manifestly excessive.
 - c. That the learned trial magistrate erred in law and in fact by awarding Kshs.250,000/=as general damages which award is excessive in view of the injuries sustained by the Respondent thereby deviating from the principle of stare decisis requiring comparable awards being made for comparable injuries sustained.
 - d. That the learned trial magistrate erred in law and in fact by disregarding and failing to appreciate the judicial authorities on quantum cited by the Appellant in his written submissions thereby making an award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the Respondent.



Reasons WhereforE the Appellant herein pray;

- a. That the Appeal be allowed.
- b. That the judgment delivered on the 16th day of June, 2023 in Eldoret CMCC No.621 of 2019 by Hon. O. Mogire (SPM) on the issue of quantum be set aside and an order re-assessing the award on quantum downwards be made.

Decision

2. Public policy demands that the business of the courts should be conducted with expedition and it is of the greatest importance in the interest of justice that these actions be brought to trial with reasonable expedition. See *Fitzpatrick v Batger and Co Ltd* [1967] 2 All ER 657 and *Reggentin v Beechholme Bakeries ltd* [1967] 111 SOL. JO 216.
3. The Civil Procedure Rule under Order 42 Rule 35 expressly states as follows:
 - (1) Unless within three months after the giving of directions under rule 13 shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
 - (2) If within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.
4. At this point having meticulously consider the record it is very clear that the intended applicant to the appeal process had lost interest long time ago and it is obvious that the continuous mentioning of cause of action is a mere formality. It is trite law that if a plaintiff, petitioner, applicant fails to appear at the time of the trial or deposit his/her actions for an unreasonable length of time or to comply with the rules the court is clothed with powers to dismiss the matter on its own motion. That indeed is the case hear. For those reasons this application on dismissal of the claim is meritorious pursuant to section 1A, 1B, 3, 3A of the CPA as read with Order 42 Rule 35 of the CPR.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13TH DAY OF OCTOBER 2025

.....

R. NYAKUNDI

JUDGE

