



REPUBLIC OF KENYA



KENYA LAW
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**Ngungi v Konga & another (Civil Appeal E149 of 2023)
[2025] KEHC 14212 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E149 OF 2023
TW OUYA, J
OCTOBER 9, 2025**

BETWEEN

ESTHER MUTHONI NGUNGI APPELLANT

AND

STEPHEN GITONGA KONGA 1ST RESPONDENT

JEREMIAH MITHAMO KINGA 2ND RESPONDENT

(Being an appeal from the whole of the judgement of the honourable J.A Agonda Principal Magistrate delivered on the 29th November 2022 in the Senior Principal Magistrates Court At Ruiru in SPMCC No. E214 of 2021)

JUDGMENT

1. The instant appeal emanates from a road accident claim whereby the appellant sought compensation following a traffic accident which occurred on 7th November 2018 involving motor vehicle registration number KCJ 872Y in which she was a passenger.
2. By Plaint dated 19th May 2021, the appellant alleged that the 1st Respondent drove the subject motor vehicle so negligently, recklessly and or carelessly at a high speed without any due care, regard and or attention that he caused the motor vehicle to lose control and hit a military land cruiser, hence causing the accident.
3. It was averred that as a result of the accident, the Appellant sustained injuries to wit:
 - a. Head injury with left frontal sub-acute subdural haematoma with sub facial haematoma with subsequent left hemiparesis;
 - b. Laceration of lower lip
 - c. Missing three teeth (11,21,41)



- d. Fracture and mobile 4 teeth (12,31,32,42)
 - e. Soft tissue injury of the right hip joint region
 - f. Cut wound on the right knee region
 - g. The weakness of the left side of the body is permanent and the degree of incapacity is assessed at 40 %
4. It was further averred that the appellant lost future earnings as she was a teacher prior to the accident and earning a salary of Ksh. 18,000.00 per month. On account of the grievous injuries and the permanent incapacity of 40% she was unable to resume her duties and has had to rely on domestic help for assistance.
 5. She also pleaded future medical expenses, for replacing missing and fractured teeth at Ksh. 60,000.00 and special damages to wit:
 - a. Medical report Ksh. 3,500
 - b. Motor vehicle search 550 and
 - c. Medical expenses Ksh. 10,100
 6. The 1st Respondent opposed the claim and in the alternative pleaded contributory negligence in that the Appellant failed to take adequate precaution for her safety. The 1st Respondent further attributed the accident to the negligence of the driver of the military land cruiser registration number KCJ 8724 Nissan Vanette Matatu. He also denied the particulars of injuries and special damages claimed by the appellant.
 7. At the end of the trial, the court found the Respondents jointly and severally liable for the accident at 100%.
 8. On quantum, the court remarked that the injuries sustained by the Appellant were confirmed by the medical report of Dr. Karanja who observed that the Appellant had sustained skeletal and soft tissue injuries; he classified the injuries as grievous harm.
 9. On damages for loss of earning, the court observed that the same was not proved as the Appellant did not call any witness nor provide any document in support of the allegation that she was a teacher. Therefore, the court declined to make any award on that limb.
 10. Ultimately, the trial court, taking into account the nature of injuries, general awards based on similar injuries, the age of the authorities as well as inflation awarded general damages for pain suffering and loss of amenities of Ksh. 700,000.00, special damages of Kshs. 14,110.00 and future medical expenses at Ksh. 60,000.00.
 11. The following authorities were relied on by the trial court:
 - i. Mutiga Kamai V Pius Muthuri Mukaria [2020] eKLR where the appellate court substituted an award of Ksh. 800,000.00 with an award of Ksh. 650,000.00 where the plaintiff had sustained lacerations to the right side of the face, fracture metacarpal 2nd, 3rd, and 4th digits, severed extensor tendon with 40% permanent disability.
 - ii. Mass Investments Limited v Stephenson Masila Kyalo [2020] eKLR where the court maintained an award of Ksh. 800,000.00 for a plaintiff who sustained 1st, 2nd and 3rd degree



burns on the right side of the head and chest, burns on right forearm, right arm, and right hand and burns on the abdomen.

- iii. Telkom Orange Kenya Limited v ISO Minor suing through his next friend and mother JN [2018] eKLR where the injuries sustained by the child were, head injury, occasioning a depressed skull, fracture of the skull, loss of consciousness, scars of the left tempo parietal area and bruises on the left leg. The High Court awarded Ksh. 500,000.00 in 2018.
12. Aggrieved and dissatisfied with the award on general damages, the appellant lodged the instant appeal vide a memorandum of appeal dated 16th December 2022 on grounds that:
- a. The learned trial magistrate erred in law and in fact in finding that the appellant was entitled to general damages of Kshs. 700,000.00 which was too low in view of the injuries suffered by the appellant;
 - b. The learned trial magistrate erred in law and in fact by failing to consider the appellant's submissions and judicial authorities on quantum thereby arriving at erroneous figure of quantum;
 - c. The learned trial magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low;
 - d. The trial court failed to analyze evidence on record and disregarded the appellant's evidence on record that the appellant had suffered severe injuries and 40 % incapacity;
 - e. The trial magistrate failed to appreciate in totality the place of the doctor's opinion evidence in the determination of the case and totally disregarded the law of evidence that expert evidence is a piece of evidence to be considered alongside other evidence;
 - f. The judgement of the learned trial magistrate is against the law and weight of the evidence on record;
 - g. The learned trial magistrate erred in law and in fact by failing to address and make finding on all issue raised by the appellant in his pleadings evidence and submissions;
 - h. The learned trial magistrate erred in law and in fact when making award by failing to consider the passage of time and incidence of inflation;
13. The Appellant therefore prayed that the appeal be allowed with costs and that the judgement delivered on 29th November 2022 at Ruiru Senior Principal Magistrates Court by the Honourable J.A. Agonda, Principal Magistrate in Ruiru SPMCC E214 of 2021 be set aside and damages be assessed afresh.
14. By order of the court the appeal was canvassed through written submissions.
15. The appellant submitted that the trial court erred in awarding damages that were inordinately low in that the treatment notes and medical report produced indicated that the appellant sustained grievous injuries, including severe head injury. Therefore, the general damages need to be enhanced to Ksh. 3,000,000.00 to reflect that the appellant had suffered 40% permanent disability. Reliance was placed on the case of United India Insurance Co. Ltd v East African Underwriters (Kenya) Ltd [1985] KLR and Mbogo v Shah & Another (1968) EA 93.
16. The Respondent did not file any submissions.



17. Section 78(2) provides that the appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein.
18. The first Appellate Court should therefore, evaluate the evidence afresh and make any of its own conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses first hand. See the case of *Selle & Anor –v- Associate Motor Boat Co. Ltd* 1968 EA 123.
19. A single issue arises for determination in this appeal; whether the damages awarded was inordinately low as to warrant its being set aside.
20. An appellate court would interfere with the discretion of the trial court in assessment of damages only where; i) the trial court committed an error in principle; or ii) the damages are too high or low as to be completely erroneous estimate of damages (*Kemfro Africa Ltd T/A “Meru Express Service Gathogo Kanini v A.M Lubia and olive* (1982-88) I KAR 727.
21. The trial magistrate awarded Kshs 700,000 as general damages; the appellant regards the award as inordinately low. The Respondents have not filed any submissions to demonstrate their position regarding the award.
22. Damages are awarded in accordance with the nature of injuries sustained. The appellant herein sustained the following injuries-
 - i. Head injury with left frontal sub-acute subdural haematoma with sub facial haematoma with subsequent left hemiparesis;
 - ii. Laceration of lower lip
 - iii. Missing three teeth (11,21,41)
 - iv. Fracture and mobile 4 teeth (12,31,32,42)
 - v. Soft tissue injury of the right hip joint region
 - vi. Cut wound on the right knee region
 - vii. The weakness of the left side of the body is permanent and the degree of incapacity is assessed at 40 %
23. There is a medical report of Dr. Karanja who observed that the Appellant had sustained skeletal and painful soft tissue injuries; he classified the injuries as grievous harm. He assessed the permanent incapacity at 40%.
24. From the medical reports it is discernible the appellant sustained serious injuries. In light of these injuries, is whether the award of Kshs. 700,000 inordinately low.
25. The Appellant proposed an award of Ksh. 3,000,000.00 on account of the 40% permanent incapacity. Notably, the authorities cited by the appellant do not relate to assessment of damages but more on exercise of judicial discretion and standard of proof.
26. In the case of *Power Lighting Comp. Ltd & Another v Zakayo Saitoti Naingola & another* [2008] eKLR, Nambuye, J. (as she then was) listed the following principles on assessment of damages:
 - (1) Damages should not be inordinately too high or too low.



- (2) They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered.
 - (3) Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
 - (4) Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of the Kenyan shillings, then at the time of the judgment.
27. I have considered the authorities cited by the trial court and note that injuries were comparable to those sustained by the Appellant. Guided by the principles set out in *Power Lighting Comp. Ltd (supra)* I do find that the trial court properly exercised discretion and there is no reason to interfere with the same. The trial court considered the circumstances of the case, the nature of injuries, comparable awards as well as inflatory trends in arriving at its decision. I do find the award of Kshs. 700,000 as general damages to be reasonable compensation.
28. The upshot is that the Appeal fails and is hereby dismissed. Each party to bear its costs.
29. Thirty (30) days stay of execution to apply.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH OCTOBER, 2025.

HON. T. W. Ouya

JUDGE

For Appellant.....msafiri

For Respondent....no Appearance

Court Assistant...brian

