



**Murungi v Julius (Civil Appeal E001 of 2024)
[2025] KEHC 14878 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E001 OF 2024
RL KORIR, J
OCTOBER 8, 2025**

BETWEEN

ARITHI SALESIO MURUNGI APPELLANT

AND

BRIGHT WANJA JULIUS RESPONDENT

(Being and Appeal from the Judgment of Hon. J.M. Gandani (C.M) in Chuka Chief Magistrate's Court Civil Case No. 159 of 2016 delivered on 31st January, 2024)

JUDGMENT

1. This Appeal arises from the judgment and decree of J.M Gandani, CM in CMCC No. 159 of 2016- Chuka delivered on 31st January, 2024. The Plaintiff (now Respondent) vide a Complaint dated 19th December 2016 sued the Defendant (now Appellant) seeking general and special damages arising out of a road traffic accident. The Plaintiff's case was that on or about 9th April 2016, he was trying to board a motor cycle registration number KMDG 986P near Kiroo Factory area or thereabouts when the defendant's agent, servant, assignee, employee and or his driver so negligently drove, managed and/or controlled motor vehicle registration number KAY 431F and knocked the motorcycle. That he consequently, suffered a crush injury to the left lower limb leading to amputation above the knee and multiple bruises on the trunk both anteriorly and posteriorly.
2. The Defendant filed a statement of defence dated 5th March 2020, and denied in toto the averments in the Complaint. He stated that if an accident occurred, then the same was wholly occasioned and/or contributed to by the Plaintiff and the owner or rider of the motor cycle.
3. Four witnesses testified for the Plaintiff at the hearing while the defence closed his case without calling any witness.
4. The trial court entered judgment entered in favour of the Plaintiff as follows:-



- a. Special damages Kshs.97,000
 - b. Cost of future medical expenses
 - c. Loss of future earning capacity
 - d. General damages for pain and suffering and loss of amenities Kshs. 2,500,000
 - e. Costs and interests.
5. Dissatisfied with the judgment, the Appellants instituted the instant Appeal on the following grounds:-
- i. That the learned trial magistrate's award of general damages in the sum of Kshs. 2,500,000 is excessive and amounts to an erroneous estimate of the damages payable in the circumstances of this matter.
 - ii. That the learned trial magistrate erred in law and fact by awarding costs of future medical treatment in the sum of Kshs. 250,000 which amount was not properly pleaded and proved.
 - iii. That the judgment of the learned trial magistrate is against the law and weight of evidence on record.
6. The Appellant prayed that the appeal be allowed with costs and that the general damages be set aside and substituted with a reasonable award. Further that the award for future earning capacity be set aside wholly.
7. My duty as a first appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. This principle was espoused by the Court of Appeal in the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR where Court held that a first appellate court must subject the entire evidence to fresh and exhaustive scrutiny and draw its own independent conclusions but must give due regard to the trial court's findings.
8. The Appeal was canvassed by way of written submissions as directed by the court.

The Appellant's submissions

9. The Appellant's submissions were dated 20th September 2024. Counsel for the Appellant raised the following issues for determination:-

i. Whether the Appellant was wholly to blame for causing the subject accident.

The Appellant submitted that PW1 who had produced the Police abstract confirmed that he was not the investigating officer, was not among the officers that visited the scene, did not have a sketch of the scene, that from the contents of the occurrence book no one was blamed for the accident and that the matter was still pending under investigations. The Appellant urged that PW1's evidence was of no probative value as he only produced police abstract whose contents he was unable to substantiate. That the Respondent failed to prove her case. The Appellant relied on the case of *Peter Matara & 2 Others V Alloy Kenyatta Kevogo* [2017] eKLR in support of his position.

10. It was also submitted that the Respondent who testified as PW3 stated that she was trying to board the motor cycle when they were hit but upon cross examination, she confirmed that the accident occurred while the motor cycle was off the road. Further, that one Dyson Kirimi Mugiira the rider of the motor cycle stated that he was off Keria-Magutini Road on the motor cycle when the Appellant's vehicle lost



control and knocked his motor cycle causing the Respondent to sustain injury. That there was no proof that he was a competent and qualified rider under the law. The Appellant further submitted that the point of impact was not ascertained since no sketch map was produced. Counsel relied on the Kenya Power & Lighting Company v Mary Wambui Kiere [2020] eKLR and Joseph Muthuri V Nicholas Kinoti Kibera [2022] eKLR.

11. Counsel further submitted that the fact that the Appellant closed his case without calling any witness does not in any way lower the burden of proof upon the Respondent thus liability should have been apportioned at 50:50. Reliance was placed on the cases of Billiah Matiangi v Kisii Bottlers Limited & Another [2021] eKLR and Valley Bakery Ltd & Another V Musyoki [2005] eKLR.

ii) Whether the award of Kshs. 2,500,000 under general damages for pain, suffering and loss of amenities is excessive.

The Appellant submitted that damages should be comparable to injuries as was established in Stanley Maore v Geoffrey Mwenda NYR CA in Civil Appeal No. 147 of 2002 [2004] eKLR. It was counsel's further contention that the award of Kshs. 2,500,000 is excessive and inordinately high and an award of Kshs. 1,000,000 is adequate and commensurate. Reliance was placed on the case of Charles Oriwo Odeyo v Apollo Justus Andawa & Another [2017] eKLR, Guandaru & 2 Others v Gitau (Civil Appeal 83 of 2021) (2023) KEHC 1984 and Waweru v Njagi (Civil Appeal E017 of 2022 (2024) KEHC 8795 (KLR).

iii) Whether the award of Kshs. 300,000 under loss of future earning capacity was pleaded and proved.

It was the Appellant's submission that parties are bound by their pleadings and in this case the claim under this head was not well pleaded and ought to have been dismissed. That there was no medical report containing any assessment on permanent incapacitation.

The Respondent's submissions

12. The Respondent's submissions were dated 13th February 2025. Counsel for the Respondent raised the following issues for determination.

(i) Liability.

In this regard, it was submitted that the Respondent, an eye witness and a police officer testified in this respect and the evidence confirmed that the Respondent was a pillion passenger on a motor cycle ridden by her eye witness when the Appellant's motor vehicle hit the motor cycle and caused the accident. It was also submitted that this being a civil case, the plaintiff must prove her case on a balance of probabilities, that the Appellant filed a defence but failed to call any witnesses to disprove the Respondent's allegations. Reliance was placed on the case of Peter Mogaka V Zipporah Gesare Omunya [2022] eKLR.

13. The Respondent further submitted that if the Appellant intended that the rider of the motor cycle be held liable, then it was his duty to enjoin the said rider as the Respondent was not in control of the motor cycle nor had any negligence been proved against her. Reliance was placed on Ntulele Estate Transporters Ltd & Another v Patrick Omutanyi Mukolwe [2014] eKLR.

ii) General damages for pain and suffering and loss of amenities of Kshs. 2,500,000.

The Respondent submitted that the award was not excessive. Reliance was placed on Crown Bus Services Ltd and 2 Others V BM (Minor Suing Through his mother and next friend SMA



[2020] eKLR, Solomon Muriithi Manyarah V SMK (Minor suing through her next friend AKK) [2021] eKLR, Mbasu and Another v Swaka (Civil Appeal E061 of 2022) [2024] KEHC 2210 (KLR) and John Kipkemboi and Another V Morris Kekolo [2019] eKLR.

iii) Loss of future earning capacity of Kshs. 300,000.

On this end, the Respondent submitted that loss of future earning capacity was a prospective financial loss which is awarded as part of general damages and does not need to be pleaded. That it is awarded whether or not the Plaintiff was employed at the time of the accident. In addition, it is awarded to compensate the plaintiff for the risk that the disability has exposed her of either losing a job or in case of loss of job, the diminution of chances of getting an alternative job in the labour market while the justification where the Plaintiff is unemployed, the risk of lack of employment or suitable employment in the future. Reliance was placed on the case of Mumias Sugar Co. Ltd v Francis Wanalo [2007] eKLR and Soshinaf Co. Ltd and Anor v Daniel Ngángá Kanyi [2020] eKLR. Counsel submitted that the trial court exercised its discretion judiciously while making this award.

iv). Costs of Kshs. 200,000 for future medical treatment.

The Respondent submitted that both Dr. Macharia and Dr. Njiru agreed that the Respondent would benefit from having a prosthesis fitted to which Dr. Njiru suggested a cost of Kshs. 250,000 and which expense the Respondent had specifically pleaded for. Reliance was placed on Housing Finance Company of Kenya Ltd V Scholastica Nyaguthi and Anor [2020] eKLR.

Analysis and determination

14. I have considered the Amended Memorandum of appeal, the record and the submissions by the parties as well as the authorities relied upon. The issues for my determination are liability; the quantum of damages awarded; the award for future medical expenses; and the award for loss of future earning capacity.

Liability.

15. The Court of Appeal in Micheal Hubert Kloss & Another vs. David Seroney & 5 Others [2009] eKLR stated as follows:-

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley vs. Gypsum Mines Ltd (2) (1953) A.C. 663* at p. 681 as follows:-

‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases



it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally”

16. The Plaintiff’s case is that she was a pillion passenger on the motor cycle when the Appellant’s vehicle hit them. This was corroborated by the evidence of PW3 the motor cycle rider who stated that on the material day he was carrying PW1. On the way, a lorry registration No. KAY 431F came from behind and as much as he tried to get out of the way the lorry still knocked them. The Plaintiff produced the Police abstract report [PEX 3] which shows that the driver of the of the lorry was to blame for the accident and was to be charged with careless driving.
17. The Defendant, however, denied liability and argued that the Plaintiff was partly to blame for the accident. In this case, the Defendant failed to call any witnesses to challenge the Plaintiff’s version of events. The Police abstract, while not conclusive, indicated that the Plaintiff was an innocent party. The Plaintiff’s evidence, supported by the testimony of an eye witness and the rider of the motor cycle, was unchallenged. The Appellant did not present any evidence to dispute the Plaintiff’s account, thus leaving the Plaintiff’s version as the most credible.
18. It is clear from the evidence that the accident occurred as a result of the Appellant’s negligent driving. The Appellant’s failure to call witnesses or produce any evidence to controvert the Respondent’s position weakened his defense significantly. The trial court, therefore, correctly found the Appellant to be liable for the accident. The trial court’s findings on liability were well supported by the evidence on record. It is my finding that the Appellant or his agent was wholly to blame for the accident.

Quantum

i. General Damages for Pain, Suffering, and Loss of Amenities

19. In considering the quantum I will be guided by the principles enunciated by the Court of Appeal in the case of *Kemfro Africa Limited t/a as Meru Express Service, Gathogo Kanini v A.M Lubia and Olive Lubia* (1987) KLR 30. It was held in that case that:-

“The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

(See also *Butt v Khan* (1981) KLR 349 and *Lukenya Ranching and Farming Co-operative Society Limited v Kavoloto* (1979) EA 414; *Catholic Diocese of Kisumu v Sophia Achieng Tete Kisumu Civil Appeal No. 284 of 2001; (2004) e KLR*).

20. The Appellant contests the award of Kshs. 2,500,000 in general damages for pain, suffering, and loss of amenities, arguing that it was excessive given the injuries sustained by the Plaintiff.
21. The Plaintiff’s injuries were serious and life-changing. She suffered a crush injury to the left lower limb, which led to amputation above the knee. She also sustained multiple bruises to the trunk. The Plaintiff’s medical evidence contained in the medical report dated 21st December 2016, and produced as PEX 1 shows the plaintiff sustained a crush injury left lower limb leading to amputation above the knee and multiple bruises on the trunk both anteriorly and posteriorly with anticipated post traumatic arthritis.



22. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) IKAR 278 stated that:

“A court of appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did”

23. I have considered the following comparable awards. In *Amref Kenya V Mary Awino Obonyo* [2019] eKLR, the court awarded Kshs. 3,000,000 for compound tibia fracture that led to above the knee amputation. Similarly, in *Njoka v Siboyi & another* [2023] KEHC 24184 (KLR) an award of Kshs. 2,000,000/- was made on general damages, to a plaintiff who had suffered multiple fractures injuries resulting in amputation of the right leg, with permanent incapacity being assessed between 40% and 100%.

24. While the Appellant has argued that Kshs. 2,500,000 is excessive, my view is that the trial court’s award was within the permissible range for similar injuries. In making the award, the trial court considered the Plaintiff’s suffering, loss of limb, and the effect of the injury on her future quality of life. The Plaintiff is likely to face long-term challenges, including emotional and physical pain, loss of mobility, and possible future medical complications. Therefore, I find no error in the trial court’s assessment on general damages for pain and suffering and loss of amenities.

ii. Loss of future earning capacity

25. The Appellant also challenges the award of Kshs. 300,000 for loss of future earning capacity. The Appellant argues that the claim was neither pleaded nor proved adequately.

26. In *Mumias Sugar Co. Ltd v Francis Wanalo* [2007] eKLR the Court of Appeal held; -

“Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering, and loss of amenities or as a separate head of damages. The award is at the discretion of the court which must consider whether the claimant’s ability to earn income has been diminished by the injury...Even where a claimant has not lost his employment, if as a result of the injury he is less marketable or has to work in pain, an award under this head may be appropriate.”

27. Additionally, in *S J v Francesco Di Nello & Another* [2015] eKLR, the Court of Appeal reaffirmed the principles in *Butler v Butler* and *Mumias Sugar* (supra) thus: -

“Loss of earning capacity is compensable as part of general damages and need not be specifically pleaded if evidence shows that the plaintiff’s ability to earn income in future has been diminished.”

28. The trial court awarded loss of future earning capacity as part of general damages, recognizing the Plaintiff’s permanent disability and the likely impact on her ability to earn a livelihood in the future. The Plaintiff did not need to be employed at the time of the accident to claim for loss of future earning capacity. The court’s award is justified by the fact that the Plaintiff’s amputation of the lower limb severely impaired her chances of obtaining suitable employment in the future.

29. The Plaintiff’s evidence, along with the medical testimony, supported the likelihood of future earnings being affected by the disability. It was not necessary for the Plaintiff to provide a detailed income history or employability analysis to claim loss of future earning capacity. The trial court exercised its discretion



in a manner consistent with established principles. I find no error in the award of Kshs. 300,000 for loss of future earning capacity.

iii. Future Medical Expenses

30. The Appellant challenges the award of Kshs. 250,000 for future medical expenses, arguing that this amount was neither pleaded nor sufficiently proved.

31. The issue of future medical expenses was considered in the case of *Tracom Limited & another v Hassan Mohamed Adan* [2009] eKLR where the Court of Appeal pronounced as follows: -

“The award for future medical expenses is challenged on two fronts. First, that it was not specifically pleaded and strictly proved. Second, that the multiplier of 25 years was inflated. We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd vs. Gituma* (2004) 1 EA 91, this Court, stated: ‘And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereon is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from the infringement of a person’s legal right should be pleaded. ‘We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require.’”

32. Further, the Court of Appeal in *Kenya Power & Lighting Company Limited v AMK* (Suing as the mother and next friend of JMK - Minor (Civil Appeal 58 of 2020) [2021] KECA 52 (KLR) (8 October 2021) (Judgment) in reference to the decision in *Tracom Limited & another v Hassan Mohamed Adan* (supra) stated as follows:

28. “As has been held above, in as much as future medical expenses are in the realm of special damages, it may not be practical for the parties to be able to fully ascertain the exact amount that will be required in the future, it therefore suffices to give an estimate as the respondents did during their testimony.

32. On the challenge to the award on future medical expenses which the appellant says had not been specifically pleaded and proved, this does not turn on much as the respondent had in their plaint stated that the minor requires additional and medical care. In our view, the functional prosthesis (artificial limbs) and their maintenance costs are covered under that prayer and as held in *Tracom Limited & another v Hassan Mohamed Adan* (supra) it was not mandatory for the respondent to delve into detail of the future expenses at that stage thus that ground of appeal fails.”

33. The Plaintiff, through her medical report dated 21st December 2015, demonstrated that she would require a prosthetic limb, which was estimated to cost Kshs. 250,000. The Plaintiff specifically pleaded



for this amount in her Plea in paragraph 5, and the medical reports provided by Dr. Njiru supported this estimate. The award for future medical expenses was based on the reasonable costs associated with the Plaintiff's future medical needs, which were clearly supported by the evidence. Consequently, I find no error on part of the trial court under this head.

34. In sum therefore, I find the appeal devoid of merit and is hereby dismissed with costs to the Respondent.

JUDGEMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 8TH DAY OF OCTOBER, 2025.

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr. Ondari for the Appellant and N/A for the Respondent. Muriuki Court Assistant.

