



**Asmara Ventures Limited v Mumo (Civil Appeal E063 of 2023)
[2025] KEHC 15686 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E063 OF 2023
KW KIARIE, J
NOVEMBER 4, 2025**

BETWEEN

ASMARA VENTURES LIMITED APPELLANT

AND

DENIS NDUNDA MUMO RESPONDENT

(Being an appeal from the judgment and decree of the Tawa Senior Principal Magistrate's Court, S PMCC No. E059 of 2021, by Hon. Stephen Jalang'o (Senior Principal Magistrate))

JUDGMENT

1. Asmara Ventures Limited, the appellant, was the defendant in Tawa Senior Principal Magistrate's SPMCC No. E059 of 2021. They were sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration numbers KCU 841H and the respondent, who was a pedestrian. As a result of the accident, the respondent sustained injuries. The respondent was awarded Kshs. 350,00.00 in general damages.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Mulyungi & Mulyungi Associates Advocates. He raised the following grounds for appeal:
 - a. The learned magistrate erred in law and in fact by awarding general damages that were inordinately too high in the circumstances.
 - b. The learned trial magistrate erred in law and fact by failing to consider the nature of injuries suffered by the respondent herein and awarding damages that were too high and incomparable to the injuries sustained.
 - c. The learned trial erred in law and fact by considering injuries that were not proved.



- d. The learned magistrate erred in law and fact by failing to appreciate the totality of the evidence before him and the submissions on record on the quantum of damages filed on behalf of the appellant.
 - e. The learned magistrate erred in law and fact by failing to apply the principles applicable in award of damages and a comparable award made for similar injuries.
3. The respondent opposed the appeals through Kulecho & Company Advocates. He argued that the appeal lacked merit.
 4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
 5. This appeal is on the quantum of damages. The appellant argued that the learned magistrate made an error in awarding excessive general damages. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance v British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

“The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint v Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis v Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.”

6. The appellant contested the damages awarded based on the findings of Dr Mwaura. The doctor examined the respondent on April 25, 2023. His findings were that the respondent had a small scar on the intergluteal region. The same was not painful on palpation. He concluded that he had sustained soft tissue injury that had healed with no residual permanent disability. This contradicted an earlier report by Dr Jane N., medical officer at Makindu Sub-County Hospital.
7. In the report dated 14th March 2022, Dr Jane N. reported that the respondent was in diapers, walked with a limp and experienced back pain when flexing the right leg.
8. When the respondent testified in court, he informed the court that, arising from the accident, he developed urine incontinence. If the appellant was of a different opinion, they ought to have called Dr Mwaura for cross-examination.
9. When an injury is classified as soft tissue, it does not necessarily make it superficial. Some soft tissue injuries are known to affect nerves and other organs and may be life-threatening.
10. In this case, the respondent demonstrated to the court that his injuries, although affecting soft tissues, were serious. This court has not been convinced to interfere with the amount of damages. The appeal is therefore dismissed with costs.



DELIVERED AND SIGNED AT MAKUENI, THIS 4TH DAY OF NOVEMBER 2025.

KIARIE WAWERU KIARIE

JUDGE

