

REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANGA
CIVIL APPEAL NO. E081 OF 2023

PETER WAINAINA MURIGI.....
APPELLANT

VERSUS

DANIEL MUNGAI NJUGUNA.....
RESPONDENT

JUDGEMENT

1. The instant appeal has been lodged vide a memorandum of appeal dated 31st October 2023 on grounds that:
 - a. The learned magistrate erred in law and facts in finding that the plaintiff was entitled to general damages of kshs. 1,500,000.00 which was too much on the lower side in view of the injuries suffered by the appellant that it presented a miscarriage of justice***
 - 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 an erroneous figure of quantum in a case where total permanent disability was assessed at 50%***
 - 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 learned trial magistrate erred in law and in fact when making his award by failing to consider the passage of time and incidence of inflation***

2. Therefore, the appellant prayed that the appeal be allowed and the judgement of the lower court be set aside with costs and this court do proceed to access the damages by law enjoined.
3. The appeal emanated from a road accident claim where the appellant alleged that on the 19th day of December 2020 he was lawfully riding as a pillion passenger in motor vehicle registration number KMCW 726K at around 1800hrs in Kambi area along Kaharati- Kigano road, when the said Motor vehicle registration number KCQ 455H was driven so negligently, recklessly and without due care by the Respondent and thereby hit motorcycle KMCW 726K and as a result, the Appellant sustained serious bodily injuries as a result.
4. Following the accident, the Appellant sustained injuries to wit:
 - i. Amputation on the right lower limb above the knee joint;*
 - ii. Fracture on the left ulna with partial displacement*
 - iii. A permanent scar on the head;*
 - iv. Total permanent disability at 50%*
 - v. Deep psychological trauma due to loss of leg.*
5. As a result, the Appellant claimed special damages of kshs. 47,650.00, general damages, prosthesis at Kshs. 350,000.00 and costs of the suit.
6. The Respondent denied the claim vide his statement of defence dated 3rd June 2022 and in the alternative pleaded contributory negligence of motor cycle rider KMEW 726K and the Appellant for failing to hold himself firmly on the motor cycle.

7. On 20th July 2023, the parties recorded a consent for liability at the ration of 80:20 in favour of the Appellant. Therefore, the appeal was against quantum.
8. Counsel for the Appellant proposed the award of quantum at Kshs. 4,500,000.00 while relying on **Civil Appeal No. 100 of 2018 [2019] Joseph Seremani & Julius Otachi vs Stella Bosibori Morekal** where an award of kshs. 2,500,000.00 was sustained for multiple fractures and an amputation of the left leg.
9. The Respondent on the other hand proposed an award of Kshs. 900,000.00 while relying on the case of **Kisumu Concrete Products Limited vs Kennedy Onyango Olwa [2016] Eklr** where an award of Kshs. 750,000.00 was upheld as general damages where the respondent's resulted in traumatic amputation of the leg below the knee.
10. The trial court determined that the amount sought by the appellant was quite high and while considering the injuries sustained by the Appellant and inflation and the authorities, awarded Kshs. 1,500,000.00 as general damages. Special damages were awarded at Kshs. 43,450.00 being the amount specifically pleaded and proved by the Appellant.
11. Dissatisfied and aggrieved with the finding of the trial court on quantum, the Appellant lodged the instant appeal.
12. By order of the court, the appeal was disposed through written submissions.
13. The appellant submitted that the trial judgment fell short of the required standard for failing to analyse the authorities provided and reasons for distinguishing the

precedents. Furthermore, the amount awarded by the trial court was inordinately low thus warranting interference by this honourable court.

14. The Respondent's submitted that the finding of the trial court was well reasoned and that the award of Kshs. 1,500,000.00 was justified. The trial court considered decided cases of similar injuries before arriving at that finding of Kshs. 1,500,000.00. Reliance was placed on **Kisumu Concrete Products Limited vs Kennedy Onyango Olwa [2016] eKLR** wherein the court upheld an award of Kshs. 750,000.00 in general damages where the Respondent's injury resulted in a traumatic amputation of the leg below the knee. **Florence Njoki Mwangi vs Peter Chege Mbitiru [2014] eKLR** where the Plaintiff was awarded Ksh. 700,000 in general damages for very severe injuries including amputation of the right foot, fracture mid right shaft femur, fracture of the left mid shaft femur was also relied on.
15. It was also submitted that the trial court relied on the appellant's submissions as the court referred to them in the judgment. Therefore, the Respondent prayed that the appeal be dismissed for lacking merit.
16. This is an appeal against quantum.
17. The first appellate court is required to reconsider the evidence, evaluate it and draw its own conclusions making an allowance for the fact that it neither heard nor saw the witnesses testify (see **Selle v Associated Motor Boat Company Ltd [1968] E.A. 123, 126**).
18. The appellant pleaded that he sustained the following injuries:
 - i. Amputation on the right lower limb above the knee joint;***

- ii. Fracture on the left ulna with partial displacement**
- iii. A permanent scar on the head;**
- iv. Total permanent disability at 50%**
- v. Deep psychological trauma due to loss of leg.**

19. Based on the injuries, the appellant proposed Kshs. 4,500,000.00 while relying on **Joseph Seremani & Julius Otachi v Stella Bosibori Moreka [2019] KEHC 8077 (KLR)** where the plaintiff sustained Tenderness on the anterior chest wall, compound fracture on the right tibia/fibula, fracture of the pelvis, fracture of the right ankle joint and amputation of the right leg below the knee and was awarded general damages of Kshs. 2,500,000.00.

20. The Respondent proposed Kshs. 900,000.00 **Kisumu Concrete Products Limited vs Kennedy Onyango Olwa [2016] Eklr** where an award of Kshs. 750,000.00 was upheld as general damages where the respondent's resulted in traumatic amputation of the leg below the knee.

21. In considering the level of damages to award, the Court of Appeal held in **Sosphinaf Company Limited v James Gatiku Ndolo NRB CA Civil Appeal No. 315 of 2001 [2006]eKLR** that:

“The assessment of damages for personal injury is a difficult task. The court is required to give a reasonable award which is neither extravagant nor oppressive. And while the judge is guided by such factors as the previous awards and principles developed by the courts, ultimately what is a reasonable award is an exercise of discretion by the trial judge and will invariably depend on the peculiar facts of each case.”

22. I have considered the decisions cited by both parties before the trial magistrate and I find the case cited by the appellant though similar to the appellant's case, the injuries are less serious compared to those sustained by the Plaintiff. The Plaintiff in the **Seremane case** (*supra*) sustained fracture of the pelvis as well as the right ankle joint.

23. While the court is guided by the cases cited to it, ultimately the duty of this court is to ensure that award for injuries in similar cases is consistent and fairly compensate the claimant. The Court of Appeal observed in **Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR** that:

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

24. Upon perusing the record, I have established that the trial magistrate considered the submissions of the parties before arriving at the decision. I find no reason to disturb the exercise of discretion by the trial court bearing in mind the principles in **Kemfro Africa Ltd t/a Meru Express & Another v A.M. Lubia & Another (Supra)**.

25. The upshot is that the appeal herein lacks merit and is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 6TH DAY OF NOVEMBER, 2025.

HON. T. W. Ouya
JUDGE

ORIGINAL