



REPUBLIC OF KENYA



KENYA LAW
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**Mukiri v Emuget (Civil Appeal E087 of 2024)
[2025] KEHC 16104 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E087 OF 2024
HM NYAGA, J
NOVEMBER 6, 2025**

BETWEEN

PASSY MUKIRI APPELLANT

AND

BENSON EMUGET RESPONDENT

(Being an appeal from the judgment from the Chief Magistrate's Court at Meru delivered by Hon. J.M. Njoroge(C.M.) in CMCC E492 of 2021 delivered on 29/05/2024)

JUDGMENT

Background.

1. The Appellant filed suit against the Respondent seeking general and special damages arising out of injuries sustained in a road traffic accident that occurred on 15th August 2021, along Meru - Nanyuki Road.
2. The Appellant's suit formed part of a series, and a test suit was selected, being Meru CMCC No. E491 of 2021. In a judgment delivered in the test suit on 27th September 2023, the Respondent held 100% liable for the accident.
3. Thereafter, the Appellant's suit proceeded for assessment of damages and on 29th May 2024 judgment was delivered in favour of the Plaintiff and against the Respondent as follows: -
 - a. Liability 100%.
 - b. General Damages for pain and suffering and loss of amenities - Kshs. 600,000/-.
 - c. Future medical expenses – Kshs. 75,000/-.
 - d. Loss of earning capacity – Kshs. 50,000/-.



- e. Special damages - Kshs. 45,070/-
Total - Kshs. 770,070/-
 - f. Costs and interest.
4. Aggrieved by the said Judgement, the Appellant filed the Memorandum of Appeal dated 27th June, 2024 in which she set out the following grounds.
- I. That the Learned Trial Magistrate erred in law and in fact in finding that the Plaintiff was entitled to general damages of Kshs. 600,000/- which was too much on the lower side in view of the injuries suffered by the Plaintiff that it presented a miscarriage of justice.
 - II. That 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 on quantum.
 - III. That the Learned Trial Magistrate erred in law and 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.
 - IV. That the Learned Trial Magistrate erred in law and in fact when making her award by failing to consider the passage of time and incidence of inflation.
5. The Appellant sought orders that the appeal be allowed, that this court sets aside the judgment of the lower court re-assess the general damages.
6. The Appeal was canvassed by way of written submissions.

Appellant's Submissions

7. For the Appellant it was submitted that the award of general damages assessed by the trial court was inordinately low given the severe nature of the injuries sustained by the Appellant, the period of treatment, and the complications noted by the medical officers who treated the Appellant. The Appellant also noted that permanent disability was assessed at 25%.
8. It was submitted that given the above, then an award of Kshs. 3,000,000/- would be reasonable. The Appellant relied on the following authorities;
- a. Ken Odoni and 2 Others v James Okoth Ombutah T/A Ombwale & Co. Advocates (2013) eKLR.
 - b. Kemfro Africa Ltd T/A Meru Express Service and Another v Lubia and Another (1985) eKLR.
 - c. Early Coach Ltd and Another v Elizabeth Musandi and Another (2015) eKLR.

Respondent's Submissions

9. The Respondent pointed out that the medical reports tendered by both parties were in concurrence on the nature of the injuries sustained by the Appellant. That the point of departure was the assessment of permanent disability, where the Appellant's report placed at 25% while the Respondent's report placed it at 15%.
10. Citing the case of John Kipkemboi and Another v Morris Kadolo (2019) eKLR the Respondent stressed that an award of damages is not meant to enrich the Appellant or punish the tortious party.



11. It was further submitted that the award by the trial court was reasonable and within the range of recent authorities. That the submission by the Appellant for Kshs. 300,000/- was unreasonable and exorbitant. On the issue of exorbitant award, the Respondent cited *Machogu v Chepkwony* (2023/KEHC 414F(KLR)).
12. The Respondent urged the court if it found it necessary, to assess damages within the range of Kshs. 400,000/- and Kshs. 600,000/-. In support of these submissions, the Respondent cited the following cases: -
 - a. S.A.O (Suing through next friend M.A.O) v Registered Trustees Anglican Church of Kenya, Maseno Parish (2017) eKLR.
 - b. Stanley Kirua Amisei v John Mkiralafu Wanjofu (2020) eKLR.
 - c. Sammy Mugo Kinyanjui and Another v Kairo Thuo (2017) eKLR.
 - d. Akamba Public Road Services v Abdikadir and Galgalo (2016) eKLR.
 - e. Kimita v Travel/Budget Express and Another (2024) KEHC 6435(KLR).

Analysis and Determination.

13. This being the first appeal, it is this Court's duty to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123 where the Court of Appeal for East Africa stated follows: -

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that, this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

14. This appeal is only on quantum, and specifically the award by the trial court for general damages for pain, suffering and loss of amenities.
15. The parties have correctly stated that the Appellate court will not disturb an award of damages made by the lower court, unless it is shown that the award was either inordinately low or high, as that the court applied the wrong principles. This portion was set out in some of the decisions cited herein including *Kemfro Africa Ltd and another v Aziri Kamau Musika Lubia & Another* (Supra) where it was held as follows;

“The principles to be applied by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that 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 have been a wholly erroneous estimate of the damages."

16. It is thus incumbent upon this court to look at the medical evidence, other evidence tendered and determine whether or not to allow the appeal.
17. The Appellant sustained the following injuries: -
 - a. Right mid shaft femur fracture.
 - b. Right segmental fibula bone fracture.
 - c. Dislocated right tibia bone at the ankle joint.
 - d. Left proximal fibula bone fracture.
 - e. Right lateral thigh and anterior knee surgical scar.
 - f. Intramedullary femur nail insitu.
 - g. Left facial scar 4cm x 2cm.
 - h. Distal right leg and heel healing wounds.
 - i. Foetal miscarriage.
18. The Appellant had produced a medical report prepared by Dr. Muthuri Kenneth in which her injuries were classified as grievous harm and the degree of permanent disability was assessed at 25%.
19. On the Respondent's request, the Appellant was also examined by Dr. P.M. Wambugu, who concurred with Dr. Muthuri on the injuries, but assessed the degree of permanent disability at 15%.
20. It is quite clear that the Appellant's injuries were severe, so much so that she was left with a permanent disability. Further, she suffered a foetal miscarriage.
21. I have considered the authorities cited by the parties. In as much as there cannot be exactly the same injuries, the court ought to look at the conveyable injuries. It would also be wrong to look at each injury sustained by the Appellant individually.
22. I find that the authority of *Fatuma Diyay Farah v Abdirahman Ali Galgalo and another* (2021) eKLR to be the most relevant. The claimant was awarded Ksh 3.5 million for injuries that were almost similar to those sustained by the appellant.
23. Looking at all the authorities cited, I am of the firm view that the award by the trial court failed to take account of the gravity of the injuries and the permanent disability assessed by both doctors, albeit in varying degrees.
24. Therefore, I set aside the award of general damages by the trial court and substitute it with an award of Kshs. 1,500,000/-.
25. The other awards were not contested so this court will not disturb them.
26. The Appellant shall have the costs of the Appeal.

Dated, Signed & Delivered at Meru this 6th day of November, 2025.

H. M. NYAGA

JUDGE.

