Mutuku v Mwangangi (Civil Appeal E034 of 2024)
[2025] KEHC 15761 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15761 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

CIVIL APPEAL E034 OF 2024

KW KIARIE, J

NOVEMBER 5, 2025

BETWEEN

DANIEL MUTUA MUTUKU ..... APPELLANT

AND

ABEDINEGO MWANGANGI ..... RESPONDENT

(Being an appeal from the judgment and decree in the Makueni Chief Magistrate's Court, CMCC No. E008 of 2022 by Hon. E. Kemei (Resident Magistrate)

JUDGMENT

1. Daniel Mutuku, the appellant, was the plaintiff in Makueni Chief Magistrate's CMCC No. E008 of 2022. He had filed for a claim of general and special damages following a road traffic accident involving motor vehicles, with registration numbers KCX 651S and KBN 031F. He was a passenger in motor vehicle number KCX 651S. As a result of the accident, the respondent sustained injuries. The respondent was held 100% liable. The appellant was awarded Kshs. 250,000/= general damages.

2. The appellant was dissatisfied with the award and filed this appeal through Kitindio Musembi & Company Advocates. He raised the following grounds for appeal:

    a. The learned trial magistrate erred in law and in fact by failing to give a concise statement of the case, points of determination, decision thereon and reason for his judgment.

    b. The learned trial magistrate erred in law and in fact in failing to consider the appellant's submissions and thereby ignoring relevant guiding facts to reach a fair and reasoned determination.

    c. The learned trial magistrate erred in law and in fact by awarding the sum of Kshs. 250,000/= on general damages, which is inordinately little and unrealistic in the circumstances, against the injuries sustained by the appellant, despite there being sufficient evidence of injuries, and

there was no contrary medical report by the respondent to rebut the plaintiff's evidence on injuries sustained, which left the appellant with 50% permanent disability.

d. The learned trial magistrate erred in law and in fact by applying the wrong and inapplicable principle of law in a civil case, and which did no basis to warrant her determination on general damages.

3. The respondent opposed the appeals through Kimondo Gachoka & 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. 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. In his pleadings, the appellant stated that as a result of the complained-of accident, he suffered the following injuries:

a. Blunt injury to the right eye;

b. Right eye conjunctival lacerations;

c. Blunt injuries to the mandible on both sides; and

d. Lacerations below the knee bilaterally.

7. Dr John Mutunga examined the appellant on the 16th day of November 2021. He confirmed the injuries. His opinion was that he sustained a severe eye injury with a 50% degree of permanent incapacity. The rest of the injuries he classified as soft tissue injuries.

8. In the trial court, the appellant sought general damages of Kshs. 1.8 million, while the respondent proposed Kshs. 200,000/= as compensation.

9. The appellant referred to the decision in Bernard Muhilana Shimanyula v Attorney General & others [2020] eKLR. The plaintiff was awarded a sum of Kshs. 1,500,000/= for the loss of the plaintiff's left eye. The respondent, while urging his case, relied on the decision in Hayer Bishan Singh and

Sons Limited v George Odhiambo Amimo[2019] eKLR. The respondent, who suffered a 30% visual disability, was awarded Kshs. 400,000.00.

10. From the two decisions relied upon by both parties, it is evident that the award by the learned trial magistrate was extremely low. The same is hereby set aside and replaced with an award of Kshs 900,000.00. The appeal has succeeded with costs.

DELIVERED AND SIGNED AT MAKUENI, THIS 5TH DAY OF NOVEMBER 2025.

KIARIE WAWERU KIARIE

JUDGE