



REPUBLIC OF KENYA



**Wambua v Mwangi (Civil Appeal E531 of 2023)
[2025] KEHC 17706 (KLR) (Civ) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E531 OF 2023

WM MUSYOKA, J

NOVEMBER 28, 2025

BETWEEN

LENNY MULINGE WAMBUA APPELLANT

AND

LEE ELVIS MWANGI RESPONDENT

*(Appeal from the judgement and decree, of Hon. SA Opande, Principal Magistrate,
PM, of 22nd May 2023, in Milimani Courts CMCC No. E13439 of 2021)*

JUDGMENT

1. The claim, before the trial court, was by the appellant, against the respondent, for compensation, for personal injury sustained in a motor vehicle accident. The claim was resisted by the respondent, who denied the allegations made, but pleaded, in the alternative, that the appellant contributed to the accident by his own negligence.
2. A trial was conducted. Only the appellant testified. Judgment was delivered on 22nd May 2023, dismissing the entire suit.
3. The appellant was aggrieved, hence the instant appeal. The principal ground is that the trial court erred on the matter of assessment of damages when it found that the injuries pleaded were inconsistent with those proved in evidence.
4. Directions were taken, on 2nd May 2025, for disposal of the appeal by way of written submissions. Both sides complied. I have seen and read their respective written submissions, and considered their respective arguments.
5. In the judgement, the trial court found that liability in negligence was established, for the respondent did not call witnesses to support that which he had alleged in the defence. The dismissal, of the suit,



- arose from the aspect of quantum, on the basis that the material, pleaded in the plaint, on the injuries, was different from what was in the medical report, placed on record.
6. The plaint pleaded severe chest injuries, 2 broken teeth, 2 loose teeth, and injuries on the upper limb and left knee. The appellant produced a medical report, by Dr. Kayo, to prove those injuries. The report detailed the injuries as a blunt chest injury, blood loss, soft tissue injuries, and physical and psychological pains. In the opinion of the trial court, the injuries pleaded were not the same as those reflected in the medical report, and that those pleaded were a lot more serious. Based on that the court ruled that the appellant was bound by his pleadings, and that that variation, between the pleadings and the medical report, was fatal to his claim.
 7. I have looked at the treatment notes from the Coptic Hospital, the P3 form and the report by Dr. Kayo, and it would appear that the most critical injury was to the chest. The treatment notes refer to “sustained chest pain,” and the P3 form refers to “sour chest with bruises.” The report by Dr. Kayo, although listing various injuries, besides that to the chest, identifies the current complaints to be about chest pains while working, and itchininess around the scars of the chest when hot. The examination findings were on multiple hyper pigmented scars on the chest, anterior chest wall tenderness. Principally, the main injury was to the chest. The “blood loss,” “soft tissue injuries” and “physical and psychological pains” must have been in relation to the chest, as there were no other injuries noted in that report.
 8. The plaint captured severe chest injuries, 2 broken and 2 loose teeth, and injuries to the left upper limb and left knee. The medical records, placed in the record, did not establish those other injuries, but captured the chest injuries. The chest injuries were described by Dr. Kayo as leaving “multiple hyper pigmented scars on the chest,” and he opined that recovery was going to be gradual, and was going to leave “scars of cosmetic significance.” That would point to the severity of the chest injuries.
 9. To the extent that the medical records, inclusive of the report by Dr. Kayo, captured the chest injury as the main injury, and that the plaint, did, indeed, plead severe chest injuries,” it would be inaccurate to conclude that there was a variance between what was pleaded and what was proved. The medical records proved the chest injury, which aligned with the pleading about “severe chest injuries.” Dr. Kayo referred to “blood loss.” The injuries to the chest left “multiple scars,” and, rationally, scars point to either bruises or wounds, which would usually be accompanied by bleeding. The scars on the chest were described as “multiple,” which would suggest soft tissue injuries to the chest.
 10. The report by Dr. Kayo supported the pleadings, relating to the “severe chest injuries.” The fact that it did not touch on the other injuries, listed in the plaint, did not mean that the appellant did not prove the principal injury, to the chest.
 11. There is merit in the appeal. The principal injury, to the chest, was proved. The trial court ought to have assessed the compensation available.
 12. I have reviewed a number of decisions, where claimants had sustained soft tissue injuries, similar to those suffered by the appellant herein, especially those that included chest injury or injuries.
 13. In *LKN & 2 Others vs. Simon Gatuni Njuki* [2022] KEHC 2497 (KLR) (C Kariuki, J), several claimants had sustained soft tissue injuries to the chest, and other parts of their bodies, and Kshs. 80,000.00 was awarded to each one of them. In *Asad Motors Limited & 2 Others vs. Yaa* [2023] KEHC 24279 (KLR) (Kiarie, J), the various claimants had sustained soft tissue injuries to the chest and other parts of the body, and each one of them was awarded Kshs. 100,000.00. In *Owino vs. Kiarie* [2023] KEHC 25374 (KLR) (Nzioka, J), the several claimants had sustained multiple soft tissue injuries,



and Kshs. 50,000.00 was awarded to each of them. In *Obure & Another vs. Okwayo (Odera, J)*, the claimant had multiple bruises, and the court awarded Kshs. 70,000.00 to each of them.

14. I see a receipt, issued by Dr. Kayo, for Kshs. 3,000.00. I have also seen a receipt from NTSA, for Kshs. 550,000.00. There are also payment receipts, with respect to treatment, for Kshs. 13,000.00; Kshs. 1,500.00; Kshs. 11,500.00 and 945.00; totalling to Kshs. 27,890.00. The total special damage proved was Kshs. 31,440.00.
15. In view of the above, I shall allow the appeal. The consequence shall be that the orders made, in the judgement of 22nd May 2023, by the trial court, dismissing the suit, are hereby vacated, and substituted with an award of Kshs. 100,000.00 general damages; Kshs. 31,440.00 special damages; plus, costs and interests. The lower court file shall be returned to the relevant registry. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 28TH DAY OF NOVEMBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Onger, instructed by Ombuna Onger & Company, Advocates for the appellant.

Mr. Migiro, instructed by Joe Ngigi & Company, Advocates for the respondent.

