



**Gichuki v Gitau & another (Civil Appeal E001 of 2024)
[2025] KEHC 19046 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E001 OF 2024
EM MURIITHI, J
DECEMBER 11, 2025**

BETWEEN

MARY MURUGI GICHUKI APPELLANT

AND

JOHN MWANGI GITAU 1ST RESPONDENT

BLU TOPAZ INVESTMENTS LIMITED 2ND RESPONDENT

*(An appeal from the Judgment and order of Hon. SM Nyaga PM
delivered on 21st September 2023 in Baricho PMCC NO. E200 of 2022)*

JUDGMENT

1. The Appellant herein, Mary Murugi Gichuki being aggrieved by the Decree from the Judgment of Hon. S.m Nyaga Senior Resident Magistrate which was delivered 21st September, 2023 in Baricho Pmcc E 200 OF 2022 appeals to this Honourable Court on the following grounds: -
 1. That the Learned trial Magistrate erred in law and fact in failing to consider adequately, or at all, the totality of the evidence that was tendered on quantum, and in so doing he arrived at an erroneous finding on quantum.
 2. That the learned trial magistrate erred in law and in fact in the manner that he assessed general damages and in awarding damages that were low in the circumstances.
 3. That the learned trial magistrate erred in law and in fact in the manner that he declined to award the Appellant costs of the suit though she was the successful party.
 4. That the learned trial magistrate erred in law and in fact in failing to consider the Appellant's submission on quantum and in so doing he arrived at an erroneous decision.

Reasons Wherefore the Appellant prays that:



5. This Appeal be allowed and the Judgment of the learned trial Magistrate be set aside.
6. That this Honourable court does proceed and determine the issue quantum finally.
7. This Honourable court does issue such further orders or directions as it may deem fit.
8. The costs of this Appeal be awarded to the Appellant.

Background facts

2. It is not disputed that a road traffic accident occurred on 15th September, 2022 involving the Appellant as a pedestrian and the Respondent, its driver, agent and or servant while driving motor vehicle registration number KDA 217M and the Respondents were to blame for the same.
3. The Respondents entered appearance through their advocates on record and when the matter was scheduled for hearing on 6th July, 2023, parties recorded a consent judgment on liability in the ratio of 85:15 in favour of the Appellant.
4. The matter then proceeded for assessment of damages, with the Appellant testifying;
5. Judgment on quantum was delivered in the following terms:
 - a. General damages awarded in the sum of Kenya Shillings Seven Hundred Thousand (Kshs. 700,000/-);
 - b. Loss of earning capacity in the sum of Kenya Shillings Two Hundred Thousand (Kshs. 200,000/-);
 - c. Future medical expenses in the sum of Kenya Shillings Three Hundred Thousand (Kshs. 300,000/-) and
 - d. Special damages awarded in the sum of Kenya Shillings Seventy-Six Thousand and Twenty (76,020/-).
 1. Gross Total: Kshs. 1,276,020/
 2. Less 15%: Kshs. 191,403/
 3. Net Total, Kshs, 1,084,617
 - e. Interest of the Suit.
 - f. No costs awarded
6. It was the Appellants evidence that as a result of the said accident, she sustained several injuries including:
 - a. A compound fracture of the left tibia fibula;
 - b. Soft tissue injury of the left forearm and
 - c. Bruised knuckles.
7. The Appellant produced in her exhibit a P3 Form, the discharge summary forms from Kerugoya Hospital and Kimbimbi Hospital and a medical report by Dr. Munyi dated 24th October, 2022 which



- clearly demonstrated the extent of the injuries she sustained from the said accident and the extent of the treatment she underwent.
8. The treatment received included internal fixation and as at the time of the medical examination, the Appellant was walking with the aid of crutches. Dr. Munyi noted the Appellant had sustained severe injuries which she had not recovered from. He assessed permanent incapacity at 20%,
 9. Dr. Wambugu in his medical report dated 10th May 2023 confirmed that the Appellant sustained the aforementioned injuries and further noted that the Appellant was walking aided by two axilla crutches and there is a 1 cm shortening of the limb.
 10. The Appellant therefore sought for general damages for pain and suffering in the sum of Kshs. 1,500,000/-. The trial Magistrate in his judgment awarded Kshs.700,000/ as general damages for pain and suffering. The appellant submits that the award of Kshs.700,000/ for general damages for pain and suffering was manifestly low considering the nature and extent of injuries which the Appellant sustained as a result of the said accident.
 11. The appellant relies on these authorities:

Charles Mathenge Wahome v Mark Mboya Likanga & 2 Others [2011] where the Plaintiff sustained similar injuries and the Plaintiff was awarded Kshs. 1,500,000/ as general damages.

Tea Warehouse Ltd & Anor v Kalyan Karsan Kerai [2020] eKLR where the Plaintiff sustained similar injuries and the Plaintiff was awarded Kshs. 1,500,000/ as general damages.

General damages for loss of earning capacity
 12. It was the Appellants further evidence that prior to the said accident she was a casual labourer earning Kshs. 500/per day however as a result of the said accident, she is unable to resume her work due to the injuries sustained.
 13. The Appellant therefore sought for general damages for loss of earning capacity in the sum of Kshs. 500,00/-being a global sum. The trial Magistrate in his judgment awarded Kshs. 200,000/for loss of earning capacity.
 14. The medical report which the Appellant provided as exhibit, including a discharge summary forms and a P3 form, substantiate the long-lasting repercussions of her injuries on her physical and economic viability.

Failure to award costs

15. The trial Court declined to award the Appellant costs of the Suit solely on the ground that she had not notified the Respondents before instituting the Suit. While it is trite that the award of costs lies within the discretion of the Court, such discretion must be exercised judicially, not arbitrarily, and must be supported by cogent and valid reasons.
16. In the case of Joseph Muchiri Mbugua v Gatimu Ndirangu [2019] eKLR where the Court quoted with authority the case of Catherine Ngore Obare V Stephen Mulanya Kula & 4 Others, [2014] eKLR where the Learned Judge expressed himself as follows:

“...The basis of denial of costs for failure to give notice to sue is founded upon the Principle that where the claim is for liquidated damages, it is considered that had the defendant been notified of the debt due, he would have paid, and the necessity of suit would have been avoided. The principle also applies where though suit has been filed, the defendant pays the



claim well before the hearing of the suit. The general principle of law however is that costs follow the event.....”

...Given that the appellant’s claim was not liquidated, it is my finding that the learned trial magistrate erred in law when he refused to award costs to the appellant who was the successful litigant in a suit which was contested. Having found the respondent liable, there was no good reason to deny the appellant costs even if he had not served a demand notice on the respondent prior to filing suit...”

Respondent submissions

17. Whether the trial Magistrate arrived at an erroneous finding on quantum
18. This issue covers grounds 1, 2 and 4 of the Memorandum of Appeal dated 8th January, 2024.
19. An appellate court will only intervene in the assessment of damages if the trial court either considered irrelevant factors or ignored relevant ones, or made an award so excessive or insufficient as to reflect an erroneous estimate, or if the assessment lacked evidentiary support.
20. This principle has been applied by courts following its statement in *Butt v Khan* 1978 KECA 24 KLR as hereunder: -

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles. or that he misapprehended the evidence in some material respect. and so arrived at a figure which was either inordinately high or low.”
21. The Appellant contends that the trial magistrate’s award was inordinately low on account of evidence tendered not being adequately considered, an erroneous assessment of damages and failure of consideration of her submissions on the same.
22. In her amended plaint dated 4th August, 2023 the Appellant detailed her injuries to include a compound fracture of the left tibia fibula. soft tissue injury of the left forearm and bruised knuckles, to which the magistrate awarded general damages of Kshs.700,000/-.
23. Prior to making the award, the trial magistrate referenced the medical reports of doctors Munyi and Wambugu on the Appellants injuries, and thereafter touched on the two doctors’ expert assessments on the issue of the Appellant’s permanent incapacity.
24. The Appellant’s allegation that the evidence tendered was not sufficiently canvassed is therefore erroneous and unfounded as the relevant evidence, the same being the availed medical reports, were canvassed by the trial magistrate in determining the issue of quantum.
25. The Appellant additionally posits that the trial magistrate’s award was inordinately low on account of an erroneous assessment of damages on the part of the learned magistrate. To this we concur only in so far as the trial magistrate’s assessment of damages being erroneous and contrarily state that the same resulted in the awarded damages being unjustifiably excessive in consideration of the injuries detailed by the Appellant.
26. The trial magistrate ignored the Respondent’s submissions and reliance on the case of *Ndwiga & another v Mukimba* 2022 KEHC 11793 KLR where the respondent had tenderness and swelling of the left leg and fracture of tibia and fibula of the left leg and the High Court set aside the trial court’s award of Kshs 1,200.000/= and replaced the same with Kshs 500.000/=.



Whether the trial Magistrate erred in declining to award costs to the Appellant

27. Section 27(1) of the *Civil Procedure Act* Cap 21. it is trite law that the discretion to award costs lies with the court in any suit. The referenced section provides as follows;

“Subject to such conditions and limitations as may be prescribed. and to the provisions of any law for the time being in force. the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid: and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

28. The trial magistrate in declining to award costs did not do so on a whim. He accurately relied on the presented evidence and the blatant lack of. to arrive at the judiciously accurate finding.

29. In the judgment delivered on 21st September, 2023 the trial court stated that: “The Plaintiff failed to notify the defendants before filing the suit and hence no costs of suit is payable.”

Issue

30. Whether the trial Magistrate arrived at an erroneous finding on quantum.

31. Whether the trial Magistrate erred in declining to award costs to the Appellant.

Analysis

Whether the trial Magistrate arrived at an erroneous finding on quantum

32. It is settled law that an appellate court will only interfere with an award of damages where the trial court acted on wrong principles, considered irrelevant factors, failed to consider relevant factors or where the award is inordinately too low or too high as to represent an erroneous estimate. This principle was articulated in *Butt v Khan* [1977] eKLR, where the Court of Appeal held that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or misapprehended the evidence in some material respect...”

Injuries and Evidence

33. The Appellant sustained: A compound fracture of the left tibia/fibula, soft tissue injuries to the left forearm and bruised knuckles. Despite this, the trial court awarded:

a. Pain and suffering: Kshs. 700,000

b. Loss of earning capacity: Kshs. 200,000

34. The Appellant argued that the award was manifestly low and relied on comparable authorities where higher awards were made for similar injuries, including:

35. In *Charles Mathenge Wahome v Mark Mboya Likanga & 2 Others* [2011] eKLR – Award of Kshs. 1,500,000 for compound fracture of tibia/fibula.



36. In *Tea Warehouse Ltd & Another v Kalyan Karsan Kerai* [2020] eKLR – Similar injury attracting award of Kshs. 1,500,000.
37. The Respondents cited *Ndwiga & Another v Mukimba* [2022] eKLR, where an award for similar fractures was reduced to Kshs. 500,000, illustrating that awards vary but must align with current judicial trends.
38. Compound fractures with permanent incapacity ordinarily attract higher awards considering prolonged pain, future medical needs and functional limitation.
39. The award of Kshs.700,000 was therefore on the lower end and fails to reflect the gravity of the injuries, particularly given the percentage incapacity and loss of mobility. The same shall; be enhanced to Ksh.800,000.
40. The Appellant was a manual labourer earning daily wages and her ability to engage in such work is significantly diminished. In *Mumias Sugar Co. Ltd v Francis Wanalo* [2007] eKLR, the Court noted “Loss of earning capacity may be awarded as part of general damages even when the claimant is not in employment if incapacity diminishes their prospects of labour.” The global sum of Kshs.200,000 for loss of earning capacity was adequate.

Whether the trial Magistrate erred in declining to award costs to the Appellant

41. The lower court denied costs solely on the basis that no demand notice had been issued. Costs are governed by Section 27 of the *Civil Procedure Act* which provides:

“Costs follow the event unless the court for good reason orders otherwise.”

42. The Appellant relied on *Joseph Muchiri Mbugua v Gatimu Ndirangu* [2019] eKLR, where the High Court held that failure to issue a demand letter is not sufficient reason to deny costs in a contested non-liquidated claim. In *Catherine Ngore Obare V Stephen Mulanya Kula & 4 Others*, [2014] eKLR where the court said as follows:

“The basis of denial of costs for failure to give notice to sue is founded upon the principle that where the claim is for liquidated damages, it is considered that had the defendant been notified of the debt due, he would have paid, and the necessity of suit would have been avoided. The principle also applies where though suit has been filed, the defendant pays the claim well before the hearing of the suit. The general principle of law however is that costs follow the event.”

43. The trial Magistrate exercised discretion wrongly in denying costs. The Appellant is entitled to costs at the lower court and on appeal.

Orders

44. Accordingly, for the reasons set out above, the Court finds merit in the appeal and makes the following orders:
 - a. The award of Ksh.700,000/- for pain and suffering is set aside and substituted with an award of Ksh.800,000/-
 - b. The other awards remain the unchanged.
45. The appellant is awarded Costs of the suit and in the appeal.



Order accordingly.

DATED AND DELIVERED THIS 11TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwangi Maina for the Appellant.

Ms. Kosgei for the Respondent.

