



REPUBLIC OF KENYA



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**Miriti v Murithi (Civil Appeal E102 of 2024)  
[2025] KEHC 18758 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18758 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E102 OF 2024  
SM GITHINJI, J  
DECEMBER 17, 2025**

**BETWEEN**

**JEREMIAH MIRITI ..... APPELLANT**

**AND**

**KELVIN MURITHI ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. Agwata Y. Kwamboka (RM)  
in Tigania SPMCC No. E097 of 2021 delivered on 17th of May, 2024)*

**JUDGMENT**

1. This Appeal arises from the judgment of the learned Resident Magistrate Hon. Agwata Y. Kwamboka delivered on 17.5.2024 in Tigania Civil Suit No. E097 of 2021 wherein judgment was entered in the following terms;
  1. Liability 90%
  2. General Damages Ksh. 1,700,000
  3. Loss of Earning Capacity Ksh. 1,824,000
  4. Special Damages Ksh. 6,000
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 26<sup>th</sup> July, 2024;
  1. The learned trial magistrate erred in law and fact by awarding inordinately high general damages for pain, loss, suffering and loss of amenities in the sum of Ksh. 1,700,000/= to the Respondent constituting a miscarriage of justice in the circumstances of the case.



2. The learned trial Magistrate erred in fact and law by awarding inordinately high compensation for loss of earning capacity in the sum of Ksh. 1,824,000/=.
  3. The Learned Trial Magistrate misdirected herself by failing to rely on contemporary, comparative and persuasive decisions and authorities in awarding general damages in the suit.
  4. The Learned Trial Magistrate's judgment was wholly not supported in law and evidence tendered in court by the parties and is a manifestly departure from established legal principles.
  5. The Learned Trial Magistrate erred in law and fact by failing to consider the Appellant's submissions and authorities on liability and quantum hence arriving at an erroneous decision.
3. The Respondent filed a memorandum of cross appeal dated 7<sup>th</sup> August 2024, setting forth the following ground:
1. The learned trial magistrate misapprehended the Respondent's injuries thereby arriving at an award of general damages for pain, suffering and loss of amenities that was so low that it is a wrong estimate of the damage that the Respondent was entitled to.

### **Evidence at trial**

4. PW1 Kelvin Murithi, the Respondent herein and a student at Meru Teachers College, adopted his witness statement dated 14/10/2021 as his evidence in chief and produced the list of documents filed therewith as exhibits. He told the court that he sustained injuries to the head, chest, right hand, right knee, right butt cheek, buttocks, and he was admitted at St. Theresa Kiirua for 16 days in the ICU. He had not recovered as he could not use his dominant right hand completely, and in cold seasons, it was extremely painful. He could neither stand nor walk for long distance, without the aid of a walking stick, and the expenses incurred of Ksh. 800,000 were paid by NHIF and MINET TSC. He was still going for check-ups, when free, but he had no documents to prove.
5. The Appellant closed his case without calling any witnesses, and conceded the medical report dated 3/6/2022 by consent, as an exhibit.

### **Submissions**

6. The Appellant, through the firm of Kiruki & Kayika Advocates, filed submissions dated 21/5/2025, citing Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR, on the duty of a first appellate court. Counsel argued that an award of Ksh. 600,000 for pain and suffering would suffice, and cited Stephen Mwallyo Mbondo v County Government of Kilifi (2021) eKLR, S.A.O (Minor suing through next friend M.O.O) v The Registered Trustees of the Anglican Church of Kenya Masero North Parish (2017) eKLR, Daniel Otieno Owino & Another v Elizabeth Atieno Owuor (2020) eKLR and Mitiga Kamai v Pius Muthuri Mukaria (2020) eKLR. Counsel faulted the Respondent for failing to prove how the accident affected his capacity to earn in future, and cited Hamo Transporters Company Limited & another v Dorcus Wangui Kiriro (2019) eKLR and S. J v Francesco Di Nello & another (2015) KECA 606 (KLR). Counsel prayed for the appeal to be allowed and the cross appeal to be dismissed with costs.
7. The Respondent, through the firm of Nkunja & Company Advocates, filed submissions dated 26/8/2025 citing Abok James Odera T/A A.J Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) KECA 208 KLR, Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2 E.A 212 and Imbezi v Fairmile School Limited & Another [2024] KECA 486 (KLR), on the duty of the first appellate court. Counsel faulted the Appellant for failing to demonstrate that the awards made herein



were inordinately high as to amount to an outright error, and cited *Joseph Kahinda Maina v Evans Kamau Mwaura & 2 others* [2014] KEHC 1772 (KLR), *Douglas Kalafa Ombeva v David Ngama* (2013) KECA 538 KLR, *Nicholas Ndanyi Migeke v Robert Chomba & Another* (Civil Appeal 146 of 2019) [2025] KEHC 2079 (KLR) (Civ) (6 February 2025) (Ruling), *Jubilee Hauliers Ltd & 2 others v Brian Muchiri Waihenya* [2017] KECA 923 (KLR), *Ngumbi v Miana* [2023] KEHC 2401 (KLR) and *Supermarine Handling Services Limited v Kenya Revenue Authority* (2010) KECA 373 KLR.

### **Analysis and Determination**

8. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions on the same.
9. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA, the court held as follows: “This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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.”
10. I have considered the appeal herein, the trial court’s judgment which is the subject of this appeal as well as the submissions by counsel.
11. From the grounds of appeal, the twin issues for determination are; whether the general damages for pain, suffering and loss of amenities and loss of earning capacity were excessive.
12. The injuries sustained by the Respondent are particularized in the medical report of Dr. John Macharia dated 18/5/2022 as head injury with loss of full consciousness for two hours resulting in semi-consciousness GCS 8/15 for about a month, blunt chest injury with a left sided pneumothorax, fracture of the right proximal humerus (transverse and displaced), fracture of the left iliac bone (Pelvis) and fracture of the left inferior pubic rami.
13. At the time of examination, the Respondent complained of poor memory with a tendency to forgetfulness, walking difficulties and inability to use the right upper limb.
14. On examination, the Respondent was walking using a walking stick and dragging his right lower limb, he had a surgical scar on the upper midline aspect of the abdomen (for insertion and removal of gastrotomy tube), his right upper limb had gross loss of muscle bulk with reduction of sensation from the mid arm distally, there is reduction of power of the right upper limb, standing at 2 out of 5, the humerus fracture had healed but with gross mal-alignment, the right shoulder joint had gross reduction of range of movements and the right knee had gross reduction of movements (flexion and extension are only possible with a 20 degrees mid-ranges).
15. In his opinion, the Respondent had sustained, “a severe head injury with a prolonged period of loss/reduced level of consciousness. He was managed and has recovered from this. A left sided pneumothorax which was managed and resolved. Two left sided pelvic fractures. These were managed conservatively and have healed. A fracture of his right humerus. This has healed with gross mal-alignment. His right radius nerve was injured by the fracture and this has resulted in loss of sensation and muscular function of the right upper limb. He secondarily has sustained an ankylosis (fusion) of his right shoulder (gross reduction of movements of the shoulder. He is thus unable to use the limb (he was right-handed prior to the accident). These are permanent incapacities. The movements of his right knee are grossly reduced as a result of soft tissue injuries over the knee. This is due to post trauma



arthritis leading to ankylosis. This is a permanent incapacity. All in all, his overall incapacity is assessed to be 60%.”

16. At the time of examination, Dr. Wambugu P.M noted that the Respondent had flaccid paralysis of the right upper limb and inability to fully extend the right knee, coupled with inability to walk unaided. The good doctor opined that there was residual flaccid paralysis of the right upper limb coupled with stiffness of the right knee joint, and he assessed the degree of permanent incapacity at 50%.
17. Evidently, the injuries sustained by the Respondent were life altering and considerably severe, necessitating his admission at St. Theresa Mission Hospital, Kiirua, for an aggregate of 110 days. The Respondent was subsequently referred to Meru County Teaching and Referral Hospital for rehabilitation and occupational therapy. Dr. John Macharia was categorical that the Respondent had made a full recovery from the left sided pelvic fractures, the severe head injury and the left sided pneumothorax. Contrastingly, the fracture of the right humerus had healed with gross mal-alignment and an injury to the radius nerve, which resulted in loss of sensation of the right upper limb and reduction of movements of the shoulder.
18. In *John Mutuga Kamau v Kanini Haraka Enterprises Limited* [2019] KEHC 1107 (KLR), the court (Richard Mwangi J) substituted a trial court’s award of Ksh. 1,500,000 with Ksh. 2,400,000 for a claimant who sustained a fracture of the right femur, right acetabula fracture, deep cut wound on the forehead, loss of one upper incisor tooth, fracture distal end of the right radius, severe soft tissue injury of the right wrist joint, blunt injury to the right shoulder joint leading to soft tissue injuries and deep cut wound on the right hip joint leading to severe soft tissue injury, with a 40% permanent disability.
19. In *Joseph Kahinda Maina v Evans Kamau Mwaura & 2 others* [2014] KEHC 1772 (KLR), the court (G.V Odunga, as he then was) awarded general damages of Ksh. 2,400,000 for a claimant who sustained a head injury (cerebral concussion), fracture of 6 teeth, injury to the right chest wall causing pneumothorax (air in the chest cavity), fracture of the pelvis (displaced fracture of the right superior and inferior pubic ramii), diastasis of the right sacro-iliac joint, fracture of the right acetabulum (hip joint) and injury to the right knee resulting in tear of the lateral meniscus.
20. I find that the award of Ksh. 1,700,000 for pain, suffering and loss of amenities is commensurate with the injuries suffered by the Respondent, given the favourable prognosis of making a full recovery from most of the injuries.
21. In distinguishing between loss of future earnings and loss of earning capacity, the Court of Appeal in *S J v Francesco Di Nello & another* (2015) eKLR noted as follows; “Claims under the heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real or actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand, loss of earning capacity is compensated by an award in general damages, once proved.”
22. It is therefore trite that loss of future earnings or loss of income is awardable for real assessable loss proved by evidence, while loss of earning capacity is awardable as part of the general damages.
23. The Respondent suffered 50% permanent incapacity, which significantly impaired his ability to earn a living, and thus deprived him, to the said percentage, of the ability to engage in gainful employment. Both doctors concur that the Respondent sustained a residual flaccid paralysis of the right upper limb coupled with stiffness of the right knee joint.
24. I am satisfied that the trial court’s award of Ksh. 1,824,000 under this head was justified.



25. The upshot from the foregoing analysis is that the appeal and the cross appeal are in want of merit, and they are accordingly dismissed with no order as to costs.

**DATED AND DELIVERED AT MERU THIS 17<sup>TH</sup> DAY OF DECEMBER, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Nkunja – For the Respondent.

Miss Mugo holding brief for Miss Oteko for the Appellant.

