

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E305 OF 2024**

**EDWIN MUCHERU MUNIU.....**

**APPELLANT**

**-VERSUS-**

**VINCENT GESORA MARANGA..... RESPONDENT**

*(Being an appeal from the judgment of Hon. P. K. ROTICH (SPM) in Milimani CMCC No. E2838 of 2022 delivered on 31/1/2024)*

**JUDGMENT**

- 1) The respondent in this appeal VINCENT GESORA MARANGA sued the appellant EDWIN MUCHERU MUNIU seeking general damages for pain and suffering and special damages for injuries the respondent sustained on 30/9/2022 when he was knocked down motor vehicle registration no. KBQ 806R belonging to the appellant.
- 2) The appellant filed a statement of defence dated 8/6/2022 denying the respondent's claim.
- 3) The respondent's case was that he was lawfully walking off the Eastern by pass when motor vehicle registration no. KBQ

806R which was so recklessly and carelessly driven veered off the road and it knocked him down.

4) The respondent sustained the following injuries;

- i. Compound fracture of right tibia*
- ii. Compound fracture of the right fibula*
- iii. Closed fracture of the left tibia*
- iv. Closed fracture of the left fibula*
- v. Head injury*
- vi. Recurrent pains on both lower limbs.*
- vii. Degree of permanent incapacity of the right leg 30%*
- viii. Degree of permanent incapacity of the left leg 20%*

5) The appellant who testified as DW1 said the respondent was crossing the road when the motor vehicle hit him. He said the respondent who was crossing the road with a lady did not check the road before crossing. He said he was doing 80km/hr when he saw the respondent in the middle of the road.

6) He veered to the right to avoid hitting him but was unable to avoid the accident. He left the scene because he was afraid of being attacked by the boda boda riders. He reported to the police.

7) The trial court found the appellant 100% liable for the accident and assessed damages as follows;

General damages      ksh.1,600,000

Special damages      ksh.3550

Total                      ksh.1,603,550

8) The respondent was also awarded costs and interest.

9) The appellant has appealed against the said judgment on the following grounds:

**(i) THAT the learned trial magistrate erred in law and in fact in assessing general damages at kssh.1,600,000/= which was excessive in light of the injuries pleaded to have been sustained by the respondent and the evidence adduced.**

**(ii) THAT the learned trial magistrate erred in law and in fact by failing to weigh all the evidence placed before him before delivering the judgment.**

**(iii) THAT the learned trial magistrate erred in law and in fact by relying on insufficient evidence to rule in favour of the respondent**

**(iv) THAT the learned trial magistrate failed to consider the submissions and precedents filed on behalf of the appellant.**

**(v) THAT the learned trial magistrate failed to consider the relevant factors and based his judgment on irrelevant factors.**

10) The parties filed written submissions as follows: the appellant submitted that the respondent sustained compound fracture of the right and left tibia, closed fracture of the left tibia and fibula, head injury and recurrent pains on both lower limbs. The appellant argued that the sum of Kshs. 1,600,000 was excessive and should be substituted with that of Kshs. 800,000. In support the appellant cited the following cases among others;

- a. **Kimita v Travel Budget Express & another (Civil Appeal E042 of 2022) [2024] KEHC 6435 (KLR) (4 June 2024) (Judgment)** the appellant sustained fracture distal end of the left tibia and fibula, severe soft tissue injury of the left leg, deep cut wound on the forehead leading to severe soft tissue injuries, cut wound on the zygomatic area leading to severe soft tissue injuries, deep cut wound on the left arm leading to soft tissue injuries, fracture of the right tibia, compound

fracture of the left tibia, deep cut wound on the chin with 20% permanent disability and the appellate court upheld the trial court award of Kshs. 800,000/=

b. **Joseph Mwangi Thuita v Joyce Mwole [2018] eKLR**

where Justice C. Kariuki increased an award of Kshs. 100,000/ = to Kshs. 700,000/ = as General Damages where the Appellant had sustained injuries in the nature of fractures to the right femur, Compound fracture (r) tibia, Compound fracture right fibula, shortening right leg and Episodic pain (r) thigh with inability to walk without support. The appellant further noted that in this case, the trial court's decision and the date of the accident happened three years before the decision by the appellate court.

c. **Godfrey Mugnicholas Mwitwi Mwirebua v Marcella**

**Mpaka Kiambi [2022] eKLR**, the court confirmed an award for Ksh 900,000 the Appellant suffered multiple comminuted fracture of right femur, right tibio-fibular fracture and blunt abdominal trauma injuries.

- 11) The respondent alternatively submitted that having considered the injuries he suffered the award of Kshs. 1,600,000 was reasonable and appropriate. In support the respondent cited **Ziporrah Nangila V Eldoret Express Limited & 2 others (2016)**, where the claimant suffered comminuted fractures of the distal and fibular, fracture of the left distal and tibia and fibula where court awarded kshs. 2,400,000.
- 12) The respondent argued that the appellant has not shown that the assessment by the trial court was based on the wrong fact or too high to warrant interference. The respondent thus urged this court to dismiss the appeal with costs.
- 13) The sole issue for determination in this appeal is whether the award of Kshs. 1,600,000 as general damages for pain, suffering, and loss of amenities was inordinately high so as to constitute an erroneous estimate, warranting appellate intervention.**
- 14) This being a first appeal, the duty of this court is to re-evaluate the evidence adduced before the trial court and

arrive at its own conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify.

- 15) The main contention in this appeal, as crystallized from the grounds and submissions, pertains to the quantum of general damages awarded by the learned trial magistrate.
- 16) The principles guiding an appellate court in interfering with an award of damages are well settled in Kenyan Courts.
- 17) An appellate court will not disturb an award of damages merely because it would have awarded a different figure.
- 18) It will only intervene if it is demonstrated that the trial court acted on a wrong principle of law, misapprehended the facts, or awarded a sum that is so inordinately high or low that it amounts to an entirely erroneous estimate of the damage suffered.
- 19) In assessing the appropriate quantum, the court must consider the nature and severity of the injuries, the awards in comparable cases, and the eroding effect of inflation.
- 20) The respondent sustained grave and life-altering injuries, as particularized and proved, comprising compound

fractures of the right tibia and fibula, closed fractures of the left tibia and fibula, a head injury, recurrent pains, and most significantly, permanent incapacity assessed at 30% for the right leg and 20% for the left leg.

- 21) These injuries, resulting in bilateral lower limb permanent disabilities, are undoubtedly severe and have had a profound impact on the respondent's quality of life and amenities.
- 22) The appellant urges this court to substitute the award with Kshs. 800,000, relying principally on the case of **Kimita v Travel Budget Express & another [2024] eKLR**. While that case involved serious lower limb fractures and a 20% disability, the court notes that the specific injuries and the totality of the sequelae, including the bilateral permanent incapacity in the instant case, present a more severe clinical picture.
- 23) The respondent relies on **Ziporrah Nangila v Eldoret Express Limited & 2 others [2016] eKLR**, where Kshs. 2,400,000 was awarded for comminuted fractures of the distal tibia and fibula in both legs.

- 24) While that award provides a ceiling, the court must also consider the need for consistency and proportionality in awards.
- 25) Having re-evaluated the medical evidence, the nature of the injuries, and the cited authorities, I find that the award of Kshs. 1,600,000 by the trial court, though on the higher end of the spectrum, was not so inordinately high as to constitute a wholly erroneous estimate.
- 26) The learned trial magistrate evidently took into account the gravity of the bilateral fractures and the significant permanent disabilities certified. The award cannot be said to be based on no evidence or wrong principles.
- 27) Consequently, the appellant has not discharged the burden of demonstrating that the trial court's award was manifestly excessive or based on a misdirection.
- 28) As was held in **Butt v. Khan [1981] KLR 349**, an appellate court will be disinclined to reverse the finding of a trial judge on quantum merely because it would have awarded a different sum. In the absence of a demonstrated

error in principle, the appellate court's discretion to interfere is not invigorated.

29) In the result, the appeal on quantum fails. The judgment of the trial court delivered on 31st January 2024 in Milimani CMCC No. E2838 of 2022 is hereby upheld.

30) The appellant shall bear the costs of this appeal.

31) Orders to issue accordingly.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this **22<sup>nd</sup> day of January, 2026.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent