

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E1327 OF 2024

JECINTA MBINYA NZIOKA..... APPELLANT

-VERSUS-

ANTHONY MATHENGE KAMAU.....1ST RESPONDENT

REBECCA KERUBO TIANTA.....2ND RESPONDENT

*(Being an appeal from the judgment of Hon. E. N. MUTIE (RM) in
Milimani CMCC No. E9770 of 2021 delivered on 17/11/2024)*

JUDGMENT

- 1) The appellant filed Milimani CMCC No. E9770 of 2021 against the respondent seeking general damages for pain and suffering and special damages of kshs.3,050 for injuries the appellant sustained on 30/11/2018 while alighting from motor vehicle registration no. KDF 586U.
- 2) The respondents did not enter appearance nor file a Defence and interlocutory judgment was entered and the case proceeded to formal proof. The trial court gave an exparte judgment.

- 3) However, the parties entered into a consent to set aside the exparte judgment and the respondents filed a defence dated 19/3/2024 denying the appellant's claim.
- 4) The appellant who testified as PW 1 said she was working as a community health volunteer at Melchizedek hospital at the time.
- 5) She said that she was alighting at Wanye stage, when the accident occurred. She was injured on her back downwards and she has difficulties retaining urine and she uses diapers and two crutches.
- 6) She said she still attends Mama Lucy hospital for physiotherapy.
- 7) The respondents did not call any witnesses.
- 8) The trial court found the respondents 100% liable and assessed damages as follows;

General damages	ksh.500,000
Special damages	ksh.3050
Total	ksh.503,050
- 9) The appellant has appealed against the said award on the following grounds;

- i. The learned magistrate erred in awarding an inordinately low sum for the spinal injuries suffered by the appellant in the face of the evidence adduced and submissions made by the appellant's counsel on general damages for pain and suffering and loss of amenities.***
- ii. The learned trial magistrate erred in law and misdirected herself when she failed to consider the appellant's submissions and authorities.***
- iii. The learned magistrate having misapprehended and misunderstood the extent and severity of the spinal injuries erred in law and fact in relying on authorities which were irrelevant and thus arrived at an award on general damages that is so manifestly low as to be erroneous.***
- iv. The learned magistrate erred in assessing an award, which was an inordinately low and wholly erroneous estimate of the loss and damages suffered by the appellant; general damages for pain and suffering and loss of amenities of kshs.500,000/=.***
- v. The learned trial magistrate erred in law and fact by failing to apply the doctrine of stare decisis when assessing the damages awarded to the appellant.***

10) The appellant submitted that she sustained the following pleaded injuries as confirmed in the medical reports by Dr. WM. Wokabi and hospital treatment notes:

- i. Partial dislocation at the L4/L5 and L5/S1 vertebrae (spondylosis);
 - ii. Weakness on both legs (power is grade 3; normal 5) caused by Spondylolisthesis impinged on nerves;
 - iii. Muscle spasms on the lower back;
 - iv. Inability to bend back; and
 - v. A permanent disability assessed at 30% (progressed to 50% and becoming worse), with a prognosis of progressive worsening with age.
- 11) In the initial medical report by Dr Wokabi dated 30 June 2021, the doctor opined that the Plaintiff Appellant endured significant pain due to a major injury to her back.
- 12) The resulting spondylolisthesis had caused nerve impingement, leading to weakness in both legs.
- 13) He classified her condition as a moderate disability, with little likelihood of improvement in the future. She had been assessed to have a permanent disability rated at 30%.
- 14) As she advanced in age, the condition of her back was expected to deteriorate further, and the level of disability would likely increase.

- 15) In the subsequent medical report by Dr Wokabi dated 28 November 2024, the doctor noted that the Appellant's condition deteriorated and would not improve further.
- 16) The doctor assessed the Appellant's disability at 50% and stated that there would be no room for surgery in her case.
- 17) He further stated that the Appellant would require the use of diapers at a cost of approximately Kshs.5,000/- per month.
- 18) During her testimony, the Appellant elaborated on her day-to-day struggles resulting from these injuries.
- 19) She explained to the trial court that she relied on adult pampers due to loss of control, and attends physiotherapy sessions twice a week at Mama Lucy Kibaki Hospital.
- 20) She further testified that she was unable to walk without the aid of two clutches, could not bend, sit, or stand for prolonged periods and was heavily reliant on others for basic activities.
- 21) She had not resumed work and was unlikely to ever do so given the severity of her injuries.
- 22) The consequences of these injuries were both physically and psychologically devastating.

23) The Appellant continues to suffer from persistent pain, discomfort, and limited mobility, which have greatly affected her quality of life and capacity to engage in gainful employment or domestic responsibilities.

24) These injuries will continue to have a lifelong impact on her. The appellant proposed an award of Kshs. 10,000,000 as general damages and in support cited the following cases among others;

- (i) **Rosemary Wanjiru Kungu v Elijah Macharia Githinji & another [2014] eKLR** where the Plaintiff sustained a compression fracture of the T12 and L1 causing irreversible spinal cord damage at that level as a result of which she was completely paralyzed and would remain paralyzed permanently and would never recover function. The Plaintiff was awarded general damages of Kshs.3,000,000/- plus cost of wheelchair, helper, transport, mattress, physiotherapy, daily skin care of Kshs. 11,070,000/-.
- (ii) **Nicholas Njue Njuki v. Eliud Mbugua Kahuro [2014] eKLR**, Ngaah J awarded Kshs 3,800,000/= in

general damages for pain, suffering and loss of amenity for: unstable fracture dislocation of lumbar vertebrae leading to spinal cord damage; complete paralysis in the lower limbs; incontinence of stool and urine.

- (iii) **William Kitoto Andere v Easy Coach Limited [2019] eKLR**, the court awarded the plaintiff Kshs 2,000,000/= for having sustained a fracture of the lumbar L1 vertebrae among other serious injuries.
- (iv) **Nancy Oseko vs. Board of Governors Masai Girls High School [2011] eKLR** where the plaintiff sustained chest injury Head compression fracture of the thoracic spine no 12 and loss of sensation from the level T-12 downwards Loss of motor function from same level downwards and other injuries and was awarded Kshs 2,500,000/= General damages for pain suffering and loss of amenities.

25) The respondents did not file any submissions in this appeal.

26) The issues arising for determination in this appeal are as follows;

- (i) Whether the learned trial magistrate erred in principle in the assessment of general damages for pain, suffering and loss of amenities awarded to the Appellant.**
- (ii) What is the appropriate quantum of general damages payable to the Appellant.**

27) Having carefully considered the record of appeal, the grounds advanced, and the written submissions by the parties, this court finds that the appeal is meritorious.

28) The main contention is the quantum of general damages awarded by the trial court.

29) The principles guiding an appellate court in interfering with an award of damages are well settled.

30) An appellate court will not disturb an award of damages merely because it would have awarded a different figure.

31) It will only do so if the trial court acted on wrong principles, misapprehended the evidence, or awarded a sum that is so inordinately high or low as to be a wholly erroneous estimate of the damage.

- 32) In the present case, the trial court, despite correctly finding the Respondents fully liable, awarded the sum of Kshs. 500,000 as general damages.
- 33) This award, in light of the uncontroverted medical evidence and the Appellant's testimony, was manifestly low and constituted a misapprehension of the severity and permanent nature of the injuries sustained.
- 34) The Appellant suffered a significant spinal injury—partial dislocation (spondylolisthesis) at the L4/L5 and L5/S1 vertebrae—which has resulted in nerve impingement, weakness in both legs (power grade 3/5), muscle spasms, an inability to bend, and a permanent disability initially assessed at 30% but which had progressed to 50% by the time of the subsequent medical report.
- 35) Critically, the Appellant testified, and it was corroborated by Dr. Wokabi's report of 28th November 2024, that she suffers from urinary incontinence requiring the use of diapers, cannot walk without two crutches, and has a prognosis of progressive worsening with no room for surgical intervention.

- 36) The trial court's award fails to reflect the devastating and lifelong consequences of these injuries. The authorities cited by the Appellant were comparable and they provided a pertinent guide for injuries of this gravity involving spinal damage and loss of bodily functions.
- 37) The doctrine of stare decisis obligates courts to maintain consistency and predictability in the law by following binding precedents for similar injuries.
- 38) The trial court's award of Kshs. 500,000 is a radical departure from the conventional range for severe spinal injuries with lasting disabilities, as established in the aforementioned precedents.
- 39) This court finds that the award was inordinately low and based on a clear misapprehension of the evidence regarding the extent and implications of the Appellant's injuries.
- 40) Consequently, this court is entitled and indeed duty-bound to reassess the damages.
- 41) Taking into account the nature of the injuries, the permanent disability now assessed at 50%, the ongoing need for assistive devices (crutches and diapers), the loss of earning

capacity, and the profound effect on the Appellant's enjoyment of life and amenities, a fair and reasonable award for general damages for pain, suffering and loss of amenities is Kshs. 3,000,000.

42) This sum properly aligns with the current judicial trends for comparable serious spinal injuries and adequately compensates the Appellant for her lifelong predicament.

43) As for special damages, the award of Kshs. 3,050 was specifically pleaded and proved and is hereby upheld.

44) The appeal is hereby allowed.

45) The judgment of the trial court in Milimani CMCC No. E9770 of 2021 delivered on 17/11/2024 is set aside and substituted with an order awarding the Appellant as follows:

(i) General Damages for Pain, Suffering and Loss of Amenities: Kshs. 3,000,000.

(ii) Special Damages: Kshs. 3,050.

Total Award: Kshs. 3,003,050.

46) The said sum shall attract interest at court rates from the date of the trial court's judgment until payment in full.

47) The Respondents shall bear the costs of this appeal and the costs in the subordinate court.

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

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A. N. ONGERI
JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent