

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E061 OF 2024

JUDY WAITHIRA NJOROGE.....APPELLANT

-VERSUS-

JOHN

MWANGI

MAINA.....RESPONDENT

(Being an appeal from the judgment and decree in the Chief Magistrate's Court at Thika (Hon. V. Asiyo PM) dated 21st September 2023 in his civil suit number 135 of 2020)

JUDGMENT

The respondent sued the appellant in the lower court claiming special and general damages arising from an accident on 27-06-2019 involving the respondent's motor vehicle registration number KAT 812C in which he was injured. The trial court found the appellant 100 per cent liable and awarded damages as follows;

- a. general damages for pain and suffering and loss of amenities Kshs 500,000.00
- b. general damages for loss of future/diminished earning capacity Kshs 100,000.00.
- c. future medical expenses (removal of implants) Kshs 100,000.00
- d. Special damages Kshs 72,166.00.

The appellant was dissatisfied with the court's award of damages and preferred this appeal relying on the following grounds;

1. ***THAT*** the learned trial Magistrate erred in fact and law and misdirected himself in finding that the respondent is entitled to general damages of 500,000/- for pain and suffering and loss of amenities, diminished earning

capacity of Kshs. 100,000/=, future medical expenses of 100,000/- and special damages of Kshs. 72,160/= with costs and interest.

2. **THAT** the trial Magistrate erred in law and in fact and misdirected himself when he failed to consider the appellant's submissions on both points of law and facts.
3. **THAT** the learned trial Magistrate misdirected himself in ignoring the principles applicable in awarding quantum of damages and relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
4. **THAT** the learned trial Magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondent (to apply precedents and tenets of law applicable).
5. **THAT** the learned trial Magistrate failed to apply himself judicially and to adequately evaluate the evidence and exhibits tendered on quantum thereby arriving at a decision unsustainable in law.
6. **THAT** the learned Magistrate erred in law and fact in arriving at the said decision.
7. **THAT** the learned trial Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.

8. ***THAT*** the learned trial Magistrate erred in fact and in law in failing to consider conventional awards on cases of similar nature.

This being an appeal on quantum only, my duty is to examine the nature and extent of injuries sustained by the respondent alongside the judgement of the trial court in respect of the quantum of damages and ascertain whether the awards were justified and within the established legal and judicial principles governing award of damages.

One of the principles on award of damages are that, quantum is always at the discretion of the trial court and the appellate court can only interfere with the awards if it is demonstrated that the awards were manifestly too low or too high such that they amounted to an erroneous estimate once compared to the other conventional awards in respect of similar injuries. This principle is meant to ensure that there is consistency and uniformity in awards given by the courts and promote sustainability of present and future awards while at the same time guarding the independence of mind of the judge or judicial officer. The other principle is that an appellate court will not overturn awards by the trial court unless it is shown that the trial court took into consideration factors it should not have taken into account or failed to take into account factors it should have. These are the parameters I will constrain myself to in this appeal.

The nature and extent of injuries sustained by the respondent are not in dispute. According to the evidence before the court and the particulars of injuries pleaded in the plaint, the respondent sustained blunt injury to the lower back and fracture of the left mid femur. He was admitted at Thika level 5 hospital from 27-06-2018 and discharge on 12-07-2018 which is a total of 15 days. Medical report by Dr

Cyprianus Okere dated 15-11-2019 shows that he classified the injuries as grievous harm and gave a degree of permanent disability at 30 per cent. That of Doctor Wokabi dated 18-12-2019 confirmed the injuries and stated that the leg was healing and rehabilitating well and gave permanent disability at 12 per cent and stated further that the backache would persist indefinitely.

I have read the submissions of the appellant dated 18-08-2025 and those of the respondent dated 28-08-2025. I note from the submissions that the appellant has addressed the court on general damages for pain and suffering and loss of amenities only and asked the court to reduce the same from 500,000.00 to between 150,000.00 and 200,000.00. She has not addressed the court on the other heads of damages and I must take it that the grounds touching on the other heads have not been prosecuted.

It is the onus of an appellant to prosecute their case and not for the court to go into interrogating the judgment of the lower court which the appellant has abandoned in its submissions. The appeal belongs to the appellant and where they choose to abandon some aspects or issues, the appellate court has no business assisting them in prosecuting those grounds. The assumption is always that the decision of the trial court is correct and sound in law until the appellate court is convinced otherwise which can only happen when the appeal is properly prosecuted. In this regard, I confine myself to the issue of general damages for pain and suffering and loss of amenities.

The appellant has not in her submissions referred this court to any comparable authorities in respect of quantum as those cited relate to the principles applicable in dealing with an appeal on award of damages. She has however attached authority

of *Michael Okello v Priscilla Atieno (2021) KEHC 7266 (KLR)* in which the respondent who had proved to have sustained multiple soft tissue injuries was awarded Kshs 500,000.00 in the lower court. The respondent had no history of admission in hospital and the injuries had healed well. In the appeal, Honourable Justice RE Aburili reduced the general damages to Kshs 250,000.00. For obvious reasons, this authority is not comparable to the respondent's injuries in this appeal.

On his part, the respondent has cited *Peter Karoka v Mbaluka Malonza & 2 others (2018) KEHC 1683 (KLR)* and *Maqsooda Begum Sroya v Sunmatt Limited (2017) KECA 390 (KLR)*. In the first authority, the court awarded Kshs 800,000.00 for a fracture of the left femur. In the second, the victim had sustained comminuted fracture of the left femur following which she was admitted for surgery and underwent a further surgery after a year. She was left with pain on the areas of surgery and was unable to sleep over her left side. Her left thigh was shortened by 2 centimeters and she suffered 20 per cent permanent disability. The court awarded her Kshs 1,000,000.00 for general damages for pain and suffering and on appeal, the same was upheld.

Having considered the authorities cited by the parties, I find that apart from the *Peter Karoka* one, they are not comparable to the respondent's injuries in this matter. Even the *Peter Karoka* one has slightly higher extent and complications. In view of this, I do not find Kshs 500,000.00 awarded by the trial court to be manifestly too high to deserve disturbance by this court. In conclusion, I find not merits in this appeal. The awards of the trial court are upheld and this appeal is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this **16th** day of **January** 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in absence of the parties.

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