

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E038 OF 2024

PETER NJOGU MURUNGA

----- **APPELLANT**

-VERSUS-

ELIZABETH WAMBUI GICHERU -----

RESPONDENT

(Being an Appeal against the Judgment and Decree delivered by Hon. Y.M. Barasa, (PM) on 6th July 2023 in Naivasha CMCC No. 182 of 2019).

JUDGMENT

1. The Respondent was the Plaintiff before the trial court where she sued the Appellant vide Plaint dated 12th March 2019 seeking the following orders: -
 - (a) General Damages***
 - (b) Special Damages***
 - (c) Future Medical Surgery Expenses***
 - (d) Costs of the suit***
 - (e) Interests on damages and costs***
 - (f) Any other relief the court would grant***
2. The Plaintiff's case was that she was on or about the 19th day of May 2018, travelling as a lawful passenger in Motor Vehicle Registration No. KCM 296V along Naivasha-Nairobi road when the Defendant and/or his authorized driver so negligently drove, managed and/or controlled the said motor vehicle registration No. KCM 296V so carelessly or

recklessly that he caused the same to cause an accident and as a consequence, the Plaintiff sustained serious body injuries and suffered pain and loss.

3. The Defendant filed his Statement of Defence dated 17th September 2019 in which he denied the claim and urged the court to dismiss the suit with costs.

4. The matter was set down for hearing where the Plaintiff called three witnesses, namely; No. 94895 PC Caroline Kiluna (PW1), Dr. Rodgers Hannington Kayo (PW2) and Elizabeth Wambui (PW3/Plaintiff). The Defendant did not call any witnesses. At the end of the trial, the trial court entered judgment in favour of the Plaintiff as follows: -

Liability at 100% against the Defendant

General Damages - Kshs. 900,000/=

Special Damages - Kshs. 95,000/=

Future Medical Expenses - Kshs. 120,000/=

Costs of the suit and interest.

5. Dissatisfied by this decision, the Appellant filed the present appeal and listed the following grounds of appeal in the Memorandum of Appeal dated 13th May 2024: -

(1) That the Learned Magistrate in the matter herein delivered judgment on 6th November 2023 in favour of the Respondent herein, thus contrary to the law and facts availing before the honourable court.

- (2) That the Learned Magistrate erred in fact and law in finding that the Respondent was entitled to General Damages of Kshs. 900,000/= and future Medical Expenses of Kshs. 120,000/= that were too high in view of the fact (sic) compared to the injuries suffered by the Respondent.**
- (3) THAT the Learned Magistrate erred in fact and law in failing to appreciate the long established principle of stare decisis, precedent law into confusion (sic) and thereby deriving an erroneous finding/conclusion, in particular relating to damages.**
- (4) THAT the Learned Magistrate erred in fact and law in failing to appreciate that the Respondent's pleadings, submissions and the evidence tendered in support thereof was incapable of sustaining the award of Kshs. 900,000/= for General Damages and Kshs. 120,000/= for future medical expenses.**
- (5) THAT the Learned Magistrate erred in fact and law in entering judgment in favour of the Respondent against the Appellant in spite of the Respondent's miserable failure to establish his (sic) case more specifically on quantum.**

6. The Appeal was canvassed by way written submissions which I have considered. I find that the main issue for determination is whether the trial court arrived at the correct verdict on quantum.

Analysis and Determination

7. This being a first appeal I am minded of the principles espoused in the case of ***Gitobu Imanyara & 2 others vs. Attorney General [2016] eKLR*** where the Court of Appeal held thus: -

“[A]n appeal to this Court from a trial by the High 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 allowances in this respect”

8. This being an appeal on quantum, the Court is minded of the fact that the assessment of damages is at the discretion of trial court which discretion should not be wantonly interfered with on appeal. When considering whether to do so, the court must be guided by the principles set out ***Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v. A.m. Lubia and Olive Lubia (1982 -88) 1 KAR 727 at p. 730***, per Kneller J.A. thus: -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See ILANGO V. MANYOKA [1961] E.A. 705, 709, 713; LUKENYA RANCHING AND FARMING CO-OPERATIVES SOCIETY LTD V. KAVOLOTO [1970] E.A., 414, 418, 419. This Court follows the same principles.”

9. It is also trite that comparable awards must be given for comparable injuries. This was aptly stated in the case of ***Stanley Maore vs. Geoffrey Mwenda*** NYR CA Civil Appeal No. 147 of 2002, [2004] eKLR where the Court of Appeal held as follows: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable

awards keeping in mind the correct level of awards in similar cases.”

10. I have considered the injuries that the Respondent suffered in the accident as pleaded in the Plea. She stated that she sustained a fracture of the left humerus and soft tissue injuries to both lower limbs and that the fracture was fixed with a metal plate which would require removal through surgery. She produced her Treatment Notes from Thika Level 5 Hospital (P.Exh2) and a P3 Form (P.Ex5) in support of the injuries. The further Medical Examination Report adduced by PW2 Dr. Kayo shows that Respondent had 20% permanent disability 2 years after the accident. This evidence was not contested by the Appellant.

11. I have considered the awards made for similar/comparable injuries as follows: -

(i) In ***Philip Mwago vs. Lilian Njeri Thuo (2019) eKLR***, the plaintiff suffered fracture of the left humerus with 8% permanent disability and was awarded Kshs. 500,000/=.

(ii) In ***Daniel Otieno Owino and another vs Elizabeth Atieno Owuor [2020] eKLR***, the claimant suffered compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with cut wound on the nose, blunt chest injury and soft tissue injury on the left lower limb involving the high and ankle region with

incapacitation assessed at 50%. The court awarded Kshs. 600,000/= in General Damages.

(iii) In ***Musembi vs. Kimeu (Suing as the Father and Next Friend to Emmanuel Muoka) (Civil Appeal E130 of 2023) [2025] KEHC 17790 (KLR)***, the minor victim sustained soft tissue injuries and a fractured bone with permanent incapacity assessed at 10%. The trial court awarded Kshs. 800,000/= in General Damages which was reduced to Kshs. 650,000/= on appeal.

12. The Appellant proposed an award of Kshs. 350,000/= and relied on the case of ***Maina Onesmus vs. Charles Wanjohi Githome (2018) eKLR*** where the High Court in Nyeri reduced an award of Kshs. 650,000/= to Kshs. 350,000/= for a claimant who suffered a fracture of midshaft humerus, fracture of the condyles and the shoulder gird which were more serious than the present case.

13. On their part, Counsel for the Respondent submitted that the Court should not disturb the award and relied on the case of ***Kago & Another vs. Karoki & Another, Civil Appeal No. 337 of 2023 (2024) KEHC 5828 KLR*** where the court upheld an award of Kshs. 700,000/= for fracture of the humerus.

14. Having regard to the above cited cases and the inflationary trends, I find that the award of Kshs. 900,000/= is slightly

on the higher side and I therefore reduce it to Kshs. 750,000.

15. Turning to the award on future medical expenses, I refer to ***Kenya Bus Services Ltd vs. Gituma (2004) 1 EA 91***, where the Court of Appeal stated:-

“And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereon is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from the infringement of a person’s legal right should be pleaded.”

16. It is trite that future medical expenses must be specifically pleaded and strictly proved. In this case, the Plaintiff pleaded Kshs. 120,000/= at paragraph 4 of her Plaint and produced a Medical Report (P.Ex7) which indicated the cost of surgery to be Kshs. 120,000/=. I find that the same was adequately proved and I shall not interfere with it.

17. On the other Special Damages, I note that Respondent presented only the medical treatment receipts but did not produce the receipt for the further medical examination or

the motor vehicle search receipt. Accordingly, I shall only award the costs for medical expenses being Kshs. 95,000/=.

18. In the final analysis, the Appeal is merited and is allowed. The judgment of the trial court is set aside and substituted as follows: -

Liability at 100% against the Defendant

General Damages - Kshs. 750,000/=

Special Damages - Kshs. 95,000/=

Future Medical Expenses - Kshs. 120,000/=

TOTAL - Kshs. 965,000/=

Costs of the suit in the trial court and interest.

19. The parties shall each bear their own costs in this Appeal.

20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

05/03/2026

FOR APPELLANT NO APPEARANCE

FOR RESPONDENT ONGERI

COURT ASSISTANT Karani

ORIGINAL