

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E076 OF 2024

**ANTONY WAMUIGWA NGUGI alias ANTHONY WAMUGWA
NGUGI alias ANTHONY WAMUIGWA NGUGI alias ANTONY
NGUGI alias ANTHONY WAMUIGWA alias ANTONY NGUGI
WAMUIGWA.....
.....APPELLANT**

VERSUS

**RACHAEL AND ANGELS LIMITED.....1ST
RESPONDENT**

**ROBBIE OKARI.....2ND
RESPONDENT**

*(An appeal from the judgement of the leaned magistrate Hon.
Mr. IF Koome (SRM) delivered at Thika on 21st March, 2024 in
Thika CMCC NO. E737 of 2022)*

JUDGEMENT

1. This is an appeal against quantum of damages awarded following a claim for a road traffic accident involving motor vehicle registration number KCF 812V belonging to the 1st Respondent and motor cycle registration number KMFR 606X which was in the control of the appellant on 26th April 2022 at around 10.30 am along Thika superhighway Kimbo area.
2. Following the accident, the appellant sustained injuries to wit:
 - i. Multiple head injuries that consisted of loss of consciousness, comminuted fracture of maxilla upper jaw, comminuted fracture of left zygomatic bone of the skull, comminuted fracture of left zygomatic arch, comminuted fracture of the greater wing of sphenoid (lateral wall of left orbit), hemosinuses

- ii. Fracture of the right femur
 - iii. Multiple blunt soft tissue injuries to the chest, back and abdomen
 - iv. Left eye injury, with loss of vision
 - v. Permanent incapacity assessed at 10 %
3. The appellant therefore sought special damages at Kshs. 3,550, general damages for pain and suffering and loss of amenities, reduced/diminished earning capacity, removal of implants at Kah. 80,000.
4. The 1st Respondent denied the claim and pleaded contributory negligence on the part of the appellant for encroaching the lane of motor vehicle registration KCF 812V.
5. The trial court found the 1st Respondent 100% liable for the accident.
6. On quantum, the trial court considered the submissions by counsel, injuries by the plaintiff as documented in the medical report by Dr. Wokabi: multiple head injuries that consisted of loss of consciousness, fracture of maxilla of upper jaw, fracture of left zygomatic bone of the skull, hemosinuses (bleeding within facial sinuses), fracture of the right femur and multiple blunt soft tissue injuries to the chest, back abdomen (trunk) the appellant was walking with the aid of crutches. The trial court awarded Kshs. 1,200,000.00 while stating that the proposed Ksh. 2,500,000.00 was quite high.
7. Regarding loss of earning capacity, the trial court found that the appellant failed to prove that he had lost extra income as he was still a police officer drawing a salary from the service. Hence no award was made on this limb as the award of damages was considered sufficient compensation.

8. He was awarded Kshs. 80,000 for future medical expenses as prayed and Kshs. 3,550 for special damages pleaded and proved.
9. Aggrieved and dissatisfied with the judgment of the trial court, the appellant lodged the instant appeal on grounds that:
 - i. The learned magistrate erred in law and in fact in awarding general damages of Kshs. 1,200,000 which is manifestly and inordinately low bearing in mind the injuries sustained by the appellant.
 - ii. The learned magistrate misdirected himself in law and in fact by failing to award general damages for diminished earning capacity
 - iii. The learned magistrate misdirected himself in law and in fact by failing to appreciate the degree and or standard of proof for a claim on diminished earning capacity.
 - iv. The learned magistrate erred in law and in fact by failing to consider the totality of the evidence adduced that gave rise to an inference that the appellant sustained severe injuries that diminished his capacity to work
 - v. The learned magistrate misdirected himself in law and fact in failing to appreciate that similar injuries should generally attract similar awards, and thereby arriving at an erroneous award.
 - vi. The learned magistrate erred in law and in fact by failing to consider the appellant's submissions and authorities on awards made in similar cases.
10. The appellant thus prayed that the appeal be allowed and the award on general damages for pain suffering and loss of amenities be set aside and be substituted by such higher sum as this honourable court deems fair and just.

11. The court directed that the matter be canvassed through written submissions.
12. The Respondent failed to comply while the Appellant filed submissions.
13. The appellant relied on **Kenya Wildlife Services vs Godfrey Kirimi Mwiti [2018] eKLR**, **Amazon Energy Limited v Magdaline Nthenya Mathias & Another [2019] eKLR** and **Duncan Kimathi Karagania vs Ngugi David & 3others [2016] eKLR** which in his estimation were comparable to the instant case and thus ought to have attracted similar awards for pain and suffering. Therefore, the trial magistrate erred in wrongful evaluation of evidence resulting in the inordinately low award for special damages.
14. Thus, the appellant prayed that the appeal be allowed.
15. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of **Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR** 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 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.”

16. The injuries sustained by the respondent are not contested. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent, and comparable awards. In the case of **Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR** where the Court of Appeal held:

“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.”

17. The appellant proposed that an award of Kshs. 2,500,000 was commensurate for the injuries sustained. However, the trial court found that the award was inordinately high and awarded Kshs. 1,200,000. The main issue for determination is whether the award of Kshs. 1,200,000 awarded by the trial court was so inordinately low that it warrants interference by this honourable court.

18. The court in **Kiautha v Ntarangwi (Civil Appeal E050 of 2021) [2022] KEHC 10595 (KLR) (30 June 2022) (Judgment)** awarded Kshs 800,000 to a respondent who suffered soft tissue injuries and a fracture of the mid-shaft femur. The court in **Jackson Mbaluka Mwangangi v Onesmus Nzioka & another [2021] eKLR** while discussing the appropriate award for an appellant who sustained a fracture of the femur observed as follows:

“14. In this case the Appellant sustained blunt injury to the right shoulder and fracture of the

left femur. The femur or the thigh bone is the large upper leg bone that connects the lower leg bones (knee joint) to the pelvic bone (hip joint)... In my view a fracture of the femur is a more serious injury than a fracture of the radius and the authorities in respect of a fracture to one cannot be used as the basis for awarding damages to the other...

15....it is my view and I find that an award of Kshs 600,000.00 is reasonable.”

19. In **Kurgat & another v Onyiero [2024] KEHC 7162 (KLR)** the High court substituted an award of Kshs. 950,000 with an award of Kshs. 850,000. The Plaintiff had sustained a fracture of the right femur neck. Permanent degree of incapacity was assessed at 10%. In **Parvat Builders v Makau [2023] KEELRC 575 (KLR) (8 March 2023) (Judgement)** where the respondent had sustained fractured left femur - upper 1/3 and a swollen tender and deformed left thigh with 12% permanent incapacity and the ELRC Court set aside the trial court's award of Kshs. 1,400,000 in general damages and substituted it with one of Kshs. 600,000.

20. Flowing from the above, I find no reason to disturb the award by the trial court as the same is within comparable awards for similar injuries.

21. The upshot of the matter is that I find no merit in the appeal and the same is dismissed with no orders to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY, 2026.

HON. T. W. Ouya

JUDGE

For ApplicantMutua

For Appellant.....No Appearance

COURT ASSISTANT.....Brian

ORIGINAL