



**Wairimu v Kinungi (Civil Appeal E008 of 2025)
[2026] KEHC 2756 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E008 OF 2025
WA OKWANY, J
FEBRUARY 5, 2026**

BETWEEN

ANTHONY WANYOIKE WAIRIMU APPELLANT

AND

JOSEPH NGIGI KINUNGI RESPONDENT

*(Being an appeal from the judgment of Hon. J. Ndeng'eri (PM)
delivered on 3rd September 2024 in Naivasha CMCC No. 390 of 2020)*

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court where she sued the Appellant for damages arising from a road traffic accident. The trial court delivered a judgment in the Respondent's favour as follows: -
 - a. General Damages: Kshs. 600,000
 - b. Special Damages: Kshs. 7,300
 - c. Future Medical Expenses: Kshs. 100,000
 - d. Less 10% contribution
 - e. Total: Kshs. 636,570 plus costs and interest
2. Aggrieved by the trial court's findings on quantum, the Appellant filed the instant appeal challenging the award of general damages. The appeal is therefore confined solely to the award of general damages.
3. The Appeal was canvassed by way of written submissions which I have considered.
4. The Appellant submitted that the award of Kshs. 600,000 is manifestly excessive, unjustified, and based on a misdirection in principle. It was the Appellant's case that as a first appellate court, this Court



- must re-evaluate the evidence but must be slow to interfere with findings of fact unless the trial court proceeded on wrong principles.
5. The Appellant faulted the trial Magistrate for relying on authorities where injuries were far more severe than in the present case and for ignoring relevant comparable authorities demonstrating lower awards.
 6. The Appellant relied on the following comparable awards: -
 - i. Kimani vs. Mwangi & 2 Others (Naivasha Civil Appeal E071 of 2023) [2024] KEHC 6744 (KLR) where the award was enhanced from Kshs. 450,000 to Kshs. 550,000 for fracture of femur and cut wound.
 - ii. Peter Kakere Ndiangui vs. Sarah Wangari Maina [2021] eKLR where the award was reduced from Kshs. 1,200,000 to Kshs. 500,000 for pelvic fracture and soft tissue injuries.
 - iii. Nguku Joseph vs. Gerald Kihui Maina [2020] eKLR where the award was reduced from Kshs. 2,500,000 to Kshs. 500,000 for multiple injuries including blunt abdominal trauma, lacerations, and fractures.
 7. The Appellant argued that the cited cases show that the award of Kshs. 600,000 was not only excessive but also inconsistent with past comparable precedents.
 8. The Respondent, on her part, supported the award and submitted that it was judicially reasoned, supported by uncontroverted medical evidence and in line with comparable precedents for femur fractures with permanent incapacity.
 9. The Respondent referred to the medical report by Dr. Cyprianus Okoth Okere who listed the injuries as: -
 - i. Fracture of the right femur;
 - ii. Surgery with metal implants;
 - iii. Visible surgical scar;
 - iv. Chronic pain, mobility limitations, numbness;
 - v. Walking difficulties requiring crutches;
 - vi. Loss of employment;
 - vii. 40% permanent incapacity
 10. It was the Respondent's case that the medical evidence was not rebutted by the Appellant. Reference was made to the following comparable awards: -
 - a. Jackson Mbulaka Mwangangi vs. Onesmus Nzioka [2021] eKLR where Kshs. 600,000 general damages was awarded for fracture with 40% incapacity.
 - b. Primia Management Ltd vs. Wilson Suba Kindatanga [2017] eKLR where Kshs. 900,000 was awarded for femur fracture.
 - c. Subati Flowers Ltd vs. Walter Wanyonyi Wekesa [2019] eKLR where Kshs. 1,600,000 was awarded for similar injury.
 - d. Benuel Bosire vs. Lydia Kemunto Mokora [2019] eKLR where an award of Kshs. 700,000 was made for compound femur fracture with disability.



11. The Respondent argued that the trial court exercised proper discretion and that the award is not excessive.

Issue for Determination

12. I find that the main issue for determination is whether the award of Kshs. 600,000 general damages for pain, suffering and loss of amenities was so manifestly excessive as to warrant interference by this Court.

Analysis and Determination

13. It is trite that an appellate court will not ordinarily interfere with the trial court's award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate, or where it is shown that the trial court proceeded on wrong principles or misapprehended the evidence. (See Butt v Khan [1981] KLR 349).
14. In *Kemfro Africa Ltd t/a Meru Express vs. Lubia (No. 2)* [1987] KLR 30 it was held: -

“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 are 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 the amount is so inordinately high or so inordinately low that it must be a wholly erroneous estimate.”
15. In the present case, it was not disputed that the Respondent suffered a fracture of the right femur, underwent surgery with internal fixation, and sustained a 40% permanent incapacity. The Appellant produced no contrary medical evidence.
16. Courts in Kenya have consistently recognizes femur fractures as serious orthopaedic injuries with long-term functional impact. This court notes that the authorities cited by the Appellant involved less serious injuries or lower levels of incapacity. For example, the case of *Kimani vs. Mwangi* (supra) involved a femur fracture without permanent incapacity while the *Peter Kakere Ndiangui* case (supra) involved a pelvic fracture, not requiring fixation. *Nguku Joseph* case (supra) involved multiple injuries but awards were adjusted due to different factual contexts.
17. In contrast, the Respondent's authorities are closer in nature, to the Respondent's injuries particularly *Mwangangi vs. Nzioka* case (supra) where Kshs. 600,000 was upheld for femur fracture that resulted in 40% incapacity and *Benuel Bosire* case (supra) where Kshs. 700,000 was awarded for compound femur fracture.
18. My finding is that in the circumstances of this case, the trial court's award of Kshs. 600,000 falls within the range of recent Kenyan authorities for femur fractures with permanent disability.
19. It is my further finding that the Appellant has not demonstrated that the trial court applied wrong principles or considered irrelevant factors while ignoring relevant factors thereby arriving at an award that was inordinately high.
20. It is my view that owing to the permanency of the Respondent's disability, the functional impact of the injuries resulting in walking difficulties/use of crutches, loss of occupation as a driver, chronic pain and long-term limitations, the award cannot be said to be excessive or unreasonable.
21. Guided by the principle set in *Kemfro vs. Lubia* case (supra) I will refrain from interfering with the trial court's award which I have already found to be reasonable and commensurate with the Respondent's injuries. I find no basis for interfering with the said award.



22. For the reasons that I have stated in this judgment, I find that the trial Magistrate correctly evaluated the medical evidence, applied relevant authorities, and arrived at a fair and conservative award of Kshs. 600,000.

23. Consequently, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.

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

HON. W. A. OKWANY

JUDGE

05/02/2026

For Appellant Kairu

For Respondent Kabaiko

Court Assistant Karani

