



REPUBLIC OF KENYA



**Kireria v Kithinji (Civil Appeal 133 of 2018)
[2025] KECA 178 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KECA 178 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 133 OF 2018
W KARANJA, J MOHAMMED & LK KIMARU, JJA
JANUARY 23, 2025**

BETWEEN

JOSEPH MUTAI KIRERIA APPELLANT

AND

PAUL KIRIMI KITHINJI RESPONDENT

*(Being an appeal from the judgment/decree of the High Court of Kenya at Meru
(D. S. Majanja, J.) dated 7th June, 2018 in High Court Civil Case No. 75 of 2017)*

JUDGMENT

Background

1. This is a second appeal. The genesis of the appeal is that Joseph Mutati Kireria, (the appellant) who was the plaintiff in the suit sued Paul Kirimi Kithinji, (the respondent) alongside 2 others (defendants in the suit) claiming general damages for pain, suffering and loss of amenities; special damages of Kshs.31,490 and costs and interest at court rates.
2. The appellant's claim as stated in his plaint dated 29th August, 2016 was that he was a passenger aboard motor vehicle registration number KBX 953K travelling along Meru-Nkuburoad near Ng'onyi area when the respondent's motor vehicle registration number KBX 058J Isuzu lorry was driven negligently and recklessly causing it to collide with the motor vehicle registration number KBX 953K, occasioning severe injuries to him.
3. As pleaded by the appellant, the injuries he suffered were minor laceration on the face and segmental fracture of right proximal ulnar. These injuries were confirmed by Dr. Nicholas Koome in his report dated 15th June, 2016 filed by the appellant.
4. According to the medical report relied upon by the appellant, Dr. Koome's opinion was that the injury that the injury suffered by the appellant was maim with no permanent incapacity.



5. By consent of the parties, liability was settled and the case proceeded for assessment of damages. After considering the evidence and submissions of the parties together with the authorities cited, the trial court assessed the damages and awarded the appellant Kshs.250,000 as general damages, special damages of Kshs.26,860 plus costs and interest.
6. This decision did not go well with the respondent who filed an appeal before the High Court seeking that the High Court replaces the trial court's judgment with a reasonable assessment of damages. His grievance was that the trial court erred in law and in fact in:
 - i. Making an award of general damage that was excessively high that there must be an erroneous estimate of the damages payable to the appellant;
 - ii. Making an award of Kshs. 250,000 as general damages and which amount was excessively high considering the injuries suffered by the appellant;
 - iii. Failing to consider the submission made by the respondent on the issue of quantum and the legal authorities provided
 - iv. Misdirecting himself into arriving at a wrong decision on the amount of the award of general damages and in making an award that is obviously against the weight of the medical evidence tendered during trial
 - v. Failing to apply and follow the principle of ratio decidendi and stare decisis thus ignoring the established principles of law applicable in assessment of damages for personal injuries claims.
 1. After considering the appeal and guided by the authority in Butt vs Khan [1981] KLR 349 on the considerations for an appellate court to interfere with an award of damages, the High Court (D.S. Majanja J.) delivered its judgment allowing the appeal in favour of the respondent. The High Court noted that the injuries sustained by the appellant were very minor on the face and a fracture that the doctor confirmed had healed and would not leave any permanent disability. The High Court held that the authorities cited by the appellant reflected more serious injuries such as multiple fractures and the awards were on a high scale and the decisions were outdated unlike those of the respondent, which were reflective of the current trends reflecting minor injuries. Consequently, the High Court held as follows:

“I allow the appeal and set aside the award of Kshs.250,000 as general damages and substitute it with an award of Kshs.150,000/-. That the sum shall accrue interest from the date of judgment before the trial court.

The respondent shall pay costs of the appeal assessed at Kshs.20,000/-.”

8. It is this finding that provoked the 2nd appeal herein. The appellant filed his notice of appeal against the said judgment. The appellant's Memorandum of Appeal seek for the appeal to be allowed and the judgment of the High Court and the resultant decree be set aside and judgment of the lower court be affirmed. The appellant's grounds of appeal are that the learned trial Judge erred in law and in fact that:
 - i. He failed to make a finding that the judicial authorities relied on by the respondent were decided long time ago and therefore the same were not relevant to the appellant's case;
 - ii. He found that the authorities cited by the respondent were relevant to the appellant's case when the same were distinguishable from the appellant's injuries;
 - iii. Finding that the authorities cited by the appellant were not relevant to his case;



- iv. Reducing the award on general damages whereas the award by the lower court were not excessive to warrant an interference by the court; and
- v. By inordinately reducing the award to Kshs.150,000 which was too low.

Submissions by Counsel

9. The appeal was heard by way of written submissions. The appellant was represented the firm of Messrs Kiogora Ariithi & Associates Advocates while the respondent was represented by Messrs Mithega & Kariuki Advocates.

10. The appellant framed two issues for determination, that is, whether the trial court's award of general damages at Kshs.250,000 was excessive considering the nature of the appellant's injuries to warrant reduction as per the finding of the High Court; and whether this Court should interfere with the award of damages by the High Court and affirm the award of Kshs.250,000 as general damages. In addressing these issues, counsel for the appellant submitted that the appellant sustained soft tissue injury and a segmental fracture of the right proximal ulnar and thus the High Court's finding that the appellant sustained very minor injuries was erroneous.

That the trial court did not act on the wrong principles of law in awarding the Kshs.250,000 as general damages to warrant interference by the High Court.

11. Counsel further submitted that the authorities cited by the respondent were not relevant to the appellant's claim. That the award by the trial court was not excessive taking into account the appellant's injuries; that the same was fair and reasonable and its reduction by the High Court was not justified noting that interference with an award by an appellate court ought to be exercised only when there is evidence that the lower court acted on wrong principles of law or that the award of damages was excessive.

Reliance put on this Court's decisions of *Morris Mugambi & Silas Imanene (Jashid) vs Isaiah Gitiru* C.A No. 138 of 2002; *Kemfro Africa Limited t/a Meru Services, Gathogo Kanini v A.M Lubia & Olive Lubia* [1987] KAR 30 and High Court decision of *Silas Muthuri Muraga & Ano vs Margaret Mwangwa Munene Meru HCCA No. 227 of 2013*.

12. Counsel for the respondent submitted that the High Court properly evaluated and took into consideration the authorities cited before the trial court noting that the authorities relied upon by the appellant did not have comparable injuries. That the appellant's authorities were *Mushambi OndeGona vs Associated Vehicle Assemblies Limited & another Msa HCCC No. 919 of 1991 (UR)* and *Jane Munguti vs Simon Peter Mwangi & Another Msa HCCC No. 910 of 1991 (UR)* yet the injuries in these cited cases were more severe than those sustained by the appellant. The injuries in the authorities relied by the appellant were for multiple fractures yet the appellant had a single fracture. Counsel for the respondent submitted further that the High Court's award of Kshs.150,000 was fair and reasonable and commensurate to the injuries sustained by the appellant.

The respondent relied on the decision of *Nelson Njuki Njuki vs Laurel Mandala (2020) eKLR* in support of its case.

Determination

13. This is a second appeal thus this Court's mandate is limited to considering questions of law unless it is shown that the court below considered matters it should not have considered or it did not consider matters that it should have considered or that the decision was otherwise perverse.



14. In *Charles Kipkoech Leting vs Express (K) Ltd & another* (2018) eKLR this mandate was delineated by this Court as follows:

“This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the court. See *Mina Mugiria* (1983) KLR 78, *Kenya Breweries Ltd verses Godfrey Odongo*, Civil Appeal No. 127 of 2007 and *Stanley Muriithi & another versus Bernard Munene Ithiga* (2016) eKLR for the holdings inter alia that, on a second appeal, the court confines itself to matters of law only unless it is shown that the Court below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

...”

15. As regards the guiding principle for an appellate court to disturb an assessment of damages, this court in the case of *Kemfro Africa Limited t/a as Meru Express Service, Gathogo Kanini* (supra) held that:

“The principles to be observed by this 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, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

16. Further, in *Catholic Diocese of Kisumu v Tete* [2004] eKLR this Court held that:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a difference figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles.”

17. We have carefully perused the record, considered the impugned judgment, submissions by parties, the authorities cited and the law. We discern the main issue for determination is whether the award of general damage was inordinately reduced to Kshs.150,000 from the Kshs.250,000 awarded by the trial court and whether the Kshs.150,000 award by the High Court is too low as to call for interference by this Court.

18. There is no standard measure for assessment of general damages. The trend has been as stated by this Court in *Kitavi v Coast Bottlers Limited* [1985] KLR 470) that:

“It is now settled law that what the appellant was entitled to was a reasonable compensation assessed with moderation and conformity with the general method of approach, local courts have taken. Guidelines and brackets for various injuries are useful aids to some hope of consistency but awards will very much depend on the facts of each case and any attempt to standardize “or rigidly” classify them will be in vain and wrong...”

19. We have re-evaluated the medical report and noted the injuries sustained.

The High Court’s opinion was that the injuries were not severe and as opined by the appellant’s doctor who prepared the medical report, the injuries would fully heal with time without any permanent



disability on the appellant. In view of the foregoing, we find that the award of Kshs.150,000 as general damages is not inordinately low to warrant interference by this Court.

20. In the circumstances, we find that the appeal lacks merit and is hereby dismissed with costs to the respondent.

21. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2025.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

