



REPUBLIC OF KENYA



**Nduruhu & another v Waweru (Civil Appeal E017 of 2023)
[2025] KEHC 8963 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 8963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E017 OF 2023
AN ONGERI, J
JANUARY 31, 2025**

BETWEEN

FREDRICK MWENDA NDURUHU 1ST APPELLANT

SAMUEL MWANGI NJOROGE 2ND APPELLANT

AND

ESTHER NJERI WAWERU RESPONDENT

*(Being an appeal from the Judgment of Hon. T. N. Sinkiyian
(PM) in Voi CMCC No. E047 of 2020 delivered on 5th May 2023)*

JUDGMENT

1. The Respondent sued the Appellants seeking general damages for pain and suffering and special damages arising out of a Road Traffic Accident (RTA) which occurred on 23rd October 2020 involving motor vehicle registration number KCK 031C.
2. The court entered into judgment on liability in a test suit being Voi SPMCC No. 52 of 2020 and the same was applied in SPMCC No. 44, 45, 46, 47, 48, 49, 50, 51, 52 OF 2020.
3. The trial court assessed general damages for pain and suffering at Kshs. 300,000/= and special damages at Kshs. 3,550/= making a total of 303,550/=
4. The Appellant has appealed against the said award on the following grounds:-
 - i. The Learned Trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the Respondent.
 - ii. The Learned Trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.



- iii. The Learned Trial Magistrate erred and misdirected herself by in awarding a sum in respect of damages which was inordinately high in the circumstance which was excessive in the circumstances occasioning a miscarriage of justice.
 - iv. The Learned Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 - v. The Learned Trial Magistrate erred and misdirected herself by ignoring the Defendant's submissions on record hence arriving a wrong decision in awarding damages.
 - vi. The Learned Trial Magistrate erred and misdirected herself by ignoring the evidence of witnesses on record especially the police officer hence arriving a wrong decision in awarding damages.
5. The parties filed written submissions as follows:-
(Please Julie summarize both here)
6. This being the first appeal, the duty of the first appellate court is as follows:-
(Julie please state it here with any authority)
7. The only issue for determination is whether the award of general damages is excessive.
8. I have considered the submissions filed herein together with the authorities relied on by the trial court.
9. The Respondent sustained the following injuries:-
- i. Bruises on the back region.
 - ii. Bruises on the left elbow.
 - iii. Bruises on and both shoulders.
 - iv. Bruises on both knees.
 - v. Bruises at both hip regions.
10. I find that the Respondent sustained soft tissue injuries.
11. The trial court relied on the case of *Catherine Wanjiru Kingori & 3 Others v Gibson Theuri Gichubi* (2005) eKLR where the Plaintiff was awarded Kshs. 350,000/= for multiple soft tissue injuries.
12. I find that the trial court award is reasonable in the circumstances of this case.
13. The only time an appellate court can interfere with the discretion of the trial court in assessment of damages is when the same is so low or so high as to warrant interference or when the court applied wrong principles or relied on erroneous factors.
14. I find that the appeal herein lacks in merit and I accordingly dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JANUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-



Court Assistant: Maina

