



**Catholic Diocese of Muranga v EEO (Suing As Grandmother And Next Friend Of MA – Minor) (Civil Appeal E056 of 2022) [2025] KEHC 1603 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E056 OF 2022  
REA OUGO, J  
FEBRUARY 27, 2025**

**BETWEEN**

**CATHOLIC DIOCESE OF MURANGA ..... APPELLANT**

**AND**

**EEO (SUING AS GRANDMOTHER AND NEXT FRIEND OF MA – MINOR) ..... RESPONDENT**

*(Appeal from the judgment and decree of the Hon. H.M. Getenga, Chief Magistrate in Bungoma in Civil Suit No E006 of 2022 delivered on 28/6/2022)*

**JUDGMENT**

1. The appellant was the defendant before the trial court. The respondent instituted a suit against it following an accident that occurred on 24/11/2021 between the appellant's motor vehicle KCX 765X and motorcycle registration number KMEX 609R at Mabanga area. The minor, a pillion passenger, sustained soft tissue injuries as a result of the accident.
2. The appellant denied causing the accident and pleaded in the alternative that if the accident occurred then the same was outside their scope and control.
3. At the hearing of the case, the evidence of the police officer in MCCC/E004/2022 was adopted as the evidence of Pw1 and the police abstract was produced as Pexh1.
4. MA (Pw3) testified that they were heading to Webuye from Bungoma. The appellant's vehicle was in the opposite direction when the appellant's driver managed it in a reckless manner causing it to veer of its lane on to their lane and knocking them down. The appellant's vehicle was driven in high speed without proper lookout for other road users. Pw3 was treated at Bungoma County Referral Hospital.



5. Haron Ombongi (Pw2) testified that Pw3 was diagnosed to have sustained soft tissue injuries following the accident of 24/11/2021. He produced the treatment card (Pexh2) and P3 Form (Pexh3). Dr Sokobe (Pw4) who prepared the medical report testified that Pw3 sustained soft tissue injuries.
6. The appellant closed its case without calling any witnesses.
7. The trial court at the close of the case found that the appellant was 100% liable for the accident. She awarded the respondent Kshs 350,000/- for general damages and Kshs 7,400/- as special damages.
8. The appellant dissatisfied with the finding of the trial magistrate has filed this instant appeal challenging the damages awarded on the following grounds:
  1. The learned trial magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently coming to a wrong conclusion on the same.
  2. The learned trial magistrate misdirected herself in ignoring the principles applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
  3. The learned trial magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondent (if any) and failed to apply precedents and tenets of law applicable.
  4. The learned trial magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis-à-vis the respondent's claim.
  5. The learned trial magistrate failed to apply herself judicially and to adequately evaluate the evidence and exhibits tendered on quantum and thereby arrived at a decision unsustainable in law.
9. The appellant submits that Kshs 100,000/- was sufficient compensation for the respondent's injuries. In *Daniel Gatana Ndugu & Another v Harrison Angore Katana* [2020] Eklr the Court of Appeal set aside an award of Kshs 350,000/- awarded for special damages and substituted it with an award of Kshs 140,000/-. In *Ndungu Dennis v Ann Wangari Ndirangu & Another* [2018] eKLR and *FM (Minor suing through mother and next friend MWM) v JMN & Another* [2020] eKLR the court awarded Kshs 100,000 as general damages for soft tissue injuries.
10. The respondent on the other hand argues that the trial magistrate applied the correct principles in awarding damages of Kshs 350,000/-. The respondent's injuries in the P3 form were classified as main. They cited the case of *Samwel Martin Njoroge Kamunyu v Mildred Okweya Barasa* [2020] eKLR where the court upheld an award of Kshs 300,000 as general damages for soft tissue injuries. The court in *Ndege & Another v Nyarindo (Civil Appeal No E034 of 2023)* [2024] KEHC 5782 (KLR) (25 April 2024) (Judgment), the court awarded Kshs 390,000 as damages for soft tissue injuries.

### **Analysis And Determination**

11. I have considered the appeal and the submissions by the parties. The appellant in his submissions has also challenged the judgment of the subordinate court on grounds that liability was not well founded and that the magistrate did not consider contributory negligence. However, the appellant's grounds of appeal only challenge damages awarded by the trial court.

Therefore, in my view, the only issue for consideration is the award of damages.



12. Circumstances in which an Appellate court will interfere with the quantum of damages awarded by a Trial Court were laid out in the case of Kenya Bus Services Limited v Jane Karambu Gituma Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows:

“...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages.”

13. The injuries sustained by the respondent are largely uncontested. According to the medical report, the appellant sustained a deep cut wound on the right cheek, bruises on the right face, the scalp and right knee, and blunt injury to the right shoulder. Dr. Sokobe in his opinion was that he sustained soft tissue injuries and has recovered well.

14. In Samwel Martin Njoroge Kamunyu v Mildred Okweya Barasa [2020] eKLR cited by the respondent, the respondent therein sustained multiple deep cut wound unlike the respondent in this case. Similarly, in Ndege & Another v Nyarindo (Civil Appeal No E034 of 2023) [2024] KEHC 5782 (KLR) (25 April 2024) (Judgment) the respondent therein also sustained multiple cut wound injuries as well as other multiple soft tissue injuries.

15. The respondent in this case did not sustain multiple soft tissue injuries to warrant the award of Kshs 350,000/- as damages. In the case of Onyango v Obura (Civil Appeal E180 of 2023) [2024] KEHC 11506 (KLR) where the respondent sustained a deep cut wound on the head as well as other soft tissue injuries the court awarded a sum of Kshs. 180,000/=. Therefore, I set aside the judgment of the lower court on general damages and substitute it with an award of Kshs 180,000/-. The appellant shall have half the cost of the appeal.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 27TH DAY OF FEBRUARY 2025.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Mr. Wangoda -For the Appellant

Mr. Okaka h/b Mr. Anwar - For the Respondent

Wilkister - C/A

