



**Muchina v Wanjiku & 4 others (Civil Appeal E915 of 2023)
[2025] KEHC 1817 (KLR) (Civ) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E915 OF 2023

REA OUGO, J

FEBRUARY 27, 2025

BETWEEN

ESTHER MUMBI MUCHINA APPELLANT

AND

TIMOTHY GACHUHI WANJIKU 1ST RESPONDENT

KAKA TRAVELLERS SACCO SOCIETY LIMITED 2ND RESPONDENT

MARTIN NGIGI MUIRURI 3RD RESPONDENT

WILSON GITAU REUBEN 4TH RESPONDENT

MICHAEL WANYORO KINYANJUI 5TH RESPONDENT

*(Being an appeal from the decision of the Learned Senior Resident Magistrate
Hon. J.A Aduke (Ms) given on 31/8/2023 in Nairobi CMCC No. 9065 of 2019)*

JUDGMENT

1. The appellant at the lower court filed his plaint claiming that a road traffic accident occurred on 4/3/2018 between motor vehicle KBQ 678C and KAQ 272J. According to the appellant, the 1st respondent was the driver of motor vehicle registration number KBQ 678C while the 2nd respondent was the owner of the said vehicle. The 3rd respondent was the driver of motor vehicle KAQ 272J owned by either the 4th or 5th respondent.
2. It was alleged that the appellant was travelling as a passenger in motor vehicle KBQ 678C when the 1st and 3rd respondents acting for the 2nd or 3rd or 4th respondents, negligently drove the vehicles causing them to collide. The appellant as a result, sustained injuries. She averred that he suffered a compound fracture of the left tibia and fibula, fracture of the socket of the left hip joint and amputation of the



left leg below the knee. She claimed that she requires total hip replacement at Kshs 450,000/- and Kshs 300,000/- for an artificial leg. The appellant in her prayers sought: general damages, special damages, costs and interest.

3. The 3rd, 4th and 5th respondent filed their statement of defence denying the occurrence of the accident. They averred that if the same occurred as alleged then it was solely caused/substantially contributed to by the negligence of the appellant and the driver of motor vehicle registration number KBQ 678C. They denied that the appellant sustained any injuries, the special damage claim and the claim for diminished earnings.
4. A full trial ensued and the magistrate in her judgment found as follows:

“The issue for determination before this court is one:

1. Jurisdiction

The plaintiff does not disclose the geographical location of the accident. As it is, I am unable to ascertain whether or not the court has the geographical territorial jurisdiction to grant the prayers sought in the plaintiff. In other words, it is not clear from the plaintiff on record or from the testimony of Pw1 on file whether or not the alleged road accident occurred in Nairobi or elsewhere. In view of this, I am unable to proceed to analyze the liabilities of the parties and any quantum that may or may not be applicable. On the strength of section 2 and section 15 (c) of the *Civil Procedure Act*, Cap 21 Laws of Kenya, I hereby strike out the plaintiff...”

5. The appellant’s response to the judgment of the subordinate court is this instant appeal filed vide the Memorandum of Appeal dated 5th September 2023. The appellant challenges the finding of the lower court on the following grounds:
 1. The learned magistrate erred by striking out the plaintiff.
 2. The court erred by basing its decision on an issue not pursued by any party and or without hearing the parties on the issue she identified.
 3. The trial court erred by failing to make awards for the suit herein.
 4. The court erred by failing to notice that all parties were agreed on where the accident occurred even in their final submissions.
 5. The trial court erred by failing to advert to and to apply the overriding objectives and or Article 159 of *the Constitution* of Kenya, 2010.
 6. The trial court disregarded section 3 of the Magistrate’s Court Act, 2012.
 7. The trial court erred by failing to refer the matter back for allocation to a court with jurisdiction.
 8. The trial court erred by dismissing the plaintiff after finding it had no jurisdiction instead of downing its tools.
 9. The trial court erred by elevating administrative jurisdiction to the level of judicial jurisdiction.
6. The appellant seeks an order reinstating the appellant’s case and for the court to assess damages. She also seeks the cost of the appeal and costs in the lower court. The appeal was not opposed.
7. The appellant in her submissions, submits that she pleaded at paragraph 8 of the plaintiff that the cause of action arose within the jurisdiction of the court. The appellant in her testimony testified that the



accident occurred along Thika Road. The exhibits were sufficient to enable the trial court to ascertain that the accident happened within Nairobi.

8. She blamed the subordinate court for not bringing the issue of jurisdiction to the attention of the parties, therefore condemning the parties unheard. She also faulted the trial court for failing to apply Article 159 of *the Constitution*. She argued that section 2 of the *Civil Procedure Act* cited by the trial court was not applicable, while section 15 (c) of the Act provides that other suits shall be instituted where the cause of action arose wholly or in part. In this instant case, the cause of action arose in Thika Road, reported to Kasarani police station. The court is presumed to know that the Kasarani area of Thika Road is in Nairobi County.
9. The respondents did not file their submissions. They did not oppose the appeal.

Analysis And Determination

10. First, I shall re-evaluate the evidence and arguments presented during the trial, as is expected of a first appellate court. (see the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123).
11. The pertinent issue is whether the trial court had jurisdiction to entertain the suit before it. The trial magistrate downed its tools on the ground that it did not have geographical jurisdiction. However, the evidence of the appellant shows that the accident happened in Nairobi. Esther Mumbi Muchina (Pw1) adopted her witness statement as her evidence in chief. According to her witness statement, Pw1 testified that the accident occurred on Thika Road. The police abstract shows that the accident occurred on Thika Road and the same was reported at Kasarani Police Station. The evidence by the appellant was sufficient for the trial magistrate to find that she was seized with the jurisdiction to determine the case. The trial magistrate erred in dismissing the appellant's suit, the order dismissing the suit is hereby set aside.
12. I shall proceed to determine the issue of liability. Pw1 testified that she was aboard motor vehicle KBQ 678C matatu when the 1st respondent lost control while changing lanes and knocked the matatu from behind. Pw2 No. 56661 CPL Magdalene Lubale produced the police abstract as Pexh1. The respondents did not call any witnesses but produced a medical report.
13. The only evidence regarding the occurrence of the accident was by Pw1. She witnessed the accident and blamed both drivers for causing the accident. Her evidence was uncontroverted. The respondents are 100% liable for the accident.
14. I now turn to consider the award of damages. The appellant in her plaint averred that she suffered compound fracture of the left tibia and fibula, fracture of the socket of the left hip joint, and amputation of the left leg below the knee. Dr. W.M. Wokabi in the medical report dated 23rd October 2019 confirmed that the appellant sustained the said injuries. The P3 form also noted the appellant sustained compound fracture on the tibia/fibula and a fracture of the hip bone. The respondent relied on the medical report of Dr. Maina Ruga. According to his expert opinion, the appellant sustained a fracture and dislocation of the left hip joint; compound fractures of the left tibia and fibula; and below-knee amputation of the left leg. The appellant adduced sufficient evidence to prove that she sustained the injuries pleaded in her complaint.
15. The appellant at the lower court urged the court to make an award of Kshs 3,500,000/-. It relied on the case of *Macharia Francis Mundui & Another v Joel Wanje Nairobi HCCA No. 163 of 2015* where the plaintiff suffered a fracture of the femur and amputation of the other leg and he was awarded Kshs



- 3,000,000/-. In *Rebecca Mumbua Musembi v Lucy K. Kinyua*, the court awarded Kshs 3,000,000/- for multiple injuries. The appellant urged the court to award Kshs.3,500.000/- for general damages.
16. The 3rd, 4th and 5th respondents in their submissions before the lower court urged the court to award Kshs 800,000/-. They relied on the case of *Charles Oriwo Odeyo v Apollo Justus Andabwa & Another* HCC No. 99 of 2014 at Kisumu. The appellant was awarded Kshs 450,000/- as general damages where the plaintiff sustained injuries leading to amputation of his right leg below the knee, concussion and soft tissue injuries.
 17. I have carefully considered the rival submissions by the parties on general damages. In *Mbasu & another v Swaka* (Civil Appeal E061 of 2022) [2024] KEHC 2210 (KLR) (27 February 2024) (Judgment) the respondent therein sustained the following injuries: mingled right foot with compound fractures of the right tibia and fibula; cut wound on the knee; below knee amputated right leg. Disability in that case was assessed at 50% and he was awarded Kshs 2,500,000/- as general damages. In *Akhwaba Olubuliera Nicodemus v Dickson Shikuku* [2020] eKLR the respondent was awarded damages of Kshs 2,000,000/- where he suffered a fracture of the right clavicle leading to internal fixation of the clavicular fracture; below knee amputation of the right leg and sprained left elbow joint. The doctor assessed permanent physical disablement at 35% because of the amputated right leg.
 18. In this case, the injuries sustained by the appellant were much more serious compared to those in *Mbasu & another v Swaka*. In this case, in addition to the appellant sustaining a fracture of the left tibia and fibula and amputation of the left leg below the knee, the appellant also sustained a fracture and dislocation of the left hip joint. Therefore, an award of Kshs. 3,000,000/- should be appropriate, considering that disability was assessed at 50%.
 19. On future medical costs, the submission was that the doctors agreed that there was a need for an operation to replace the hip joint. Dr. Wokabi approximated the cost of the hip replacement at Kshs 450,000/- while Dr. Ruga approximated the costs to Kshs 600,000/-. The appellant urged the court to award Kshs 450,000/- as pleaded.
 20. The appellant pleaded that the hip replacement surgery would cost Kshs 450,000/- and further provided a medical report with said estimate. Therefore, I award the sum of Kshs 450,000 as sufficient compensation for the hip replacement.
 21. The appellant submitted that she would also need an artificial leg over the years and it was submitted that 3 legs will aid her mobility up to the age of 76. She urged the court to award Kshs 900,000/- for the costs of the artificial limbs as the cost of an artificial leg was estimated to cost Kshs 300,000/-. The 3rd, 4th and 5th respondents submitted that the appellant would only require one prosthetic replacement noting that she was 42 years old at the time of the accident and that she may probably live up to 60 years due to the uncertainties of life. They urged the court to award Kshs 300,000/- on this head.
 22. The respondent did not provide any evidence regarding how much the prosthesis would cost. To this end, the Kshs 300,000/- estimated for the prosthesis leg is reasonable, therefore, I award Kshs 900,000 (300,000 x 3) for the prosthesis leg to be utilized during the appellant's lifetime. It is clear from the report of Dr Wokabi that one prosthetic leg cannot be used during the appellant's whole lifetime.
 23. The appellant submitted that she was earning Kshs 1,000/-. She urged the court to award a 50% loss of capacity and a 50% loss of earning capacity because her business had closed. She was 42 and urged the court to adopt a multiplier of 30 years. They proposed a sum of Kshs 1,944,000/- worked out as: 500 x 6 (days) x 4 (weeks) x 12 (months) x 27 = Kshs 3,888,000/- x ½. They also urged the court to award the appellant Kshs 700,000/- for the cost of the person providing her with aid as was awarded in *George Ragoko Ogola v Attorney General* (2008) eKLR.



24. The respondent submitted that the appellant on cross-examination confirmed that she did not have any proof of what business she was involved in nor had evidence of how much she made daily. The respondent therefore submits that the multiplier approach should not be applied. There was no evidence that the appellant was using an aid whom she was paying Kshs 500 per day.
25. On diminished earning capacity, the court in *Ndoro Kaka Kakondo v Salt Manufacturers K Limited* [2016] eKLR held as follows:
- “Damages for loss of future earning capacity and/or diminished earning capacity, unlike damages for loss of earnings, is a type of remedy based on the claimant’s potential earning power. It focuses on the claimant’s ability to earn income. The remedy is granted based on the difference in potential earning power, not on what the claimant actually earned in the past. Even if a person is unemployed at the time the injury occurs, he would be entitled to pursue damages for loss of future earning capacity or diminished earning capacity. This item is therefore treated as general damages, which though not required to be specifically proved, must be proved on the balance of probability”
26. In this case, there was no evidence that the appellant earned Kshs 1,000/- for the court to adopt the multiplier approach. According to her evidence, she would still be able to operate her grocery business but would require aid in running the business. Therefore, the appellant is entitled to an award of loss of diminished value, but the court will adopt the global sum approach. Since the appellant was 42 years old, an award of Kshs 400,000/- would be most appropriate in the circumstances.
27. The appellant urged the court to award Kshs 1,995,571/- on special damages based on the receipts produced. The respondent opposed the special damage claim arguing that the receipts produced amounted to Kshs 1,087,414/-.
28. The appellant in the plaint sought Kshs 1,100 for copies of records and annexed two receipts as proof of payment. She availed the receipt for Kshs 2,500 for funds paid towards the medical report. The medical fees paid towards the hospital bills amounted to Kshs 1,423,940/-. The receipts for the transport costs amounted to Kshs 33,200/-. The special costs pleaded and proved, therefore amounted to Kshs 1,460,740/-.
29. Having considered the appeal in its entirety, I enter judgment in favour of the appellant in the following terms:
1. General Damages Kshs 3,000,000/-
 2. Future Medical Costs (Hip replacement) Kshs 450,000/-
 3. Costs of Prosthesis Kshs 900,000/-
 4. Diminished earning capacity Kshs 400,000/-
 5. Special Damages Kshs 1,460,740/-
- Total Kshs 6,210,740/-
30. There shall be no orders as to costs as agreed by the parties.

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

R. OUGO
JUDGE



In the presence of:

Mr. Kaburu -For the Appellant

1st and 2nd Respondent - Absent

3rd, 4th and 5th Respondents – Absent

Wilkister -C/A

