



**Ndung'u & another v Mburu (Civil Appeal 113 of 2023)
[2025] KEHC 3912 (KLR) (Civ) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL 113 OF 2023
KW KIARIE, J
MARCH 27, 2025**

BETWEEN

BENSON NDUNG'U 1ST APPELLANT

SIMON MWANGI WANJERI 2ND APPELLANT

AND

JOSEPH NDUNG'U MBURU RESPONDENT

*(Being an Appeal from the judgment and decree in Engineer Principal
Magistrate's PMCC No. 189 of 2016 by Hon. D.N. Sure – Resident Magistrate)*

JUDGMENT

1. Benson Ndung'u and Simon Mwangi Wanjeri, the appellants, were the defendants in Engineer Principal Magistrate's PMCC No. 189 of 2016. They had been sued for a claim of general damages and special damages following a road traffic accident involving motor vehicle registration number KCD 562U and motor vehicle registration number KBV 626Z. The respondent was a passenger in a motor vehicle registered as KCD 562U. As a result of the collision, the respondent sustained fatal injuries. The respondent was awarded Kshs. 1,300,00.00 in general damages Kshs. 80,000.00 for future medical expenses and Kshs. 61, 515.00 special damages (as it appears in the submissions).
2. The appellant was aggrieved by the judgment and filed this appeal through Murimi Ndumia, Mbago & Muchela Advocates. They raised the following grounds of appeal:
 - a. That the learned trial magistrate erred and misdirected herself as to the exact nature of the respondent's injuries and, therefore, erred in law in his assessment of damages awardable to the respondent, which was manifestly excessive.



- b. That the learned trial magistrate erred in assessing damages and failed to apply the principles applicable in the award of damages and comparable awards made for analogous injuries.
3. The respondent opposed the appeal through P. K. Njuguna & Company Advocates.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
5. The record of appeal is incomplete. The impugned judgment is not part of it. Apart from the incomplete record, the attached proceedings concern Civil Case Number 190 of 2016, whereas the appeal pertains to PMCC No. 189 of 2016. This court will be unable to adjudicate this appeal.
6. The appeal is incompetent and is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

