



REPUBLIC OF KENYA



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**Njunguna v Ruto (Civil Appeal E022 of 2023)
[2025] KEHC 3715 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E022 OF 2023
JK NG'ARNG'AR, J
MARCH 26, 2025**

BETWEEN

LAZARUS NJUNGUNA APPELLANT

AND

KENNEDY RUTO RESPONDENT

(Being an Appeal from the Judgment of Senior Resident Magistrate, Muleka E. at the Magistrate's Court at Sotik, Civil Suit Number E033 of 2022)

JUDGMENT

(Being an Appeal from the Judgment of Senior Resident Magistrate, Muleka E. at the Magistrate's Court at Sotik, Civil Suit Number E033 of 2022)

JUDGEMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising from a road traffic accident on 18th November 2021. The Respondent stated that he was riding motorcycle registration number KMF1 776Z when he was hit by motor vehicle registration number KCL 343Z (allegedly belonging to the Appellant) thereby occasioning him injuries. The Respondent blamed the Appellant for causing the accident.
2. The trial court conducted a hearing where the Respondent called two witnesses and the Respondent called one witness before closing their respective cases.
3. In its Judgment dated 3rd May 2023, the trial court found liability in the ratio of 65:35 in favour of the Respondent. The trial court further awarded the Respondent a net award of Kshs 1,473,257/=.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 8th May 2023 and relied on the following grounds:-



- I. The learned trial Magistrate erred in fact and misdirected himself in fact and law by awarding damages to the Respondent that were manifestly excessive.
 - II. The learned trial Magistrate erred in fact and in law in assessing damages and failed to apply the principles applicable in award of damages of comparable awards made for analogous injuries.
 - III. The learned trial Magistrate erred in failing to consider and critically analyze the submissions made on behalf of the defendant and thus arrived at an unjustifiably high award for the injuries sustained.
 - IV. The learned trial Magistrate's award on damages was so inordinately high.
 - V. The learned trial Magistrate erred in fact and in law in awarding damages that were neither properly pleaded nor sufficiently proved as by law required.
 - VI. The learned trial Magistrate was in error of law and fact in awarding damages that were not proportionate to the injuries sustained by the Respondent.
 - VII. The learned trial Magistrate erred in fact and in law in failing to take into account certain considerations material to an estimate of evidence.
 - VIII. THAT the award on general damages for pain and suffering and loss of amenities was so inordinately high.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR.
 6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through his Complaint dated 8th March 2022, the Respondent stated that he was riding motorcycle registration number KMF1 776Z when he was hit by motor vehicle registration number KCL 343Z.
8. The Respondent stated that the Appellant was the owner of motor vehicle registration number KCL 343Z and was negligent in causing the accident. The particulars of the negligence were listed in paragraph 5 of the Complaint.
9. That as a result of the accident, he the following injuries:-
 - a. Fracture right radius/ulna.
 - b. Disarticulation of the right small finger.
 - c. Dislocation of the left patella.
 - d. Fracture of the right tibia/fibula.
 - e. Dislocation of the right ankle.
10. The Respondent's claim against the Appellant was for special and general damages as a result of the accident.
11. In his written submissions dated 6th February 2025, the Respondent submitted that the trial Magistrate correctly arrived at the award of KShs 2,200,000/=. That the doctor assessed his permanent disability at 2% due to the loss of his right small finger. He further submitted that he had not fully



recovered from his fractures and still experienced pain. On the award of general damages, he relied on *Lucy Waruguru Gatundu vs Francis Kinyanjui Njuku* (2017) eKLR and *Wurano Tosha & another vs DMK* (suing through next friend and mother of JNN (2021) eKLR.

12. It was the Respondent's submission that the prayer for future medical expenses and special damages was pleaded and proved and this court should not interfere with it

The Defendant's/Appellant's case

13. Through his statement of defence dated 21st March 2022, the Appellant denied that he was the motor vehicle registration number KCL 343Z.
14. The Appellant denied the particulars of negligence levelled against it. That if any accident happened, it was caused solely by the negligence of the Respondent. He particularized the negligence in paragraph 7 of his Defence.
15. The Appellant denied that the Respondent suffered any injuries and further denied that the Respondent required the future medical expense of Kshs 150,000/=.
16. In his written submissions dated 18th June 2024, the Appellant submitted that the award on general damages was inordinately high and that it was trite that awards must be within consistent with comparable injuries.
17. The Appellant proposed an award of Kshs 700,000/= and relied on *Joseph Njuguna Gachie vs Jacinta Kavuu Kyengo* (2019) eKLR, *Damaris Ombati vs Moses Mogoko Levis & another* (2019) eKLR and *Tile & Carpet Center Warehouse v Okello* (Civil Appeal 74 of 2019) [2022] KECA 5 (KLR) (4 February 2022) (Judgment).
18. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 18th June 2024 and Respondent's written submissions dated 6th February 2025. From the grounds of the Appeal, it was apparent that the Appeal was limited to quantum only. The only issue for my determination therefore was whether the award on general damages was inordinately low.

Quantum

19. Having gone through the Appeal and the parties' respective submissions, there was no dispute as to the nature of injuries suffered by the Respondent. This much was confirmed by the Respondent who in his submissions dated 18th June 2024 confirmed the injuries suffered by the Respondent to be similar to the ones pleaded in the Plaint. The only point of departure and as earlier alluded in this Judgement was the extent of general damages payable to the Appellant.
20. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Catholic Diocese of Kisumu vs Tete* (2004) eKLR.
21. In the present case, the Appellant submitted on the issue of general damages that the award of Kshs 2,200,000/= was inordinately high and he proposed an award of Kshs 700,000/=. On the other hand, the Respondent asked this court to uphold the award of Kshs 2,200,000/= as it represented a fair award.



22. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in *Stanley Maore vs Geoffrey Mwenda* (2004) eKLR, held:-

“...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

23. The Respondent suffered the following injuries:-

- a. Fracture right radius/ulna.
- b. Disarticulation of the right small finger.
- c. Dislocation of the left patella.
- d. Fracture of the right tibia/fibula.
- e. Dislocation of the right ankle.

24. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison:-

I. In *John Mwangi Kiiru v Salome Njeri Mwangi* [2019] KEHC 4495 (KLR), the court upheld the award of Kshs 450,000/= as general damages where the Respondent suffered a massive swollen foot, two fractures of the metatarsal bones, soft tissue injuries and pain and swelling.

II. In *China Wu Yi Company Ltd v Stephen Muniu Kinyanjui* [2021] KEHC 1725 (KLR), the court upheld the award of Kshs 800,000/= for a fracture and dislocation of tarsal-metatarsal joint right foot and a Degloving injury medical aspect right foot.

III. In *Jesca Kajumwa Masela v Razick Aziz Obuba* [2021] KEHC 9010 (KLR), the court increased the award of Kshs 350,000/= to Kshs 500,000/= for a fracture of the first metatarsal on the left foot, fracture of the proximal phalanx of the left big toe and a massive 10*4 cm Degloving injury on the left foot.

25. I have also considered the authorities quoted by the Respondent i.e. *Lucy Waruguru* (supra) and *Wurano Tosha* (supra) and I have found that the injuries sustained in those cases were not comparable to the present one as the injuries are more severe than those suffered by the Respondent.

26. I have considered the authorities above and the nature of the injuries suffered by the Appellant and the fact that his permanent disability was assessed at 2%. I have also considered the current inflation rates and I find that the award of Kshs 2,200,000/= was excessive. I hereby vacate the award of Kshs 2,200,000 and substitute it with an award of Kshs 800,000/=.

27. In regard to the future medical expenses, the Court of Appeal in *Tracom Limited & another v Hassan Mohamed Adan* [2016] KECA 150 (KLR) held: -

“...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd vs. Gituma* (2004) 1 EA 91, this Court, stated:

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“And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require...”

28. Flowing from the above, a prayer for future medical expenses was a special damage which had to be pleaded and proved. I have looked at the Plaint dated 8th March 2022 and I have noted that the Appellant pleaded for Kshs 150,000/= for the future removal of implants. This prayer was supported by Dr. Sokobe’s Medical Report (P.Exh 4) which indicated that the Respondent would need the Kshs 150,000/= for the removal of the implants. This prayer was granted by the trial court and I uphold the same.
29. In regards to the special damages, the Respondent pleaded Kshs 6,000/= for the Medical Report, Kshs 60,000/= for treatment and medical expenses and Kshs 550/= for motor vehicle search. I have seen the bundle of receipts produced as P.Exh 6 and they support the Respondent’s prayer for Kshs 66,550/= as special damages. This prayer was awarded by the trial court and I uphold the same.
30. The final computation is as below:-
 - i. General Damages Kshs 800,000/=
 - Less 35% Contribution Kshs 280,000/=
 - Kshs 520,000/=
 - Add Future Medical Expenses Kshs 150,000/=
 - Add Special damages Kshs 66,550/=

Total Kshs 736,550/=.

31. In the final analysis, the trial court’s award of Kshs 1,473,257/= is substituted with Kshs 736,550/=.
32. In the end, the Memorandum of Appeal dated 8th May 2023 is merited as the damages awarded to the Respondent is reduced from Kshs 1,473,257/= to Kshs 736,550/=. The Appellant shall have the costs of the Appeal while the costs and interest in the main suit remain as awarded by the trial court.
33. 30 days stay of execution granted.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH, 2025.

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J.K.NG’ARNG’AR



JUDGE

**Judgement delivered in the presence of the Kimathi for the Appellant, N/A for the Respondent.
Susan (Court Assistant).**

