



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mutinda v Runji (Civil Appeal E038 of 2024)  
[2025] KEHC 3914 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3914 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E038 OF 2024  
RM MWONGO, J  
MARCH 26, 2025**

**BETWEEN**

**ELIAB MUIA MUTINDA ..... APPELLANT**

**AND**

**TABITHA NGITHI RUNJI ..... RESPONDENT**

*(Appeal arising from the decision of Hon. S.K. Ngii, PM in  
Siakago PMCC No. E097 of 2022 delivered on 28th March 2024)*

**JUDGMENT**

**Background and appeal**

1. This appeal arises out of a road traffic accident prosecuted in the lower court. By a plaint dated 24<sup>th</sup> November 2022, the appellant sought general and special damages for injuries suffered in the accident.
2. The appellant's case there was that on or about 8<sup>th</sup> January 2022, he was lawfully riding his motorcycle Registration Number KMEZ 842E at Gachoka Market along the Kiritiri - Embu Road at the junction to Gachuriri Market. The respondent thereupon, carelessly, recklessly and/or negligently drove motor vehicle Registration Number KCZ 380C Toyota Wish along the said road causing it to lose control that it hit the said motorcycle. As a result, the Plaintiff sustained the following injuries: Osteoarthritis right knee joint; wound on left leg; and wound on head, left side.
3. The respondent neither entered appearance nor did he defend the suit. Ultimately, the trial court awarded general damages of Kshs.150,000/- plus costs.
4. Dissatisfied, the appellant filed a memorandum of appeal dated 16<sup>th</sup> April 2024, seeking the following orders:
  1. That the appeal be allowed;



2. That an order setting aside the subordinate court's judgment issued on 28<sup>th</sup> March 2024 in Siakago Civil Suit Number E097 of 2022 be issued;
3. That the Honourable court be pleased to re-evaluate the Appellant's evidence and make a finding that the award of general damages was inordinately low and the court do reassess the award of general damages;
4. The costs of the appeal be provided for.
5. The appeal is premised on the grounds that the learned trial magistrate erred in law and fact:
  1. The learned magistrate erred in law and fact by failing to consider and analyze the medical evidence tendered by the Appellant when awarding general damages for pain and suffering;
  2. The learned magistrate erred in law and fact in failing to consider the seriousness of the injuries suffered by the Appellant herein indicated in the P3 Medical form(PEXH2), Discharge Form (PEXH3) and Physiotherapy Medical notes (PEXH4) when awarding general damages for pain and suffering;
  3. The learned magistrate misapplied the principles governing the assessment of damages by giving an award of Kshs.150,000/= for general damages for pain and suffering which award was inordinately low and not proportionate to the injuries suffered by the Appellant; and
  4. The learned magistrate erred in law and fact in failing to consider the Appellant's submissions and the authorities annexed in support of the award of general damages for pain and suffering.

### **Hearing and Findings of the trial court**

6. The appellant testified as PW1 at the formal proof hearing and rehashed his evidence in Chief. In its judgment, the trial court considered the medical report dated 22<sup>nd</sup> November 2022 by Dr. Maina, indicating that the appellant had suffered: osteoarthritis on the right knee joint; a wound on the left leg; and a wound on the left side of the head.
7. The Magistrate considered the cases of West (H) and Sons Ltd v Shepherd [1964] AC 326 as cited with approval in Cecilia Mwangi & another v Ruth Mwangi [CA 251/1996](#), Ephraim Wagura Muthui 2 others v Toyota Kenya Limited & 2 others [2019] eKLR and FM (Minor suing through Mother and next friend MWM) v JNM & another [2020] eKLR. He found that the award of Kshs.150,000/= for general damages was fair and that the amount of Kshs.2,500,000/= sought by the appellant was excessive. He found that the special damages pleaded were not strictly proved and did not award them. Costs were awarded to the appellant.

### **Submissions**

8. As in the lower court, the appeal herein proceeded ex-parte. Thus, only the appellant filed his written submissions, in which he asserted that the trial court's award of general damages is too low in the circumstances. He submitted that he sustained these injuries:
  - a. Right Knee Osteoarthritis
  - b. Partially healed left leg wound



- c. Unable to walk for long distances due to left leg and knee joint pain
  - d. Headaches and eye ache after the accident
  - e. Left Knee and anterior leg pain.
9. He urged this court to enhance the award of general damages to Kshs.2,000,000/=. He referred to the decisions in the cases of Akhwaba Olubuliera Nicodemus v Dickson Shikuku [2020] KEHC 7979 (KLR) and Yobesh Makori v Elmerick Mobisa Bota [2021] KEHC 8145 (KLR) for guidance.

### Issues for determination

10. The core issue for determination is whether the trial court's award of damages should be enhanced.
11. The duty of an appellate court is to re-evaluate the evidence adduced before the trial court and make its own finding. This was so stated in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the court held:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

12. The appellant testified that while he was riding his motor cycle, the respondent carelessly drove her motor vehicle and knocked him down when the vehicle was attempting to make a turn towards Gachiriri. He stated that he sustained injuries and he was rushed to Tenri Hospital where he was admitted for 3 days. It was his evidence that since the accident, he developed back problems and continually goes for physiotherapy.
13. At the time of his medical examination on 2/11/2022 by Dr. Kane Maina, it was established that as a result of the accident, the appellant sustained the following injuries:
- a. Right knee joint osteoarthritis
  - b. Partially healed leg wound from left foot and left knee joint injuries
  - c. Partially healed left head wound from injuries of the head.

The doctor opined that the appellant would need treatment comprising antibiotics and analgesics “at a cost of Kshs.100/= per month for about 2 years.”

14. The appellant has pointed this court towards the case of *Akhwaba Olubuliera Nicodemus v Dickson Shikuku* (supra) as a reference point. In that case, the appellant suffered a fracture of the right clavicle leading to internal fixation of the clavicular fracture, crush injury to the right leg leading to below knee amputation of the right leg and Sprained left elbow joint. In that case, the court upheld an award of Kshs.2,000,000/= as general damages for pain and suffering. The injuries in that case are far more severe than the ones the appellant herein suffered.
15. He also cited the case of *Yobesh Makori v Elmerick Mobisa Bota* (supra). In that case, the court upheld an award of Kshs.2,000,000/= where the respondent had suffered: head injury, deep laceration on the scalp, left clavicle fracture, bruises on the upper limbs, crushed left leg, dislocation of the right tarsal



bone and cut wound on the right leg. Again, the injuries in that case are much more severe than those that the appellant herein suffered.

16. The case whose facts are somewhat more comparable with the present case is *Moraa v Constance & another* [2022] KEHC 16650 (KLR). There, the appellant developed post-traumatic osteoarthritis of the right wrist joint that caused her 50% permanent disability on the use of her right hand. The appellate court awarded her KShs.800,000/= as general damages for pain and suffering. Whilst the injuries might be similar to those suffered by the appellant herein the court nevertheless noted the permanent disability arising from the aftermath of the injuries. Here, there was no indication of any disability.

### **Conclusions and Disposition**

17. The assessment of general damages is at the discretion of the trial court. An appellate Court will not substitute a figure awarded for its own figure simply because it might have awarded a different figure had it tried the case at first instance. There must be manifest misapplication of the law. This is the gist of the holding in the Court of Appeal case of *Catholic Diocese of Kisumu v Sophia Achieng* [2004] 2 KLR 55. There the Court stated:

“The appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles.... or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

18. All factors considered, nothing presented by the appellant has persuaded me to interfere with the award by the trial Court. That award is in my view, fair in the circumstances.
19. Accordingly, I find that the appeal lacks merit and is hereby dismissed, with no order as to costs.
20. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 26<sup>TH</sup> DAY OF MARCH, 2025.**

---

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Makworo for Appellant

No Representation by the Respondent

Francis Munyao - Court Assistant

