



REPUBLIC OF KENYA



KENYA LAW
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**Mose v Mungai (Civil Appeal E108 of 2024)
[2025] KEHC 9217 (KLR) (Civ) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9217 (KLR)

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

CIVIL

CIVIL APPEAL E108 OF 2024

AN ONGERI, J

JUNE 30, 2025

BETWEEN

JOHN OKWORO MOSE APPELLANT

AND

MILCAH MBUTU MUNGAI RESPONDENT

*(Being an appeal from the Judgment of Hon. Muthoni Mwangi (SRM)
in Milimani CMCC Case No. 4161 of 2020 delivered on 23rd May 2023)*

JUDGMENT

1. The Respondent filed Milimani CMCC Case No. 4161 of 2020 seeking general damages for pain and suffering and loss of amenities and special damages for injuries she sustained on 22nd March 2019 when the Respondent was travelling in motor vehicle registration number KBZ 211J along Hospital Road stage at Nairobi when the said motor vehicle dropped the Respondent as she was alighting at the stage.
2. The Respondent averred in the plaint that the accident was as a result of the negligence of the Defendant.
3. The Appellant filed a defence dated 19th November 2020 denying the Respondent's claim.
4. The Respondent's evidence in summary was that she was alighting from the motor vehicle in a designated dropping point when the motor vehicle drove off before she could fully disembark and the Respondent fell and sustained the following injuries:-
 - i. Fracture of the left superior pubic ramii.
 - ii. Fracture of the left inferior pubic ramii.
 - iii. Fracture of the right inferior pubic ramii.



5. The trial court found the Appellant 100% liable in negligence and assessed damages as follows:-
 - i. General damages for pain and suffering Kshs. 1,000,000/=
 - ii. Special damages Kshs. 3,050/=
 - Total Kshs. 1,003,050/=
6. The Appellant has appealed against the said judgment on the following grounds:-
 - i. That the learned trial Magistrate erred in law and misdirected herself when she failed to consider the Appellants submissions on both points of law and facts.
 - ii. That the learned Magistrate erred in law and in fact in awarding general damages of Kshs. 1,000,000/= plus special damages Kshs. 3,050/= at 100% liable totaling to Kshs. 1,003,050/= plus costs and interest which amount is/was excessive, unjust in the circumstances considering the nature of claim and the conventional awards in relation to such claim.
 - iii. That the learned Magistrate erred in law and in fact in finding the Defendant 100% liable and awarding the amount awarded by assessing the same against the height of evidence on record.
 - iv. That the trial Magistrate erred in fact and in law in failing to consider the Appellant's/ Defendant's submissions on quantum.
 - v. That the learned Magistrate erred in law and in fact in unduly disregarding the Judicial authorities cited by the Defendant/Appellant and by instead relying on the authorities cited by the Respondents which were unrelated to the actual claim by the Respondent.
 - vi. That the learned trial Magistrate erred in fact and in law in finding that the Respondent was entitled to general damages of Kshs. 1,003,050/= which is a very high award for the injuries suffered.
 - vii. 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 which are soft tissue in nature.
 - viii. That the learned Magistrate erred in law and in fact in unduly the evidence adduced in trial.
7. The parties filed written submissions as follows:-
8. The Appellant did not file any submissions.
9. The Respondent's written submissions opposed the Appellant's appeal on both liability and quantum, urging the court to uphold the trial court's judgment delivered on 4th October 2022.
10. The Respondent submitted that the appeal arises from a road traffic accident on 22nd March 2019 involving the Appellant's vehicle, which dropped the Respondent while she was alighting, causing serious injuries.
11. The Respondent, a lawful passenger, testified that the driver negligently drove off before she fully disembarked, an account supported by the police abstract (PW2) and the Appellant's own witness (DW1).
12. Since the Appellant failed to call the driver to rebut this evidence, the trial court rightly held the Appellant 100% liable.



13. The Respondent relied on the principle that uncontroverted evidence must be believed, as affirmed in Meru Civil Suit No. 28 of 2019, where unchallenged evidence stands undisputed.
14. On quantum, the Respondent sustained multiple fractures, leading to an 18% permanent incapacity, as confirmed by a medical report.
15. The trial court awarded Kshs. 1,000,000 in general damages and Kshs. 3,050 in special damages, which the Respondent argues is reasonable given the severity of the injuries and aligns with precedents like Florence Hare Mkaha v Tawakal Mini Coach (Kshs. 2,040,000 in 2012) and Peace Kemuma Nyanch'era v Michael Thuo (Kshs. 2,500,000 in 2014).
16. The Respondent contended that the award is neither excessive nor erroneous and prays for the appeal's dismissal with costs.
17. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. In *Selle v Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High 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.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

18. The issues for determination in this appeal are as follows;
 - i. Whether the trial court was right in holding the Appellant 100% liable in negligence.
 - ii. Whether the assessment of damages was excessive.
19. On the issue of liability, the evidence is that the Respondent was alighting at a designated stage.
20. It was the duty of the Appellant's driver to ensure that the Respondent had fully disembarked before driving off.
21. I find that the trial court correctly applied the principle established in *Karanja v Malele* [1983] KLR 142 that a carrier owes a duty of care to passengers during boarding and alighting.
22. The Respondent's uncontroverted evidence that the Appellant's driver negligently drove off before she had fully disembarked at a designated stage was properly accepted, particularly since the Appellant failed to call the driver to rebut this account, as required under the principle in *Kinyanjui Kamau v George Kamau* [2015] eKLR where the court held that failure to call a material witness invites an adverse inference.



23. Regarding quantum, the award of Kshs. 1,000,000 for general damages for three pelvic fractures resulting in 18% permanent disability is consistent with precedents for comparable injuries.
24. In Peter Gakere Ndiangui v Sarah Wangari Maina [2021] eKLR, the High Court upheld Kshs. 500,000 for 15% disability from similar fractures, while in Joseph Njeru Luke & 3 Others v Stellah Mukii Kioko [2020] eKLR, Kshs. 750,000 was awarded for comparable injuries.
25. The Court of Appeal in Butt v Khan [1981] KLR 349 established that an appellate court will only interfere with damages where the award is so inordinately high or low as to represent an entirely erroneous estimate.
26. The present award falls within the reasonable range established by case law and does not warrant interference.
27. The special damages of Kshs. 3,050 were specifically pleaded and proved through receipts, satisfying the requirement in Hannah Wanjiku Wanderi v KENCOM Ltd [2013] eKLR that special damages must be strictly proved.
28. Consequently, the appeal is dismissed with costs to the Respondent, as the Appellant has failed to demonstrate any error in the trial court's application of legal principles or assessment of evidence.
29. The judgment delivered on 23rd May 2023 in Milimani CMCC Case No. 4161 of 2020 is hereby confirmed in its entirety.
30. The only circumstances where the appellate court can interfere with the award of the trial court is where the trial court applied wrong principles and arrived at an erroneous decision or where the award is too high or too low as to warrant interference.
31. I dismiss the appeal with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF JUNE 2025 VIRTUALLY VIA MT AT VOL.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellant

.....for the Respondent

