



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthee v Njagi (Civil Appeal E019 of 2024)  
[2025] KEHC 11669 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 11669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E019 OF 2024**

**RL KORIR, J  
JUNE 30, 2025**

**BETWEEN**

**EZRA KIRIMI MUTHEE ..... APPELLANT**

**AND**

**PATRICK NJAGI ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. D.A Ocharo (SPM)  
in Chuka CMCC No.E150 of 2022 delivered on 23rd May, 2024.)*

**JUDGMENT**

1. The Plaintiff [now Respondent] filed suit against the Defendant [now Appellant] for damages arising out of injuries he sustained in a Road Traffic Accident on 9<sup>th</sup> May 2022 along Chuka-Embu Road involving the Defendant's Motor Vehicle Registration No. KCY 371 Z Toyota Pick-up and the Plaintiff's Motor Cycle Registration No. KMDY 096 W Tiger.
2. The Plaintiff blamed the Defendant for negligence in causing the accident. However, in the course of the proceedings, parties entered a consent on liability in the ratio of 80% to 20% in favour of the Plaintiff.
3. On 23<sup>rd</sup> May 2024 the trial court, Hon. D.A Ocharo [SPM] entered Judgement as follows:-
  - i. General damages -Kshs.3,000,000.00
  - ii. Future Medical expenses- Kshs.110,000.00
  - iii. Special damages -Kshs.38,850.00Total - Kshs.3,148,850.00  
Less 20% contribution- 629,770.00



Total Kshs.2,519,080.00

4. The trial court also awarded costs and interest from date of Judgement.
5. Aggrieved by the Judgement the Appellant filed the present Appeal on grounds reproduced verbatim that:-
  - i. The Honourable Trial Magistrate erred in fact and in law by awarding the Respondent inordinate General Damages amounting to Ksh.3,000,000/- to constitute a miscarriage of justice in circumstances of this case.
  - ii. The Learned Trial Magistrate erred in law and in fact in awarding Kshs.38,850/- special damages by failing to consider that the receipts produced were illegible and did not bear the mandatory stamp duty revenue stamps.
  - iii. The Learned Trial Magistrate erred in fact and in law by failing to consider the Appellant's authorities in their submission on quantum hence arriving to an erroneous decision.
  - iv. The Honourable Trial Magistrate erred in fact and in law in failing to consider the Appellant's documents that were filed and produced in court.
  - v. The Honourable Trial Magistrate misdirected himself as to the facts of the case thus arriving at an erroneous decision.
  - vi. The Learned Trial Magistrate misdirected himself by failing to rely on contemporary comparative and persuasive decisions and authorities in awarding general damages in the suit.
  - vii. The Learned Trial Magistrate's judgement was wholly not supported in law by evidence tendered in court by the parties and manifestly a departure from established legal principles.
6. The Appellant prayed that the judgement be set aside and damages be re-assessed afresh in line with ease current law.
7. The Appeal was canvassed by way of written Submissions. The Appellant filed submissions dated 17<sup>th</sup> March 2025 while the Respondent's submissions were dated 7<sup>th</sup> April 2025.
8. The Plaintiff's case was that he was riding a motor cycle registration KMDY 096W Tiger when he was hit by Motor Vehicle Registration No.KCY 371Z Toyota Pick-up. That he was thrown off the motor cycle and landed onto the pedestrian path. He became unconscious and was taken to Chuka Referral hospital where he was admitted from 9<sup>th</sup> May, 2022 and discharged on 24<sup>th</sup> June, 2022. That he sustained serious injuries and was amputated on the right leg. He also suffered abrasion of the hands and phantom pains.
9. Dr. Nicholas Nkonge [PW3] who examined the Plaintiff on 7<sup>th</sup> July 2022 testified that the Plaintiff sustained traumatic amputation of the right lower limb and soft tissue injuries and was walking on crutches at the time of examination. That the injuries resulted to permanent disability and would require future prosthesis. PW3 produced the Treatment Notes [P.Exhibit 2] and [Medical Report P. Exhibit 3.]
10. Joseph Mwenda Mwirebua [PW4] was a clinical officer at Chuka County Referral hospital. He testified that he attended the Plaintiff on 9<sup>th</sup> May, 2022. That he had a tender swelling and lacerated wound on the right leg and an X-ray revealed fracture on the fibre bone. That he was an inpatient between 9<sup>th</sup> May, 2022 to 24<sup>th</sup> June, 2022.



11. PW4 testified that he classified the injury as grievous and the patient's right leg was amputated. He filled the P3 Form which he produced as P. Exhibit 6.
12. The trial court after comparing awards for comparable injuries awarded Kshs.3,000,000/- as damages for pain, suffering and loss of amenities. The court also awarded special damages amounting to Ksh.38,850/- and future medical expenses of Kshs.110,000.
13. My work as a first appellate court is to analyse and re-examine the evidence adduced in the lower court and reach my own conclusions bearing in mind that I neither saw nor heard the witnesses testify. I take guidance from the case of *Kiilu & Another v Republic* [2005] 1 KLR 174, where the Court of Appeal stated:-
 

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court's own decision on the evidence. The first appellate court must itself weight conflicting evidence and draw its own conclusions.

It is not the function of a 1<sup>st</sup> appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses.”
14. I have considered the Grounds of Appeal, the Record of Appeal and the respective submissions of the parties. I discern the following two issues for my determination:-
  - i. Whether the award was erroneous
  - ii. Who should bear the costs.
15. Ground 1, 3, and 6 of the Appellant's Memorandum stated that the award was inordinately high and was not in tandem with recent comparable awards. The Appellant urged in his submissions on this Appeal that the award on general damages was inordinately high and that the trial court did not consider their submissions on the same. They urged this court to interfere with the award as the same was not based on the legal principles that general damages are awarded to compensate and not benefit the injured party and that comparable awards should be made for comparable injuries.
16. On the other hand, the Respondent submitted that the general damages awarded were in tandem with damages awarded in comparable cases as relied on by the trial court. They urged this court not to interfere with the award as there was no error of principle.

### **Analysis and Determination**

17. It is trite that assessment of damages was at the discretion of the trial court and an appellate court would not interfere unless the award was inordinately high or low. In *Butt v Khan* [1981] KLR,356.
 

“An Appellant court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that a Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”
18. It was common ground that the Plaintiff suffered injuries. The extent of the injuries was stated in Medical Report [Exhibit 3] and Treatment Notes [Exhibit 2] as well as the P3 Form [Exhibit.6].



The P3 Form dated 15<sup>th</sup> July, 2022 stated the lacerations and cut wound and fracture of the tibia bone and amputation as injuries sustained by the Plaintiff. The Medical Report [Exhibit 3] stated that the plaintiff had sustained abrasion and traumatic amputation on the lower right limb. It stated that the Plaintiff had received antibiotics, analgesics, cleaning and dressing of wounds; surgery of amputation and stump fashioning and physiotherapy. That at the time of the Report, the plaintiff had phantom pains and was walking on crutches.

19. The Defendant's counsel did not object to the production of the Medical Report and neither did she challenge the findings in that Report with respect to the injuries sustained by the plaintiff.
20. I further observe that the Defendant's Counsel had been granted leave by the court to procure a second Medical Report. The Defendant's further list of Documents contains a Medico –Legal Report dated 14<sup>th</sup> November 2023 prepared by one Dr. Wambugu. The Report details the injuries and also states that the Plaintiff was amputated and had permanent disability which requires prosthesis. It was however unclear from the Record whether or not the Report was produced in court.
21. It is therefore my finding based on the testimony of the Plaintiff and the medical evidence presented by Dr. Nkonge that the Plaintiff suffered injuries including traumatic amputation of the lower right limb abrasion of the hand and phantom pain. The injuries resulted in permanent disability of the affected limb which required prosthesis.
22. I have looked at the authorities cited by the parties. The Appellant cited the following cases:
  - i. Florence Njoki Mwangi v Peter Chege Mbitiru [2014] eKLR with an award of Kshs. 700,000/- for amputation of the right foot.
  - ii. Jane Wangui Murage v Dakianga Distributors Ltd [2012] eKLR which awarded Kshs.400,000/- for left leg amputation.
  - iii. Frodak Cleaning Services & Another v Daniel Meshack Shikanga [2017] eKLR where the court awarded Kshs.1,500,000/- for amputation of leg above the knee.
  - iv. Nelson Njihia Kimani v David Marwa & Another 2017 eKLR where the court awarded Kshs.1,500,000 for amputation of the lower right limb.
23. The Appellant urged that an award of Kshs.1,500,000/- would suffice for pain, suffering and loss of amenities.
24. The Respondent on the other hand relied on the following authorities.
  - i. Munyoro Mong'are Shere & Another v Timothy Nyagaka [2021] eKLR where the award was Kshs.3,500,000/- for amputation of the right limb at the knee. The Plaintiff in this case however had other multiple injuries.
  - ii. Crown Bus Services Ltd & 2 others v B.M [Minor suing through his mother and next friend [2020] eKLR where the award was kshs.2,500,000/- for amputation of right leg at the knee.
25. I have considered the authorities cited by the parties. The Appellant's authorities are fairly old which explains the low awards, while the Respondent's authorities were more recent.
26. Apart from the Authorities cited to me by the parties, I have found the following authorities helpful.
  - [i] Jackson Mutuku Ndeti v AO Bayusuf & Sons Ltd [2007] eKLR where the court awarded Ksh.2,000,000/- for an amputated leg.



- [ii] In *Cosmas Mutiso Muema v Kenya Road Transport Ltd & Another*, Mombasa HCCC No. 285 of 2006, where the court awarded 2,500,000 for an amputated leg.
27. I am persuaded that the award of Kshs.3,000,000/- was on the higher side. I find an award of Kshs.2,500,000/- to be a fair compensation.
28. Special damages must be specifically pleaded and proved. In the *Plaint* dated 7<sup>th</sup> July, 2022, the Plaintiff prayed for general damages for pain, suffering, loss of amenities and future medical expenses.
29. Future Medical expenses depend on the injuries sustained and the treatment to be availed in the future. In *Hahn v Singh* [1985] KLR 716 the court held that:-
- “Special damages must not only be specifically claimed [pleaded] but also strictly proved..... for they are not the direct natural or probable consequence of the act complained of and may not be inferred the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
30. In this case, Dr. Nicholas Nkonge PW3 testified that the Plaintiff after being amputated would require a prosthesis to aid his mobility. He estimated that cost at 110,000. The trial court awarded Ksh.110,000 and I uphold the award.
31. With respect to special damages the Appellant had faulted the trial court in Grounds 2 and 7 for awarding the sum. They submitted that the award of Kshs.3,000/- for the demand letter should be excluded as the same would be catered for in costs of the suit. The Respondent did not submit on this issue. It submitted generally that the bundle of receipts totaling Kshs.38,850/- was produced and there was no opposition by the Defendant.
32. I agree with the Appellant that the Demand letter fees falls within the cost of the suit. The same is therefore deducted.
33. I have looked at the bundle of receipts. The legible ones are official search Kshs.550, medical report Kshs.10,000, purchase of medicine receipts totaling Kshs.10,200 all making Kshs.20,750 which I award.
34. The receipt from Chuka Referral hospital was hardly legible and was a motley of payments received, invoices and pending payments. It was a document thrust upon the court with no explanation or highlight. It was the Respondent’s duty to show what payments were made and by whom. I discard the said receipt as being of no evidential value.
35. In the end, the Appeal succeeds to the extent that the special damages shall be Kshs. 20,750 instead of Kshs.38,850 while the general damages are reduced to Ksh. 2,500,000/-. The award shall therefore be:-
- General Damages - 2,500,000  
 Future medical expenses - 110,000  
 Special damages - 20,750  
 Total - 2,630,750  
 Less 20% contribution - 526,150  
 Total - 2,104,600
36. The costs and interest remain as awarded by the trial court while each party shall bear their costs in this Appeal.



37. Orders accordingly.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**R. LAGAT-KORIR**

**JUDGE**

Judgment delivered in the absence of parties who had notice of delivery.

