



REPUBLIC OF KENYA



KENYA LAW
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Ananda Marga Universal Relief Team (AMURT) & another v Karanha (Civil Appeal E310 of 2024) [2025] KEHC 9159 (KLR) (Civ) (27 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9159 (KLR)

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

CIVIL APPEAL E310 OF 2024

AN ONGERI, J

JUNE 27, 2025

BETWEEN

ANANDA MARGA UNIVERSAL RELIEF TEAM (AMURT) 1ST APPELLANT

EBBY MUREBI 2ND APPELLANT

AND

LUCY NJERI KARANHA RESPONDENT

(Being an appeal from Judgment of Hon. S. N. MUCHUNGI (PM) in Milimani CMCC no. E3551 of 2022 delivered on 2nd February 2024)

JUDGMENT

1. The respondent in this appeal filed Milimani CMCC no. E3551 of 2022 seeking general damages for pain and suffering, special damages of ksh.16,300 plus cost and interest in respect of injuries the respondent sustained when her tooth was extracted at the appellant's facility.
2. The respondent's evidence was that on 22nd March 2018, she sought medical treatment at the 1st appellant's medical facility known as AMURT Health Centre which is located along Waiyaki way at Mountain View.
3. The respondent had toothache on one of her wisdom teeth.
4. The respondent paid consultation fees and she was told the tooth had to be extracted.
5. She paid kshs.300 for extraction of the tooth.
6. She was injected to dull the pain but the pain during the procedure was unbearable.
7. The respondent told the 2nd appellant to stop but she insisted promising that she was almost done.



8. After extraction, the respondent saw a bone attached to the wisdom teeth that was removed.
9. The 2nd appellant assured her that it was normal for the wisdom teeth to come out with a bone.
10. The 2nd appellant prescribed medicine for the respondent and allowed her to go home.
11. On the way home the pain became worse and the respondent's face started swelling.
12. The following day the respondent returned to the facility but she was assured that the pain and swelling would subside. She was given more medication.
13. That night the pain got worse and the respondent would not eat or talk properly.
14. The following day she returned to the facility but she did not find the 2nd appellant. The person who attended her assured her that she would get better.
15. On 25th March 2018, the respondent got worse, she could not eat, open her mouth or talk and she was spitting pus.
16. The respondent returned to the facility on 26th March 2018 accompanied by her husband and demanded to be referred to another facility.
17. The 2nd appellant refused but upon insisting she was given a referral letter to KNH where an x-ray was done which showed that a chunk of her jaw bone had been removed and that she suffered a fracture of the jaw bone and a severing of the jaw muscles and nerves leading to a condition called trismus.
18. The respondent said she closed her saloon business at Nairobi CBD as she could not work.
19. She lodged a complaint with the Kenya Medical Practitioners and Dentists council (KMPDU) and the appellants were found guilty but they did initiate compensation hence the respondent filed suit.
20. The appellants offered the respondent compensation of Kshs.110,000 but she said she wanted ksh.800,000.
21. The appellant filed a defence dated 19th August 2022 denying the respondent's claim and prayed for dismissal of the suit.
22. In their evidence the appellants said a pre-extraction x-ray would not have prevented the tooth coming out with the bone.
23. Further the appellants said the fact that the respondent suffered from traumatic extraction resulting in maxillary tuberosity procedure leading to TMJ pain and trismus is a normal occurrence or side effect associated with tooth extraction and not negligence.
24. There was evidence that the medical council found the appellants liable and fined them ksh.100,000 and that the appellants did not appeal from the decision of the medical council.
25. The trial court found the appellants liable in negligence and awarded damages as follows;
General damages ksh.600,000
Special damages ksh. 5,200
Total ksh.605,200
26. The appellants have appealed against the judgment on the following grounds;



- i. The Honorable Magistrate erred in law and in fact by holding the Appellants liable for negligence in their treatment of the Respondent
 - ii. The Honourable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the Appellants had discharged their duty of care owed to the Respondent
 - iii. The Honourable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the Respondent had not tendered any evidence to demonstrate that the standard of care the Appellants gave in treating the Respondent fell short of the standard objectively required of a reasonably skilled professional in this field.
 - iv. The Honorable Magistrate erred in law and in fact in dismissing the Appellants' submissions that it had adhered to the standard guidelines/regulations in treating the Respondent.
 - v. The Honorable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the Kenya Medical Practitioners & Dentist Council, as it then was, lacked jurisdiction to determine negligence on the part of the Appellants herein
 - vi. The Honourable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the ruling of the Kenya Medical Practitioners & Dentist Council, as it then was, delivered on 7th October, 2020 should be expunged from court record as it lacked jurisdiction to determine a dispute involving the Appellants.
 - vii. The Honourable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the Respondent was guilty of contributory negligence by failing to adhere to the medical instructions given by the Appellants.
 - viii. The Honourable Magistrate erred in law and in fact in dismissing the Appellants' submissions that the Respondent had not suffered any injury as a result of the tooth extraction carried out on 22nd March, 2018.
 - ix. The Honorable Magistrate erred in law and in fact in dismissing the Appellants submissions that the Respondent had not suffered any disability.
 - x. The Honorable Magistrate erred in law and in fact in awarding an exorbitant sum as general damages for alleged negligence on the part of the Appellants.
27. The parties filed written submissions as follows;
 28. The Appellants seek to overturn the lower court's judgment dated 2nd February 2024, which held them liable for medical negligence in the treatment of the Respondent and awarded excessive damages.
 29. The case stems from a tooth extraction procedure performed on the Respondent on 22nd March 2018.
 30. The Appellants argued that the Respondent failed to prove negligence, as she did not demonstrate that their treatment fell below the standard of care expected of a reasonably skilled dental practitioner.
 31. They contended that the trial court erred in relying on the Respondent's expert witness, who claimed that an X-ray was mandatory before extraction, despite no written regulations supporting this assertion.
 32. The Appellants' expert testified that no such standard exists, and differences in medical opinion do not constitute negligence.



33. Additionally, the Appellants challenged the admissibility of the Kenya Medical Practitioners & Dentist Council's ruling, arguing that the Council lacked jurisdiction over the 1st Appellant (a health facility) and the 2nd Appellant (a Community Oral Health Officer) under the unamended *Medical Practitioners and Dentists Act*.
34. They further disputed the severity of the Respondent's alleged injuries, noting that no medical report or X-ray confirmed a maxillary fracture, while trismus and swelling are common post-extraction side effects.
35. Further, that the Respondent's claim of psychological distress and loss of business was unsupported by evidence, and special damages were neither pleaded nor proved.
36. The Appellants argued that the trial court's award of Kshs. 600,000 in general damages was excessive and arbitrary, as it was not based on comparable precedents.
37. They cited the cases where similar soft tissue injuries attracted significantly lower awards (e.g., Kshs. 100,000–200,000) and urge the appellate court to set aside the judgment.
38. The appellants emphasized that the Respondent's non-compliance with postoperative instructions contributed to her complications and that the Appellants acted within acceptable medical standards.
39. The appeal seeks a full reversal of the lower court's decision, with costs awarded to the Appellants.
40. The Respondent submitted that the Appellants breached their duty of care, causing significant injuries, and that the trial court's award of damages should not be disturbed on appeal.
41. That the duty of care owed by the Appellants—a dentist and the medical facility—is undisputed, as established in precedents like *Ricarda Nioki Wahome v Attorney General* and *Paul Semeve v Aga Khan Hospital*, which hold that healthcare providers assume responsibility for patients upon consultation.
42. The trial court correctly found negligence, as the 2nd Appellant failed to conduct an X-ray before extracting a decayed tooth, ignored the Respondent's severe pain during the procedure, and mismanaged post-operative care by not prescribing antibiotics or addressing complications like trismus (jaw stiffness) and infection.
43. That the traumatic extraction fractured the Respondent's maxilla, causing prolonged pain, swelling, and psychological distress, corroborated by Kenyatta National Hospital's medical report.
44. On damages, the Respondent contended that the Kshs. 600,000 award was justified, as the trial court considered relevant factors—such as the avoidable fracture, repeated hospital visits, prolonged recovery, and comparable awards in cases like *Ahmed Mzee Famau v Veronica Muiva* (Kshs. 500,000 for a jaw fracture).
45. The respondent further submitted that the appellate court should not interfere unless the award is based on misapplied principles or is inordinately high, per *Catholic Diocese of Kisumu v Tete* and *Kemfro Africa Ltd v Lubika*.
46. The Respondent dismissed the Appellants' challenge to the Kenya Medical Practitioners & Dentists Council's ruling, noting they never appealed it, partially complied by paying a fine, and even produced it as evidence.
47. The respondent said that the trial court independently assessed the evidence without overreliance on the ruling.



48. In conclusion, the Respondent urged the court to dismiss the appeal, asserting that it lacks merit and that the trial court's findings were sound.
49. Finally, the Respondent submitted that the costs should follow the outcome.
50. The first appellate court, while hearing a first appeal, bears a crucial duty to conduct a thorough and independent reappraisal of the entire evidence on record, both oral and documentary, rather than merely endorsing the findings of the trial court.
51. It must examine not only questions of law but also questions of fact, unless restricted by statute, and arrive at its own conclusions based on a proper assessment of the evidence.
52. The first appellate court is obligated to apply its mind independently, scrutinizing the trial court's reasoning and correcting any errors—whether factual, legal, or procedural—that may have crept into the lower court's judgment.
53. The issues for determination in this appeal are as follows;
 - i. Whether the respondent proved her case to the required standard.
 - ii. Whether the award of damages was excessive.
54. On the issue as to whether the respondent proved her case, the elements of the tort of negligence are as follows;
 - i. That the appellants owed the respondent a duty of care.
 - ii. That there was breach of the duty of care.
 - iii. That the respondent suffered resultant damage.
55. I find that the respondent successfully proved the three elements of negligence as set out in tort law: duty of care, breach, and resultant damage.
56. As a healthcare providers, the appellants owed the respondent a duty of care when she sought treatment at their facility, a principle well-established in cases like *Ricarda Nioki Wahome v Attorney General*.
57. The breach was demonstrated through multiple failures - the 2nd appellant's extraction of the wisdom tooth without conducting a pre-extraction X-ray, ignoring the respondent's excruciating pain during the procedure, and providing inadequate post-operative care despite worsening symptoms.
58. These actions fell below the standard of care expected of a reasonably skilled dental practitioner.
59. The resultant damage was amply proved through the Kenyatta National Hospital's medical report confirming the fractured jaw bone, severed muscles and nerves, and the debilitating condition of trismus that forced the respondent to close her business.
60. The appellants' contention that the Kenya Medical Practitioners and Dentists Council lacked jurisdiction is unconvincing since they never appealed the Council's finding of negligence and even partially complied by paying the imposed fine.
61. Their belated challenge to the Council's jurisdiction cannot override its substantive findings, especially when they produced the ruling as evidence themselves.
62. Regarding quantum, the trial court's award of Kshs. 600,000 general damages is reasonable and comparable to awards in similar cases like *Ahmed Mzee Famau v Veronica Muiva* where Kshs. 500,000 was awarded for a jaw fracture.



- 63. The principles in *Kemfro Africa Ltd v Lubika* guide that appellate courts should not interfere with damages unless they are inordinately high or based on wrong principles, which is not the case here.
- 64. The appellants' argument about contributory negligence fails because there is no evidence the respondent disregarded post-operative instructions.
- 65. Their claim that complications were normal side effects contradicts the medical evidence showing an actual fracture rather than routine post-extraction issues.
- 66. The trial court properly evaluated the evidence and applied relevant precedents.
- 67. Since the appeal raises no meritorious grounds to overturn the well-reasoned judgment, it is dismissed with costs to the respondent as the successful party.
- 68. The appeal be and is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 27TH DAY OF JUNE, 2025.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellant

.....for the Respondent

