



REPUBLIC OF KENYA



KENYA LAW
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**Gitonga v Munge & 2 others (Civil Appeal E1088 of 2023)
[2025] KEHC 11769 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11769 (KLR)

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

CIVIL

CIVIL APPEAL E1088 OF 2023

LP KASSAN, J

JULY 31, 2025

BETWEEN

CHARLES NGANGA GITONGA APPELLANT

AND

JOSPHINE WAIRIMU MUNGE 1ST RESPONDENT

PETER MUTHEE KAMAU 2ND RESPONDENT

CHRISPUS THEURI MACHARIA 3RD RESPONDENT

(Appeal from the award of the Judgement of Honourable S.A Opande dated 9th October 2023)

RULING

1. This is an appeal from the award of the Judgement of Honourable S.A Opande dated 9th October 2023 in which the plaintiff was awarded ksh 120000 among other awards. I have perused the proceedings and wish to note the following in order to determine this appeal;
2. The Appeal is solely on the nature of injuries and damages awarded and so I will not analyse anything outside this issue.
3. The plaintiff testified that he sustained fracture amongst other injuries as a result of the accident. According to the medical report which was produced as exhibit from Karuri Sub District Hospital, the plaintiff sustained a fracture (#) on the frontal skull. The abstract form indicates that the plaintiff sustained injuries equivalent to "grievous harm" which may connote injuries in the caliber of fracture. The trial Court award is only on soft tissue injuries. To the contrary, the second medical report indicate that the Plaintiff suffered soft tissue injuries. The Second Doctor who examined the Plaintiff did not have the X-ray and so he could not be expected to know if there was a fracture or not.



4. The main issue is whether this Court can rely on the evidence by the plaintiff that he sustained a fracture and supported by the police abstract and his first medical report vis a vis the Second medical report which stated that the Plaintiff sustained only soft tissue injuries. The standard of evidence in this matter is that of balance of probability or in other words, the Court need to consider what appears to be weightier. The Second Dr who examined the Plaintiff did not see the X-ray and so can this be regarded fatal to the plaintiff case? The plaintiff was fully represented and so failure by his advocate to ensure that the X-ray is amongst the documents to be taken to the Defendant Doctor cannot be visited upon the Plaintiff and besides the first medical report showing that he sustained a fracture was produced alongside other documents supporting fracture injuries.

5. In passing, I wish to note that the accident must have been a serious one because the rider died on the spot signifying a great impact. The Plaintiff, being a pillion passenger must have had this impact and one will not be surprised that he got a fracture. The onset of the above is that the Plaintiff sustained both a fracture and soft tissue injuries.

Having found that the Plaintiff sustained both fracture and soft tissue injuries, I now analyze the injuries that the plaintiff sustained as per the first medical report. I have read the authority annexed and all relevant information. I find the award of soft tissue injuries reasonable and so I will not interfere. On the fracture sustained, I award the Plaintiff Ksh 500000 (five hundred thousand).

6. In the nutshell, I find that the appeal is partially merited save that the award of general damages as a result of my finding that there was a fracture is added to the general damages already awarded by the lower Court. Otherwise the rest shall remain the same. The total general damages awarded shall attract interest from the date of delivery of the lower Court Judgement. Given the fact that the appeal has been partially allowed, each party shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2025

LINUS P. KASSAN

JUDGE

In the presence of:-

Kiptanui holding brief Waiganjo for Applicant

Kiarie for Respondent

Carol – Court Assistant

