



REPUBLIC OF KENYA



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

**Maina v Kanyigi (Civil Appeal 45 of 2018)  
[2024] KEHC 3202 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3202 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 45 OF 2018**

**J WAKIAGA, J**

**MARCH 20, 2024**

**BETWEEN**

**ALLAN NDEGWA MAINA ..... APPELLANT**

**AND**

**ELIUD NJOROGE KANYIGI ..... RESPONDENT**

*(Being an Appeal from the judgement delivered by Hon. J. J. Masiga  
SRM on 7th August 2018 in Muranga SRMCC NO 128 of 2012)*

**JUDGMENT**

1. This Appeal arises from the judgement by the trial Court in which the Court the Respondent liable at 100% and awarded the Respondent Kshs.800,000 in general damages for pain and suffering as a result of injuries sustained on 17<sup>th</sup> April 2009 arising from a road traffic accident between himself as a pillion passenger and motor vehicle registration number KAB 828 B owned and or driven by the Appellant.
2. Being dissatisfied by the said judgement and decree the Appellant raised the following grounds of Appeal:
  - a. The trial Court failed to consider the Appellant's submissions and awarded excessive damages for soft tissue injuries.
  - b. The Court erred by ignoring the evidence adduced at the trial.
3. Directions were issued on the determination of the Appeal by way of written submissions. On behalf of the Appellant it was submitted that according to the treatment notes, P3 form and police abstract, the Plaintiff sustained soft tissue injuries without any fracture and that as was stated in the case of *Timesales Ltd v Wilson Libuywa* [2008] eKLR a medical report by a doctor who examined Plaintiff much later is of little help.



4. It was contended that the injuries sustained by the Respondent were soft tissue which could not attract an award of Kshs.800,000. It was submitted that an award of Kshs.60,000 would be an adequate compensation based on the principles set in the case of *Jennifer Mathenge v Patrick Muriuki Maina* [2020] eKLR to the effect that damages are meant to compensate a party for the loss suffered and not to enrich a party and must be commensurate to the injuries suffered.
5. In support of the proposed award, reference was made to the cases of *Ephraim Wagura Mutbui & 2 Others v Toyota Kenya Limited* [2019] eKLR where an award of Kshs.100,000 was given and *Eva Karemi & 5 Others v Koskei Kieng & Another* [2020] eKLR where an award of between Kshs.40,000 and Kshs.70,000 was given on Appeal.
6. On behalf of the Respondent, it was submitted that as per the medical report produced by the Plaintiff at the trial, the same sustained fractured pelvis, fracture left radius and ulna bone, fracture right radius and ulna bone, cut wound on the right thigh and temporal region and therefore the award was appropriate.
7. This being a first Appeal, the Court is required to re-evaluate the proceeding tendered at the trial and to come to its own determination thereon. In this cause the Plaintiff testified as PW1, and stated that he was hit on the left side and he had fractures on both hands, dislocation on the right pelvis injuries to the right ankle and on the chest. He was admitted from 17<sup>th</sup> April to 20<sup>th</sup> April 2009. He produced medical report by Dr. Kangi Gitau.
8. This evidence was corroborated by PW2 John Ouko who gave the age of the Plaintiff as 16 years, who sustained head injuries and fractured legs and that the Appellant's driver was charged with causing death by dangerous driving. PW3 Dr. Kanyi Gitau confirmed that the Plaintiff sustained fracture pelvis, fracture of the left radius and ulna bone and fracture of the right radius and ulna bones which were confirmed through x rays and that at the date of examination he was limping and that the Plaintiff was admitted twice, between 17<sup>th</sup> April to 20<sup>th</sup> April 2009 and 10<sup>th</sup> June to 27<sup>th</sup> June 2009.
9. PW4 Patrick Mwangi stated that the Plaintiff was admitted to Murang'a District Hospital twice and that the fractures were not detected in the first admission but were as a result of the accident.

### **Determination**

10. There is only one issue for determination, in this Appeal, which is the injuries sustained by the Respondent. It is the Appellant's contention that the Respondent sustained only soft tissue based on the initial treatment notes against the Medical report produced at the trial. This is an issue of evidence and as an Appellant Court I might not interfere with the trial Court finding thereon without justifiable cause.
11. The Appellant had the opportunity of challenging the Respondent's witnesses by way of cross examination and he who alleges has the burden of proof. The Appellant failed to prove that the Respondent did not sustain the injuries pleaded and proved. I take the view that the Respondent's injuries were proved on a balance of probability and therefore find no merit on the Appellant's Appeal herein which I hereby dismiss with cost to the Respondent.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 20<sup>TH</sup> DAY MARCH 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of:



Mr. Kimani for the Respondent

No appearance for Kimondo Gichuki for Applicant

Jackline – Court Assistant

