



REPUBLIC OF KENYA



**Maina v Muturi (Civil Appeal 8 of 2020) [2024] KEHC 2811 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2811 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A**

**CIVIL APPEAL 8 OF 2020**

**J WAKIAGA, J**

**MARCH 20, 2024**

**BETWEEN**

**FELIX MAINA ..... APPELLANT**

**AND**

**DORIS WANJIKU MUTURI ..... RESPONDENT**

*(Being an Appeal from the Judgement of Hon. S.K. Nyaga Resident Magistrate  
delivered on 24th February 2020 at the Chief Magistrate's Court at  
Murang'a Civil Case No 23 of 2019 - Doris Wangui Muturi v Felix Maina)*

**JUDGMENT**

1. This Appeal arises out of the judgement of the lower Court in which it found the Appellant liable at 100% and awarded the Respondent general damages of Kshs.500, 000 and special damages of Kshs.282,575 as a result of road traffic accident on or about 6<sup>th</sup> February 2018 while the Respondent was travelling as a fare paying passenger in motor vehicle registration number KCP 929B which collided with the Appellant's motor vehicle registration number KBE 921V -ZA 1936.
2. Being dissatisfied by the said determination, the Appellant filed this Appeal and raised the following grounds of Appeal:
  - a. The trial Court erred in fact and law in assessing damages which were manifestly high and misappropriate to the fact and evidence on record.
  - b. The Court failed to consider the Appellant's submissions and authorities cited in support thereof opting to rely entirely on the Respondent's thereby making wrong judgement.
  - c. The Court erred in awarding special damages without proof thereof.
  - d. The Court did not distinguish the authorities submitted by the Appellant on quantum.



## Submissions

3. Directions were issued on the disposal of the Appeal by way of written submissions. On behalf of the Appellant, it was contended that the only ground of Appeal pursued was on special damages of Kshs.284,124 as pleaded, and that the said sum was paid on behalf of the Respondent by NHIF and AON and that at the hearing the Respondent did not submit any receipt to support her contention that she had paid for the hospital bills. It was further submitted that the receipts tendered by the Respondent in evidence only amounted to Kshs.6,200 and not Kshs.7,500 as contended by the Respondent.
4. In support of the Appellant's submissions, reference was made to the cases of *Swalleh Kariuki & Another v Violent Owiso Okuyu* [2021] eKLR where the Court set aside the award on special damages since the documents in support thereof were bills and not receipts, *China WUYi Limited v Irene Leah Musau* [2021] eKLR where the Court held that the Plaintiff is not entitled to be compensated to such an extent as to place him in a better position than that in which he would have found himself.
5. On behalf of the Respondent, it was submitted that special damages were pleaded and in support thereof, the Respondent produced receipts from Kenol Hospital of Kshs.6,000, Jamii Hospital of Kshs.265,075 and hire of taxi at Kshs.6,200, which was awarded by the Court.
6. This being a first Appeal, the Court is under a duty to re-evaluate the record of the proceedings before the lower Court and to come to its own conclusion thereon. The Respondent testified as PW1 and adopted the list of the documents submitted. In cross examination she stated that she was admitted between 17<sup>th</sup> February and 7<sup>th</sup> March 2018 during which period of time she incurred cost and in finding for the Plaintiff the Court noted that special damages were pleaded and proven with receipts.

## Determination

7. In this Appeal, the only issue for determination, is whether the Respondent proved special damages. It is not disputed that the Respondent at paragraph 6 of the plaint pleaded special damages of Kshs.281,125 and in support thereof the same attached receipts which were produced as part of the evidence in chief. Whereas the Appellant's contention is that the bills were not paid by the Respondent, there was no evidence tendered to prove that the Respondent did not pay the bill in view of the receipts issued in her favour and produced in evidence.
8. This being a Court of record, I find no fault with the trial Court's award on special damages. It follows that the Appeal herein lacks merit and subsequently dismiss the same with costs to the Respondent.
9. In the final analysis, the Appeal is dismissed and the award of the lower Court affirmed both on General and special damages. The Respondent is entitled to cost.

**DATED, SIGNED AND DELIVERED THIS 20<sup>TH</sup> DAY OF MARCH 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of :

Ms Naliaka for Mr. Kiama for Respondent

No appearance by Ndirangu Kamau for Applicant

Jackline – Court Assistant

