



REPUBLIC OF KENYA



**Mungai & another v Mutua (Civil Appeal 36 of 2019)  
[2024] KEHC 6055 (KLR) (28 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 36 OF 2019**

**J WAKIAGA, J**

**MAY 28, 2024**

**BETWEEN**

**SERAH NDUTA MUNGAI ..... 1<sup>ST</sup> APPELLANT**

**PHILIP CHEGE KARIUKI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PRISCAH NJERI MUTUA ..... RESPONDENT**

*(Being an appeal from the Judgement of Hon. S. K. Nyagah RM  
delivered on 19th August 2018 in Muranga CMCC No 260 of 2018.)*

**JUDGMENT**

1. This appeal arose from the Judgement of the trial Court in which the Court found the Appellants liable at 90% and awarded general damages against the same in general damages of Kshs 300,000 and special damages of Kshs 13,355, arising out of a road traffic accident on March 17, 2018 involving motor vehicle registration number KBM 631L wherein the Respondent was travelling as a passenger and motor vehicle registration number KBS 596Q owned by the Appellant.
2. Being dissatisfied by the said determination, the Appellant filed this appeal and raised the following grounds of appeal:
  - a. The Court erred in law and fact by awarding General damages which was excessively high considering the injuries.
  - b. The Court did not consider the Appellant's submissions, the law, evidence and decided cases.

**Submission**

3. Directions on the appeal was given and on behalf of the Appellant, it was submitted that as per the medical report by Dr. P.K. Mwangi, the Respondent sustained facial injuries particularized as bruises



- and swelling on the face, blunt soft injuries on the right hand and leg and therefore an award of Kshs 300,000 was so high and against the principles set out in [Sosphinaf Company Limited v James Gatiku Ndolo](#) [2006] eKLR where it was held that the Court is required to give a reasonable award which is neither extravagant nor oppressive.
4. It was contended that an award of Kshs 100,000 would have been reasonable based on the cases of [Daniel Gatana Ndungu v Harrison Angore Katana](#) [2020] eKLR where the award of Kshs 350,000 was reduced on appeal to Kshs 140,000, [Ephraim Wagura Muthui & 2 others v Toyota Kenya limited](#) [2019] eKLR where a sum of Kenya shillings one hundred thousand was awarded and [Godfrey Wamalwa Wambua & another v Kyalo Wambua](#) [2018] eKLR where the sum of Kshs 100,000 was awarded.
  5. On behalf of the Respondent, it was submitted that the Appellant did not tender any material evidence to discount the Respondent account and that in arriving at the award, the trial Court paid particular and exclusive reference to the P3 form and the medical report and relied on the case of [Catherine Wanjiru Kingori & 3 others v Gibson Theuri Gichubi](#) [2005] eKLR where the Court awarded Kshs 300,000.
  6. In support of the trial Court, referenced was made to the following cases : [Lucy Ntibuka v Bernard Mutwiri & others](#) [2007] eKLR where an award of Kshs 500,000 was given, [Samuel Muthama v Kenneth Maundu Muindi](#) [2009] eKLR – Kshs 380,000, [Charles Gichuki v Emily Kawira Mbuba & another](#) [2018] eKLR where a sum of Kshs 300,000 was given and [Francis Ndungu Wambui & 2 others v Purity Wangui Gichobo](#) [2019] eKLR where the Court stated that awards must reflect the trends of previous, recent and comparable awards.
  7. This being a first appeal, the Court is required to re-evaluate the record of the trial Court and to come to its determination thereon while giving allowance to the fact that it did not unlike the trial Court have the advantages of seeing and hearing witnesses.
  8. It is clear that the Appellant contention is on the award of damages, PW1 PRiscah Njeri Mutua testified that she was hit on her head and both hands and in support produced the medical report dated June 28, 2018 in which it was indicated that the Respondent sustained bruises and swelling on the face, bruises and tenderness on the right hand and bruises and tenderness on the right leg.
  9. It is not disputed that the Respondent sustained soft tissue injuries with no complications and in deciding whether the award was excessive, I have looked at the following cases of comparable awards:
    - a. [Lilian Anyango Otieno v Philip Mugoyo Ogila](#) [2022] eKLR where an award of Kshs 150,000 was given on appeal in respect of more severe injuries.
    - b. [Daniel Gatana Ndungu & another v Harrison Angore Katana](#) [2020] eKLR where on appeal an award of Kshs 140,000 was given
    - c. [Pascal v Ouko](#) [2023] KEHC 24463 where on appeal the Court assessed General damages at Kshs 150,000 for more severer injuries.
  10. It is clear that the award herein was excessive having considered the injuries sustained by the Respondent and would therefore allow the appeal, set aside the Judgement of the trail Court and substitute the same with an award of Kshs 150,000.
  11. The Appellant is entitled to cost of the appeal while the Respondent is entitled to cost of the lower Court and it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 28<sup>th</sup> DAY OF MAY 2024**



**J. WAKIAGA**

**JUDGE**

In the presence of :

Ms. Adongo for Kebongo for the Respondent

Mrs. Muya for the Applicant

Jackline – Court Assistant.

