



**Musyoka v Korir & another (Civil Appeal E253 of 2021)
[2024] KEHC 5849 (KLR) (Civ) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5849 (KLR)

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

CIVIL

CIVIL APPEAL E253 OF 2021

WM MUSYOKA, J

MAY 24, 2024

BETWEEN

MICHAEL MUTHINI MUSYOKA APPELLANT

AND

HELLEN CHEMUTAI KORIR 1ST RESPONDENT

JAMES RONO 2ND RESPONDENT

*(An appeal arising from the judgement of Hon. J. Omollo, Resident Magistrate,
RM, delivered on 20th April 2021, in Milimani CMCCC No. 7140 of 2018)*

JUDGMENT

1. The suit, at the primary court, was initiated by the appellant, against the respondents, for compensation, arising from a road traffic accident, which allegedly happened on 5th January 2018, along Cotton Avenue, Nairobi, involving the appellant and motorcycle registration mark and number KMDL 727L, allegedly owned or controlled by the respondents at the material time. The case was that the appellant was a pedestrian, and was knocked down by the said motorcycle, which was negligently handled or controlled by the 2nd respondent. The respondents filed a defence, in which they denied liability, and everything else pleaded in the plaint. In the alternative, they attributed negligence on the appellant
2. No formal hearing was conducted. A consent was recorded on 10th February 2021. Liability was apportioned at 80%:20% in favour of the appellant. The appellant's list of documents, dated 7th August 2018, were admitted without calling the makers, and the parties were to file written submissions, on quantum. Written submissions were duly filed, and a judgment was delivered on 20th April 2021. The



appellant was awarded Kshs. 450,000.00, less 20% contribution, plus Kshs. 3,550.00 special damages, and costs.

3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 23rd April 2021, revolve around the award of Kshs. 450,000.00, general damages, being inordinately low; the trial court failing to consider the conventional awards made for similar injuries; the court failing to consider the nature of the permanent disability suffered by the appellant; among others.
4. Directions were given on 16th June 2023, for disposal of the appeal by way of written submissions. There has been compliance, by both sides.
5. The appellant has submitted that he had suffered a closed head injury; fractures of the left tibia and left fibula; deformed left lower limb at distal third; multiple soft tissue injuries to the chest, neck, hips, right shoulder, and left lower limb. He submitted that permanent disability was assessed at 30%, and that he was predisposed to arthritis following the injuries to the affecting the joints at the lower limbs. He cites *Frankline Chilibasi Spii v Kirangi Liston [2017]* eKLR (W. Korir, J), where the claimant had sustained compound and comminuted fractures of the right distal tibia and the right distal fibula; a fracture of the right distal radius, extending to the right wrist; severe head injuries, involving the left zygomatic arch, extending to the lateral wall of the left orbit; haematoma on the left temporal scalp; soft tissue contusions on the peri-orbital and front scalp; friction burns on the left forearm; and a large wound on the right leg and right foot. An award of Kshs. 1,800,000.00 general damages were made, with special damages of Kshs. 907,000.00, and future medical expenses of Kshs. 250,000.00. He also relies on *Zachary Kariithi v Jason Otieno Ochola [2016]* eKLR (Majanja, J), where an award of Kshs. 1,500,000.00 was made for chest pains; injuries to the waist; compound fractures to the right tibia and right fibula, and left femur bone midshaft; fracture of the right femur bone; fractures of the 3rd, 4th and 5th ribs of the right side; injuries to the forehead, and to the hip joint and big left toe.
6. The respondents submit on all the grounds set out in the memorandum of appeal, and support the decision of the trial court on quantum, and urge that the award by the trial court be upheld. They have attached *Charles Oriwo Odeyo v Appollo Justus Andabwa & another [2017]* eKLR (Riechi, J), where the court awarded Kshs. 800,000.00, for amputation of the right leg below the knee, injuries to the left leg leading to inability to walk, injuries to the head leading to concussion, and bruises and lacerations on the legs and hands.
7. The appeal turns largely on assessment of damages.
8. The medical record filed to guide the court is the medico-legal report by Dr. Roger Hannington Kayo, dated 31st May 2018. The injuries noted were a mild head injury; blunt injuries to the chest, neck, hip, right shoulder and left lower limb; fracture of the left tibia and left fibula; blood loss, soft tissue injuries; and physical and psychological pains. The findings were that he had a deformed left lower limb and a hyper-pigmented scar on the right shoulder. The principal injury was the fracture of the tibia and fibula bones, with multiple soft tissue injuries.
9. Looking at the injuries sustained by the appellant, it would be clear that the authorities cited by both parties would not apply here. I am talking about *Zachary Kariithi v Jason Otieno Ochola [2016]* eKLR (Majanja, J), *Charles Oriwo Odeyo v Appollo Justus Andabwa & another [2017]* eKLR (Riechi, J) and *Frankline Chilibasi Spii v Kirangi Liston [2017]* eKLR (W. Korir, J). The injuries reflected in the medico-legal report by Dr. Kayo are the fractures of the left tibia and left fibula, and soft tissue injuries, which are not comparable to the very serious injuries in the authorities relied on, which are compound



and comminuted fractures, and amputation of limbs, plus other fracture injuries and multiple soft tissue injuries. The 3 authorities would be of little use, in the circumstances.

10. The appellant argues that he suffered 30% permanent disability. I have read and re-read the medico-legal report by Dr. Kayo, and I have not come across any reference to 30% permanent disability. There is mention of a deformity, but the degree is not indicated or classified. There would have been no basis, therefore, for the trial court to consider 30% permanent disability, when the record before it made no mention of the same.
11. I have surveyed the following decisions, where the claimants had suffered similar or comparable injuries. In *George Raini Atungu v Moffat Onsare Aunga* [2021] eKLR (Ougo, J), Kshs. 650,000.00 was awarded for a fracture of the right tibia and fibula bones, a fracture of the left radius and ulna, and contusions to the chest and the pelvis. *Nahson Nyabaro Nyandega v Peter Nyakweba Omboga* [2021] eKLR (Maina, J), it was a compound fracture of the right tibia bone; cut wound on the right leg; and bruises on the face, and the court awarded Kshs. 650,000.00. In *Ndwiga & another v Mukimba* [2022] KEHC 11793 (KLR)(Njuguna, J), the court awarded Kshs. 500,000.00, for fractures of the tibia and fibula, and tenderness and swelling on the left leg. In *Atunga v Mogambi* [2022] KEHC 9854 (KLR)(Ougo, J), the injuries were fractures of the tibia and fibula bones; dislocation of the right hip joint; multiple lacerations on the lower limb; bruises, with multiple cut wounds, on the upper limbs; Dislocation of the right shoulder; chest trauma; and bruises on the frontal part of the head, and Kshs. 550,000.00 was awarded. In *Munene v Mbarire* [2023] KEHC 18417 (KLR)(Njagi, J), the court awarded Kshs. 450,000.00, for fractures of the right tibia and fibula bones; and bruises on the right side of the head, both elbows, right groin and right knee.
12. The decision, the subject of the instant appeal, was rendered in 2021, and the award it made, on general damages, for a fracture of the tibia and fibula, and the soft tissue injuries, was within the range, as emerges from the decisions reviewed above. Consequently, I find no merit in the instant appeal, and I hereby dismiss it. Each party shall bear their own costs.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 24TH DAY OF MAY 2024

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Ombuna, instructed by Ombuna Ongeru & Company, Advocates for the appellant.

Mr. Chasia, instructed by Ochieng Opiyo & Company, Advocates for the respondents.

