



**Njoroge v Muruki (Civil Appeal E099 of 2023)
[2025] KEHC 7819 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E099 OF 2023
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

ELIUD KINYANJUI NJOROGE APPELLANT

AND

DENIS MACHARIA MURUKI RESPONDENT

*(Being an Appeal from the Judgment of Resident Magistrate, Waithira G.
at the Magistrate's Court at Kerugoya, Civil Suit Number E167 of 2022)*

JUDGMENT

1. The Appellant (then Plaintiff) sued the Respondent (then Defendant) for general and special damages that arose when the Appellant while aboard the Respondent's motor vehicle registration number KCA 302E was involved in a road traffic accident with motor vehicle registration number GK B 344H.
2. The trial court conducted a hearing where the Appellant called two witnesses in support of his case and the Respondent did not call any witness in aid of his defence.
3. In its Judgement delivered on 30th October 2023, the trial court awarded the Appellant a net award of Kshs 624,390/=.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 24th November 2023 appealing against the low award on damages.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
6. I now proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.



The Appellant's/ Plaintiff's case.

7. Through his Amended Plaintiff dated 31st January 2023, the Appellant stated that on 27th June 2021 while aboard motor vehicle registration number KCA 302E, he was involved in a road traffic accident with motor vehicle registration number GK B 344H along Kerugoya-Kagumo road. It was his case that the Respondent was the registered owner of motor vehicle registration number KCA 302E.
8. It was the Appellant's case that the Respondent was negligent in the accident. The particulars of the negligence were stated in paragraph 4 of the Plaintiff. That as a result of the accident, the Appellant suffered injuries.
9. The Respondents prayed for special and general damages against the Appellant.
10. Through his written submissions dated 2nd August 2024, the Appellant submitted that the trial court's award on general damages was inordinately low and merited this court's interference. That the lower court erred in finding that the Appellant did not suffer a dislocation of the hip and thus awarded Kshs 450,000/= as general damages. The Appellant further submitted that he proved that he suffered a dislocation of the hip and his evidence was not controverted.
11. The Appellant proposed an award of Kshs 1,800,000/= and relied on Kennedy Ooko Ouma Dachi v Joseph Maina Kamau & another [2018] KEHC 7839 (KLR).

The Respondent's/Defendant's Case.

12. Through his statement of defence dated 17th January 2023, the Respondent denied the occurrence of the accident on 27th June 2021. The Respondent also denied being the registered owner of motor vehicle registration number KCA 302E.
13. It was the Respondent's case that if the accident occurred then it was caused by the negligence of the driver of motor vehicle registration number GK B 344H. The particulars of negligence were contained in paragraph 6 of the Defence.
14. Through his written submissions dated 15th July 2024, the Respondent submitted that awards must be consistent and comparable to similar injuries and awards. He relied on Jane Muthoni Nyaga vs Nicholas Wanjohi Thuo and anor (2010) eKLR where the court awarded Kshs 300,000/= for similar injuries.
15. I have gone through and carefully considered the Record of Appeal dated 13th June 2024, the Appellant's written submissions dated 2nd August 2024 and the Respondent's written submissions dated 15th July 2024. The only issue for my determination was whether the quantum was inordinately low.
16. The trial court awarded the Respondent Kshs 450,000/= as general damages, an amount which the Appellant felt aggrieved by being low.
17. It is trite that for this court to interfere with the above award, it must be shown that the trial court acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the Appellant was entitled. Further, that that awards must be reasonable and comparable to awards in similar cases.
18. From the Amended Plaintiff, the Appellant suffered the following injuries: -
 - a. Deep (4 cm long) cut wound to the chin.



- b. Closed fracture to the head of the right femur.
 - c. Dislocation of the right hip joint
 - d. Severe damage to the right sciatic nerve.
19. Eliud Kinyanjui Njoroge (PW2) testified that he sustained severe injuries as a result of the road traffic accident of 27th June 2021. That he was taken to Kerugoya Level V Hospital for cross reduction of the right hip joint, then was transferred to Afya Bora Hospital and Nairobi East Hospital for an open reduction of the right hip joint. He produced a P3 Form, Treatment Notes, Discharge Summary and a Medical Report as P. Exh 3, 4 and 5 respectively. I have keenly gone through the aforementioned exhibits and I have confirmed that the Appellant suffered the injuries he pleaded in the Plaintiff.
20. In an effort to determine the general damages awardable, I have found the following authorities quite helpful in terms of comparison: -
- I. In *Pestony Limited & another v Samuel Itonye Kagoko* [2022] KEHC 1146 (KLR), the Respondent suffered a fracture of the left femur (mid-shaft) and swollen left tender thigh and the court reduced the award of Kshs 1,400,000/= to Kshs 800,000/=.
 - II. In *David Kimathi Kaburu v Dionisius Mburugu Itirai* and *Florence Njoki Mwangi v Peter Chege Mbitiru* (2014) eKLR, the plaintiff suffered a dislocated hip, and fragmented fractures to the right femur and was awarded Kshs 630,000/=
 - III. In *Eston Mwirigi Ndege & another v Joseph Macharia Kawira* [2019] KEHC 231 (KLR), the court awarded Kshs 500,000/= for the fracture of the right femur and right arm where the Respondent would require future surgery to remove the K nail.
 - IV. In *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] KEHC 8373 (KLR), the court awarded Kshs 450,000/= for a deep cut wound on the left earlobe, a tender left lateral chest wall, swollen and tender left arm, bruises on the left hand, swollen and tender left elbow, bruises on the left elbow, cut wound on the left foreleg, fracture of the tibia and fibula and dislocation on the left hip joint.
21. Guided by the above authorities, it is my finding that the award of Kshs 450,000/= as general damages by the trial court was low. Having taken into consideration the current inflation rates, it is my finding that an award of Kshs 650,000/= would be just and commensurate to the injuries suffered by the Appellant. I therefore substitute the award of Kshs 450,000/= with an award of Kshs 650,000/=.
22. With regard to special damages, the Appellant pleaded a total of Kshs 174,390/. Eliud Kinyanjui Njoroge (PW2) produced receipts for the Medical Report, treatment charges, purchase of crutches and for the motor vehicle search as P. Exh 6, 7, 8 and 9 respectively. I have looked at the receipts and I have confirmed that the Appellant' total outlay on special damages was Kshs 174,390/. I therefore uphold the trial court's award of Kshs 174,390/.
23. Flowing from the above, the amount awarded to the Appellant is as follows: -
- General Damages Kshs 650,000/=
- Add special damages Kshs 174,390/=
- Total Kshs 824,390/=
24. In the end, the Appeal dated 24th November 2023 succeeds as the amount awarded to the Appellant is enhanced from Kshs 624, 390/= to Kshs 824,390/=.



25. Each party to bear their own costs in this Appeal while the costs in the suit remain as awarded by the trial court.

30 days stay of execution granted.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

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J.K. NG'ARNG'AR

JUDGE

Njoroge for the Appellant

Kabita for the Respondent

Siele/Mark (Court Assistants)

