



REPUBLIC OF KENYA



**Muiruri & 2 others v Ndonge & another (Civil Appeal E480 of 2021)
[2024] KEHC 11763 (KLR) (Civ) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11763 (KLR)

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

CIVIL

CIVIL APPEAL E480 OF 2021

REA OUGO, J

SEPTEMBER 27, 2024

BETWEEN

PAUL WAINAINA MUIRURI 1ST APPELLANT

INVESTMENT & MORTGAGE BANK LTD 2ND APPELLANT

VINTAGE AFRICA LTD 3RD APPELLANT

AND

FLORENCE MUMBUA NDONYE RESPONDENT

AND

LAWRENCE NJUNGUNA THIRD PARTY

*(Being an appeal from the whole of the judgment delivered by the Hon. B.J
Ofisi (R.M) in Milimani CMCC NO. 2815 of 2016, on 16th April 2021)*

JUDGMENT

1. The appellants have filed this instant appeal against the judgment of the subordinate court challenging the award of damages on the following grounds:
 1. That the learned trial magistrate erred in law by failing to consider the applicable principle in the assessment of damages in personal injury claims thus occasioning a miscarriage of justice.
 2. The learned magistrate erred in law by failing to consider awards or already decided authorities with comparable injuries, consequently awarding manifestly excessive general damages.
2. At the subordinate court, the respondent filed a suit claiming damages after she sustained injuries in a road traffic accident due to the appellants' negligence. The respondent claimed to have suffered



the following injuries: dislocation of the left shoulder, multiple fractures on the left lower limb and multiple soft tissue injuries.

3. The trial court found the appellants 100% liable for the occurrence of the accident. The court awarded general damages of Kshs 900,000/-, Kshs 15,700 as special damages, costs and interest at court rates from the date of judgment.
4. The appeal was canvassed by way of written submissions. The appellant in challenging the award of the lower court relied on the case of *S.D.V. Transami K. Ltd v Scholastic Nyambura* [2012] eKLR where the plaintiff therein sustained compound fractures of the right tibia and fibula, deep cut wound on the leg and multiple cut wound on the right leg and was awarded Kshs 200,000/-. They submit that Kshs 900,000/- general damages are too excessive for the injuries sustained.
5. The respondent submits that the trial magistrate correctly applied the correct principles in awarding Kshs 900,000/- as general damages. The respondent cited the case of *Mary Pamela Oyioma v Yess Holdings Limited* [2011]eKLR where the plaintiff therein sustained a comminuted fracture of the right femur, a compound fracture of the right tibia, a fracture of the left tibia and soft tissue injuries and the court made an award of Kshs 900,000/- as general damages. In *Martin Ireri Namu & another v Alicailinda Igoko Kiringa* [2019] eKLR the respondent had sustained dislocation of the left shoulder and fractures to the right tibia fibula and left radius ulna and was awarded Kshs 800,000/-.

Analysis And Determination

6. I now turn to consider the award of damages. I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”
7. The injuries sustained by the respondent in this case were not challenged. The respondent pleaded and proved that she suffered a dislocation of the left shoulder, multiple fractures on the left lower limb and multiple soft tissue injuries.
8. The only issue before the court is whether the award of Kshs 900,000/- was too excessive for the injuries sustained. The report by Dr. Waithaka Mwaura reveals that the respondent suffered comminuted fractures of the upper 1/3 of the fibula and lower 1/3 tibia. According to the report of Dr. Waithaka Mwaura and Dr. Soren Otieno disability was assessed to be between 12%-15%. The award of Kshs 200,000/- in *S.D.V. Transami K. Ltd v Scholastic Nyambura case* (*supra*) was made more than 10 years ago. Similarly, the case cited by the respondent, *Mary Pamela Oyioma* case (*supra*) in my view contains more serious injuries than those sustained by the respondent herein.
9. The award of Kshs 800,000/- made in *Martin Ireri Namu case* (*supra*) was within range as the claimant sustained a fracture of the tibia/fibula and left radius ulna and dislocation of the shoulder. In *Mbugua & another v Kesbara* [2024] KEHC 9282 (KLR) the Respondent therein was awarded Kshs 900,000/- after he sustained a compound comminuted fracture right tibia/fibula and disability assessed at 10%-12%.
10. Having reviewed the authorities cited by the parties, as well as awards made to those who suffered similar injuries, I find that the award by the trial magistrate was proper. The appeal is therefore without merit and is dismissed.



DATED, SIGNED AND DELIVERED AT BUNGOMA VIA TEAMS THIS 27TH DAY OF SEPTEMBER 2024.

R.E. OUGO

JUDGE

In the presence of:

Appellant - Absent

Respondent - Absent

Wilkister -C/A

