



**Ochieng & another v Kariuki (Civil Appeal E073 of 2023)
[2024] KEHC 11930 (KLR) (Civ) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11930 (KLR)

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

CIVIL

CIVIL APPEAL E073 OF 2023

RC RUTTO, J

OCTOBER 4, 2024

BETWEEN

ELIJAH OGOYO OCHIENG 1ST APPELLANT

ISAAC RICHU KARANJA 2ND APPELLANT

AND

BONIFACE MUIRURI KARIUKI RESPONDENT

(Being an appeal from the Judgment of Honourable G. Omuodho Principal Magistrate in Nairobi CMCC No. E8004 of 2021, delivered on 31st January, 2023)

JUDGMENT

1. This appeal arises from a judgment and decree in Nairobi Principal Magistrate's Civil Suit No. E8004 of 2021. In the said suit, the Respondent had sued the Appellants for general and special damages arising from a road traffic accident in which he sustained bodily injuries.
2. The 1st Appellant was sued in his capacity as the driver of the motor vehicle registration number KCF 114A while the respondent was lawfully aboard as a passenger. It was alleged that the motor vehicle lost control as a result of which the Respondent was injured. Upon hearing the parties, the trial court delivered its Judgment in which she apportioned 100% liability in favour of the Respondent against the Appellants.
3. The trial Court also awarded general damages of Kshs. 400,000/= and special damages of kshs. 3,550/=, interest at court rates payable from the date of the judgement until payment in full as well as costs of the suit.
4. The appellants being aggrieved by the judgment lodged this appeal dated 2nd February, 2023 setting out the following grounds of appeal which I hereby produce in verbatim and seriatim:



- i. That the Learned Magistrate in the matter herein delivered Judgment on 31 January, 2023 in favour of the Respondent herein thus contrary to the law and facts availing before the Honourable Court.
- ii. That the Learned Magistrate erred in fact and law in finding that the Respondent was entitled to General Damages of Kshs. 400,000/= that were too high in view of the fact that compared to the injuries suffered by the Respondent.
- iii. That the Learned Magistrate erred in fact and law in finding that the Respondent was entitled to General Damages of Kshs. 400,000/= that were too high in view of the fact that compared to the injuries suffered by the Respondent being Blunt injuries to the head and blunt injuries to the chest back and pelvis region.
- iv. That Learned Magistrate erred in Law and Fact in failing to appreciate the long established principle of stare decisis, precedent law thus bringing law into confusion and thereby deriving an erroneous finding/conclusion, in particular relating to damages.
- v. That Learned Magistrate erred in Law and Fact in failing to appreciate that the Respondent's pleadings and the evidence tendered in support thereof was incapable of sustaining the award of Ksh.400,000/= general damages.
- vi. That Learned Magistrate erred in Law and Fact in entering Judgment in favour of the Respondent against the Appellant in spite of the Respondent's miserable failure to establish her case more especially on quantum.

The Appellants' submissions

5. The Appellants submissions are dated 31st May, 2024. Despite listing the various grounds of appeal, the appellants sum up the issues to one issue for determination that is quantum.
6. They submitted that the award of kshs. 400,000/- as general damages was inordinately high considering the injuries sustained. That the Respondent sustained blunt soft tissue injury to the head, chest, back and pelvis (trunk). He further submitted that the P3 and medical report from Dr. W. M Wokabi confirmed that the soft tissue injuries caused no permanent disability.
7. It was submitted that a sum of between Kshs. 50,000/= and Kshs. 100,000/= would have been reasonable and sufficient compensation. Reliance was placed on the case in *Ndungu Dennis v Ann Wangari Ndirangu & Another* [2018] eKLR where the court of appeal set aside the trial court's award of Kshs. 300,000/= on sustained soft tissue injuries to the lower right leg and back and substituted it with an award of Kshs. 100,000/=.
8. Also relied was the case in *Eva Karemi & 5 Others v Koskei Kieng & Another* [2020] eKLR where the Appellants were awarded damages of between Kshs. 40,000/= and Kshs. 70,000/= for injuries sustained.
9. The appellant urged this court to allow the appeal with costs as prayed.

The Respondent's submissions

10. The Respondent submissions are dated 24th June, 2024. On quantum, counsel submitted that the Respondent had diligently discharged his evidentiary burden before the trial court on a balance of probabilities. Counsel cited the case of *Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another* [2015] eKLR.



11. It was counsel's submission that both the police abstract and P3 form confirmed that motor vehicle registration number KCF 114A was responsible for the accident and that the injuries sustained by the Respondent. He relied on the case of *Kibichi v Mathai* (Civil Appeal E003 of 2023) [2024] KEHC 4065 (KLR) where the court held that contents of a police abstract was conclusive proof as long as it was not rebutted.
12. On quantum the Respondent submitted that the award of general damages was at the court's discretion and sought reliance on the case of *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55.
13. He submitted that the trial court's award of Kshs. 400,000/= was sufficient and relied on the case of Nairobi HCCA No. 70 of 2019 Meru; *John Mwendwa Kuti & 2 Others v Ibrahim Kunyaga* [2020] where the appellate court set aside the lower court's award of Kshs. 500,000/= and substituted it with Kshs.350,000/= for head and shoulder injuries and multiple bruises on the scalp.
14. He also relied on the case of *Poa Link Services Co. Ltd & Another v Sindano Boaz Bonzemo* HCCA No 17 of 2019 where the court upheld general damages of Kshs. 350,000/= for deep cut wound injuries, blunt and soft tissue injuries and hip movement restriction.
15. He submitted that considering the inflation rate as at 2023, the said award of Kshs. 400,000 was not excessive. He urged the court to uphold the trial court's decision and dismiss the appeal with costs.

Analysis and Determination

16. This being a first appellate court, this court is guided by the dictum in the case of *Selle v. Associated Motor Boat Co. Ltd.* [1965] EA 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.
17. This court notes with great exception the glaring grammatical flaws and factual errors with regard to the motor vehicle registration number that caused the accident as well as the scene of the accident particularly given that they were prepared by a counsel on record for the Appellant.
18. Having considered the record of appeal, grounds of appeal, the submissions and the authorities relied on by the respective parties, I opine that the sole issue for determination is: Whether the award on general damages was excessively high.
19. The principles upon which this court can interfere with an award of damages made by the trial court are well settled. In *Gitobu Imanyara & 2 Others v. Attorney General* [2016] eKLR, the Court of Appeal held that –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. (Emphasis mine).



20. Additionally, the Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated as follows: -

“comparable injuries should attract comparable awards”.

21. In the present suit, the Respondent’s injuries were set out in the Plaint and Medical report by Doctor W.M Wokabi as follows: blunt soft tissue injuries to the head, chest, back and pelvis(trunk). He continued to experience pain on the trunk.

22. This court has considered the award of Kshs. 400,000/= as made by the trial magistrate was based on the authorities cited by the parties in submissions at the trial court. It is noteworthy that the two authorities as cited by the Appellants were not similar to the injuries sustained by the respondent in this case.

23. I have considered other comparative cases where awards for multiple soft tissue injuries on the head were made as follows:

- i. *National Industrial Credit Ltd & 2 others v MNO (Minor Suing Thro’ Next of Friend and Mother FNM)*, Civil Appeal E035 of 2023 where the plaintiff multiple soft tissue injuries and was awarded a sum of Ksh.300,000.
- ii. *Kenyatta University v Isaac Karumba Nyuthe* NRB HCCA No. 193 of 2012 [2014] eKLR where the plaintiff was awarded Kshs. 350,000/= in 2014 for sustaining a fracture of the right femur, soft tissue injuries to the head and bruises on the right knee.
- iii. *Samuel Muthama v. Kenneth Maundu Muindi*, MKS HCCA 102 of 2008 where the Respondent had sustained blunt injuries to the head, chest and cut wounds was awarded a sum of Kshs. 380,000/=

24. In view of the above cited authorities, this court is convinced that the award of Kshs.400,000/= by the trial magistrate was not excessively high and this court will not interfere with it. I therefore dismiss the Appeal each party bear its own costs. The award of special damages of Kshs. 3,550/=is upheld.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 4TH DAY OF OCTOBER 2024

For Appellants:

For Respondent:

Court Assistant:

