



REPUBLIC OF KENYA



**Gathogo & another v Maina (Civil Appeal 123 of 2023)
[2024] KEHC 16609 (KLR) (Civ) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL 123 OF 2023
CM KARIUKI, J
DECEMBER 20, 2024
FORMALLY, NAIVASHA CIVIL APPEAL NO. E019 OF 2022**

BETWEEN

MICHAEL KARERI GATHOGO 1ST APPELLANT

JAMES MUTAHI KARIUKI 2ND APPELLANT

AND

ESTHER NJERI MAINA RESPONDENT

(Being an appeal against the Judgment and decree of the Hon. E. Wanjala Senior Principal Magistrate, in Engineer PMCC No. E019 of 2022 consolidated with No. E020, E025, E026 and E027 dated and delivered on 23rd February 2023)

JUDGMENT

1. The plaintiff/respondent filed suit via plaint dated 17/1/2021 seeking general and special damages plus costs and interest for injuries sustained in a road traffic accident on 23/10/2021 involving motor vehicle KCH 418J. The defendant/Appellant respondent via defense dated 14/3/2022 and filed on 15/3/2022. He denied liability and said that the motor vehicle had been driven negligently.
2. The trial court made the verdict that liability was 100% in the Plaintiff's favor and awarded general damages assessed as Kshs—220,000, thus precipitating instant appeal.
3. The appeal set out five (5) grounds of appeal as follows:
 - i) The Learned Magistrate erred in law and, in fact, by awarding the Respondent General damages of Kshs.220,000/- which award is inordinately high and excessive in the circumstances.



- ii) The Learned Magistrate erred in fact and law in failing to consider conventional awards in cases of a similar nature.
- iii) The Learned Magistrate's decision was unjust, against the weight of evidence, and was based on misguided points of facts and wrong principles of law, which has occasioned a miscarriage of justice.
- iv) The Learned Magistrate erred in law and, in fact, when she over-relied on the Respondent's submissions and erroneous principles of law in arriving at an excessive award on quantum.

Appellant Submissions

4. Urge this Honorable Court to set aside the entire finding of the lower Court.
5. A re-evaluation of the quantum herein would be prudent, considering that Plaintiff suffered mainly soft tissue injuries.
6. It is trite law that assessment of the quantum of damages in a claim for general damages is a discretionary exercise. However, the law has set dimensions for the exercise of discretion; it must be exercised judicially, with wise circumspect, and based on some legal principles. The said dimensions are vital such that when the trial court has violated a legal principle(s), the appellate Court will interfere with the exercise of discretion by the trial court. The discretion in assessing the amount of general damages payable will be disturbed if the trial court;
 - i. Took into account an irrelevant factor or,
 - ii. Left out of account a relevant factor or, short of this
 - iii. The amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.
7. It is also trite law that awards must be within consistent limits, and court awards for damages must be made taking into account comparable injuries or similar injuries and awards. In *Denshire Muteti Wambua vs. Kenya Power & Lighting Co. Ltd* [2013] eKLR [as quoted in *Michael Okello v Priscilla Atieno* [2021] eKLR], it was held that the general method of approach for assessing damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.
8. Similarly, in the case of *Kigaraari vs. Aya* (1982-88) 1 KAR 768, as quoted by Kamau J in *Godfrey Wamalwa Wamba & another v Kyalo Wambua* [2018] eKLR, it was stated as follows: -

Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford. Significant awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees. "
9. Urge this Court to disturb the award of Kshs. 220,000/- in general damages as the same is so high as to be an erroneous estimate because the Plaintiff sustained soft tissue injuries. In this regard, we wish to rely on the following cases;
 - a) In *Losagi Insurance Brokers Limited & another v Josephat Achesa Chumbali* [2022] eKLR, the injury suffered by the Respondent was a cut wound. The general damages in the lower Court were set aside, and the Court substitutes, therefore, an award of Kshs. 95,000/- (Ninety-



Five Thousand) subject to the agreed liability ratio. The costs of the appeal are awarded to the Appellant.

- b) George Mugo & another V AKM (minor suing through the next friend and mother of A.N.K [2018] where Kemei J awarded Kshs. 90,000/= for soft tissue injuries.
 - c) Ndungu Dennis Vs. Ann Wangari Ndirangu & Another [2018] eKLR where Ngugi Joel J reduced general damages for soft tissue injuries from Kshs. to Kshs. 100,000/.
 - d) Lamu Bus Services & Another —vs.- Caren Adhiambo Okello (2018) eKLR where the claimant sustained a dislocation of the left shoulder joint, a deep cut wound on the left chin, a deep cut wound on the left thigh, and a blunt injury to the left thigh. An award of Kshs.200,000/= was reduced to Kshs.130,000/= on appeal.
10. In line with the above decisions vis a vis the injuries sustained by the Plaintiff, it is ultimate humble submission that the award rendered was unjustified and should be revised substantially if not set aside wholly.
11. Propose a maximum award of Kshs. 80,000.

Respondents Submissions

12. On the issue of liability, the trial court found the Appellants 100% liable. From the evidence by the 1st Appellant on cross-examination, he admitted that he caused the accident because of a vehicle that was reversing. He confirmed that he did not sue the driver of the vehicle that was reversing.
13. He further confirmed that he was blamed for the accident. The Appellants have not raised any ground as regards the issue of liability. Submit that they are 100% liable and urge this Court to uphold the said finding.
14. On quantum, on plaint, the injuries that the Respondent sustained were as follows:
- a) Blunt injury to the anterior chest leading to soft tissue injuries
 - b) Blunt injury to the left hip joint leading to soft tissue injuries
15. In illustrating the said injuries, the Respondent herein produced various treatment notes and receipts as well as a medical-legal report from Dr Obed Omuyoma. In the report by Dr. Omuyoma, he noted that the Respondent was still experiencing chest pains and had restricted movement at the left hip joint due to pain.
16. The report produced by the Appellants herein also confirmed that the Respondent sustained injuries and that the Respondent herein was experiencing numbness in the right hip joint. The degree of harm was attributed as harm. The Respondent stayed in the hospital overnight before she went for further treatment in Nairobi.
17. In the submissions filed by the Appellant, an award of Kshs 80,000/= has been proposed as being sufficient. We urge this Court to find that said award is insufficient and uphold the award by the trial court.
18. On the issue of quantum, rely on the sentiments of the Court of Appeal's decision in the case of Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR, where 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. This is the principle enunciated in *Rook v Rainie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per law, J.A 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."

19. Further, in *Bashir Ahmed Butt V Uwais Ahmed Khan* [1982-88] KAR 5, the Court of Appeal 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."

20. In the case of *Savanna Saw Mills Ltd Vs. Gorge Mwale Mudomo* (2005) eKLR the court-stated as follows: -

It is the law that the assessment of damages is at the discretion of the trial court, and an appellate court is not justified in substituting a figure of its own for that awarded by the court simply because it would have awarded a different figure if it had tried the case at the first instance ... "

21. The Appellants herein have not demonstrated how the trial court was wrong in exercising its discretion when it arrived at the conclusion on quantum at Kshs 220,000/=

22. In the case of *Lake Naivasha Growers v Muigai Thuka* [2020] eKLR, where the Respondent herein had suffered soft tissue injuries on the left thigh and leg and while upholding the decision by the trial court, the learned judge made the following remarks:

The Trial Magistrate determined that an award of Kshs 250,000/= "strikes a chord of fairness and would be sufficient and that an award of Kshs 60,000/= is on the lower side. " She awarded the Kshs 250,000/=

16. I agree with the trial Magistrate's award. She did not consider any matters that did not warrant consideration, nor fail to consider any matters that ought to have been considered. There is, therefore, no reason to disturb the award.

17. Accordingly, the appeal fails and is hereby dismissed with costs.

23. *Poa-Link Services Co. Ltd & another v Sindani Boaz Bonzemo* [2021] eKLR, the Honourable Court, while dealing with an appeal relating to soft tissue injuries and while making an award of Kshs 350,000/= made the following observations;

Guided by the above-cited decisions, it is the Court's finding that the trial magistrates' award of Kshs 350,000/= for general damages is a fair amount bearing in mind the



inflation tendencies that have affected the economy and strikes a balance between the parties' proposed amounts. "

24. During the trial, the Respondent herein had proposed Kshs 300 000/ = for the Injuries sustained. Upon taking into consideration all the facts before it, the trial court formed the opinion that an award of Kshs 220,000/ would be sufficient.
25. The finding by the trial magistrate was fair and just in the circumstances of the case, taking into consideration the infatuation and the standard of living, which has dramatically changed.

Issues, Analysis and Determination

26. The only issue is whether the award of damages was inordinately high and what the costs were. It is not in dispute that the claimant sustained the following injuries: Blunt injury to the anterior chest leading to soft tissue injuries and Blunt injury to the left hip joint leading to soft tissue injuries.
27. On the quantum of damages, the Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* (2004) 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

It is trite law that the assessment of general damages is at the discretion of the trial court, and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."

28. Similarly, in *Jane Chelagat Bor vs. Andrew Otieno Onduu* [1988-92] 2 KAR 288; [1990-1994] EA 47, the Court of Appeal held that:

In effect, the Court, before it interferes with an award of damages, should be satisfied that the judge acted on the wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate Court is to interfere, whether on the ground of excess or insufficiency."

The appellate Court can only interfere with the award of damages where it finds that the trial court applied wrong principles of law by taking into account some irrelevant factor, leaving out of account some relevant ones and therefore arriving at an erroneous estimate of damages to be awarded.

29. The appellants rely on the following cases to support the interference with an award and reduce it to ksh 80,000.

In *Losagi Insurance Brokers Limited & another v Josephat Achesa Chumbali* [2022] eKLR, the injury suffered by the Respondent was a cut wound. The general damages in the lower Court were set aside, and the Court substitutes, therefore, an award of Kshs. 95,000/- (Ninety-Five Thousand) subject to the agreed liability ratio. The costs of the appeal are awarded to the Appellant.

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30. The Respondent submits that an award of ksh 220,000 made by the trial court is sufficient and relies on the following cases: Lake Naivasha Growers v Muigai Thuka [2020] eKLR, where the Respondent herein had suffered soft tissue injuries on the left thigh and leg and while upholding the decision by the trial court, the learned judge made the following remarks:

The Trial Magistrate determined that an award of Kshs 250,000/= "strikes a chord of fairness and would be sufficient and that an award of Kshs 60,000/= is on the lower side. " She awarded the Kshs 250,000/=

16. I agree with the trial Magistrate's award. She did not consider any matters that did not warrant consideration, nor fail to consider any matters that ought to have been considered. There is, therefore, no reason to disturb the award. Accordingly, the appeal fails and is hereby dismissed with costs.

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Guided by the above-cited decisions, it is the Court's finding that the trial magistrates' award of Kshs 350,000/= for general damages is a fair amount bearing in mind the inflation tendencies that have affected the economy and strikes a balance between the parties' proposed amounts. "

32. From the foregoing, I note that the authorities cited by the appellants quote an inordinately low figure and are relatively old, ranging from 2018 to 2022, and the Respondent is apparently justifying the trial court award.

33. In Francis Ochieng & Another v Alice Kajimba (2015) eKLR, the High Court reduced an award of Kshs 500,000/= to Kshs 350,000/= for multiple soft tissue injuries. In H. Young Construction Company Ltd v Richard Kyule Ndolo (2014) eKLR, an award of Ksh 250,000/= general damages was made for soft tissue injuries.

34. Guided by the above-cited decisions, it is the Court's finding that the trial magistrates' award of Kshs 220,000/= for general damages is a fair amount, bearing in mind the inflation tendencies that have affected the economy and strikes a balance between the parties' proposed amounts.

35. Thus, the Court finds no merit in the appeal and, therefore, makes the orders;

- i. The appeal is dismissed for want of merit.
- ii. The costs of the appeal are awarded to the Respondent.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 20TH DAY OF DECEMBER 2024.

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CHARLES KARIUKI
JUDGE

