



**Packing Gredient E.A. Ltd v Ondujo (Civil Appeal E078 of 2023)
[2024] KEHC 7592 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E078 OF 2023**

**KW KIARIE, J
JUNE 25, 2024**

BETWEEN

PACKING GREIDENT E.A. LTD APPELLANT

AND

SALINE JUMA ONDUJO RESPONDENT

*(Being an Appeal from the judgment and decree in Oyugis Senior Principal Magistrate's
SPMCC No. E084 of 2022 by Hon. B.O. Omwansa – Senior Principal Magistrate)*

JUDGMENT

1. Packing Gredient E.A. Ltd, the appellant, was the defendant in Oyugis Senior Principal Magistrate's SPMCC No. E084 of 2022. The respondent, Saline Juma Ondujo, filed a claim for general and special damages after a road accident involving a motor vehicle and a motorcycle on which she was a passenger. The accident resulted in injuries to the respondent. The trial magistrate found the appellant fully liable and awarded the respondent Kshs. 2,500,000 in general damages.
2. The appellant, deeply aggrieved by the judgment, filed this appeal through Okong'o, Wandago & Company Advocates. The following grounds of appeal:
 - a. That the learned trial magistrate erred in fact and in law in awarding general damages of kshs.2,500,00/- which amount was so inordinately and manifestly high in the circumstances that it represented an entirely erroneous estimate *vis-à-vis* the respondent's injuries which injuries comprised fractures of the right leg coupled with soft tissue injuries which injuries were not debilitating nor did they result in any residual or permanent disability.
 - b. That the learned trial magistrate's award of general damages of kshs.2,500,000 in respect of fractures of the right leg and soft tissue injuries was intended to be punitive rather than compensatory, thus contrary to the general rule on the assessment and award of damages.



- c. That the learned trial magistrate's assessment and finding on damages lacked any legal and/or factual basis and was unsupported by relevant case law or, otherwise, any case law at all, and the monetary figure awarded appears to have been plucked from thin air.
 - d. That the learned trial magistrate treated the evidence and written submissions tendered before him on the quantum of damages superficially, thereby arriving at a wrong conclusion on the same.
 - e. That the learned trial magistrate erred in fact and law in disregarding the written submissions and supporting authorities tendered by the appellant, thereby awarding general damages which were excessive given the nature and degree of injuries sustained by the respondents.
3. The respondents opposed the appeal through the Phiona Ogoi & Company Advocates firm. They contended that it lacked merits.
 4. This Court is the first appellate court. I am aware of my duty to evaluate all the evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 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 conclusions in the matter.
 5. The appellant contended that the award to the respondent was inordinately high. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs Khan* [1981] KLR 349 on page 356, Law JA stated:

...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an 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.
 6. As a result of the accident complained of, the respondent sustained the following injuries:
 - a. Massive gaping/degloving wound on the right leg from the ankle joint to the knee joint.
 - b. Compound displaced fracture of the right tibia bone.
 - c. Compound displaced fracture of the right fibula bone.
 - d. Severe multiple bruises/lacerations on the right forehead.
 - e. Deep cut wound on the right supraorbital region.
 - f. Cur wound on the right earlobe.
 - g. Lacerated right arm.
 7. When she went to the hospital, she received treatment as follows:
 - a. Open reduction and internal fixation;
 - b. Application plaster cast;
 - c. Broad-spectrum antibiotics;
 - d. Suturing of wounds; and
 - e. Dressing of wounds.



8. After treatment, the doctor noted that she had healed and left with:
 - a. An ugly scar on the right leg;
 - b. Walks with the aid of crutches;
 - c. Has occasional headache;
 - d. Ugly facial scar; and
 - e. Is on regular analgesics.
9. He assessed that she suffered 30% disability.
10. She was awarded Kshs. 2,500,000.00 for these injuries.
11. At the trial, the appellant proposed an award of Kshs. 400,000. She relied on the decision in [Daniel Otieno Owino & Ezekiel Otieno Owino vs Elizabeth Atieno Owuor](#) [2020] eKLR. The respondent sustained the following injuries:
 - a) Compound fractures of the tibia/fibula bones on the right leg.
 - b) Deep cut wound and tissue damage on the right leg.
 - c) Head injury with a cut wound on the nose.
 - d) Blunt chest injury.
 - e) Soft tissue injury on the left lower limb involving the high and ankle region.
12. She was awarded Kshs. 400,000.00 general damages.
13. The respondent proposed Kshs. 3,000,000.00 and relied on the decision [Christine Mwigina Akonya vs Samuel Kairu Chege](#) [2016] eKLR. The plaintiff, who sustained a fracture of the right femur, fracture of the 3rd to 6th ribs, pain in the right side of the chest and the right thigh and persistent pain in the right knee, was awarded Kshs.4,000,000 as general damages.
14. The injuries the respondent sustained are more severe than what the respondent in [Daniel Otieno Owino & Ezekiel Otieno Owino vs Elizabeth Atieno Owuor](#) (*supra*) suffered. These injuries are, however, less severe than in the case of [Christine Mwigina Akonya vs Samuel Kairu Chege](#) (*supra*). There is no reason, therefore, to make me interfere with the award.
15. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

