



**Security Group Kenya Limited v Ramadhan (Civil Appeal
E024 of 2022) [2024] KEHC 9922 (KLR) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E024 OF 2022
JN KAMAU, J
JULY 29, 2024**

BETWEEN

SECURITY GROUP KENYA LIMITED APPELLANT

AND

JUMA ABAKA RAMADHAN RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon S. O. Ongeru (PM) delivered at Vihiga
in the Senior Principal Magistrate's Court Civil Case No 167 of 2021 on 2nd August 2022)*

JUDGMENT

Introduction

1. In his decision of 2nd August 2022, the Learned Trial Magistrate, Hon S. O. Ongeru, Principal Magistrate, apportioned liability at 90%:10% in favour of the Respondent herein and entered Judgment in favour of the Respondent against the Appellant herein as follows:-
General damages Kshs 500,000/=
Less 10% Kshs 50,000/=
Kshs 450,000/=
Plus Costs and interest of the suit.
2. Being aggrieved by the said decision, on 25th August 2022, the Appellant filed a Memorandum of Appeal dated 22nd August 2022. It relied on five (5) grounds of appeal.
3. Its Written Submissions were dated 1st March 2024 and filed on 15th March 2024 while those of the Respondent were dated 29th February 2024 and filed on 5th March 2024. The Judgment herein was based on the said Written Submissions which the parties relied upon in their entirety.



Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another vs Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Appellant's Grounds of Appeal, and the parties' Written Submissions, it appeared to this court that the said grounds were related and that the only issue that had been placed before it for determination was whether or not the quantum of damages that were awarded by the Trial Court were excessive in the circumstances so as to warrant the interference of this court.
7. The Appellant placed reliance on the cases of *Selle & Another vs Associated Motor Boat Co. Ltd & Others* (Supra) and *Peters vs Sunday Post Ltd* [1958] EA 424 where the common thread was that the appellate court was called upon to exercise caution in exercising its jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand.
8. It referred this court to the case of *Kemfro Africa Limited t/a Meru Express Services, Gathogo Kanini vs A.M.M Lubia & Another* (1982-88) 1 KAR 777 where it was held that in deciding whether it was justified to disturb quantum of damages awarded by a trial judge, an appellate court had to be satisfied that either in assessing the damages, the trial judge took into account an irrelevant factor or left out of account a relevant one or that the amount was inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.
9. It asserted that comparable injuries should be compensated by comparable awards as was held in the case *Simon Taveta vs Mercy Mutitu Njeru* [2014] eKLR. It added that damages should always represent a fair compensation but not be excessive.
10. It relied on the case of *Osman Mohammed & Another vs Saluro Bundit Mohammed* Civil Appeal No 30 of 1997 (eKLR citation not given) where it was held that damages had to be within limits set out by decided cases and within limits that the Kenyan economy could afford.
11. It submitted that the award by the Trial Court failed to reflect the nature and gravity of the injuries that were sustained by the Respondent herein as it was not supported by any substantive authority with comparable injuries as was required by the law.
12. In this regard, it referred this court to the case of *Kilda Osborne vs George Barsed & Metropolitan Management Transport Holding* (2005) HCR where the court adopted the holding in *H. West & Sons Ltd vs Shepherd* (1963) 2 ALL ER 625 where it was held that similar injuries determine the actual award made to a particular claimant.
13. It also cited the case of *Coolson vs Knowles* (1977) QB, 913(1972) AC 556 which was quoted in the case of *Alfred Chivatsi & Another vs Cecilia Tabu Kitsao* [2019] eKLR where it was held that general damages were based on the evidence that was available at the time of trial.
14. It faulted the Trial Court for having erroneously relied on the case of *Jesky Enterprises Limited & Another vs Nancy Wachinga Wanjiru & Another* [2019] eKLR where an award of Kshs 2,500,000/= was reduced to Kshs 850,000/= where the 1st respondent therein had sustained bilateral tibia, fibula



- compound fractures, right hip dislocation, chest pain, multiple bruises and cut wounds on both limbs and multiple cut wounds on the trunk posteriorly.
15. It also pointed out the Trial Court failed to consider the submissions and authorities by both parties and the 2nd Medical Report by Dr W. S. Adero dated 22nd November 2021.
 16. It restated the authorities it submitted during trial being, Hantex Garments (EPZ) Ltd vs Haron Mwasala Mwakawa [2017]eKLR where an award of Kshs 100,000/= was upheld as general damages to the plaintiff who had sustained bruises, blunt trauma, swelling and tenderness on the right leg and Francis Omari Ogaro vs JAO (minor suing through next friend and father GOD [2021]eKLR where an award of Kshs 230,000/= was reduced to Kshs 180,000/= where the plaintiff therein had sustained multiple cut wounds on the right lower limb, frontal region, left lilac region and temporal region, bruises on the right lower limb, both elbows, right iliac region, frontal region and temporal region, lacerations on the frontal region, and blunt trauma to the abdomen.
 17. It further cited the case of Mombasa Maize Millers Limited vs Ngugi [2023] KEHC 22204(KLR) where an award of Kshs 400,000/= was reduced to Kshs 200,000/= where the Respondent sustained multiple bruises on the right knee, right hand and right elbow, blunt object injury to the right knee, right foot and right elbow and abrasions on the right foot. It was emphatic that an award of Kshs 200,000/= would be sufficient in the circumstances.
 18. It averred that the plaintiffs in the aforementioned cases sustained far more severe injuries than the ones that were sustained by the Respondent. It was its submission that the award of Kshs 500,000/= was excessive and prayed that the same be revised downwards to Kshs 200,000/=.
 19. It also pointed out that it was trite law that costs followed the event. It invoked Section 27(1) of the *Civil Procedure Act* and the case of Republic vs Rosemary Wairimu Munene, Ex-parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No 6 of 2014(eKLR citation not given) where it was held that costs were not used to penalise the losing party but rather it was for compensating the successful party for the trouble he or she had taken in prosecuting or defending the case. It therefore urged this court to allow its appeal with costs and set aside the Trial Court's Judgment.
 20. On his part, the Respondent submitted that the Trial Court's award was commensurate with the fracture of the wrist joint/ulna radius that he sustained. He added that in making the said award, the Trial Court considered the aspect of inflation and relevant authorities with similar injuries to arrive at its decision.
 21. He cited the cases he relied on at the Trial Court being, Kimatu Mbuvi t/a Kimatu Mbuvi & Bros vs Augustine Munyao Kioko [2006] eKLR where an award of Kshs 300,000/= as general damages was upheld in 2006 and Joseph Njuguna Gachie vs Jacinta Kavuu Kyengo [2019] eKLR where an award of Kshs 1,000,000/= was reduced to Kshs 600,000/= for similar injuries as the ones that he sustained.
 22. He further placed reliance on the cases of Richard Kirimi & Another vs Mercy Kathambi [2017] eKLR where the court declined to interfere with the award of Kshs 800,000/= in 2017, Francis Nzivo Munguti & Another vs Mercy Kathambi [2017] eKLR where the court reduced an award of Kshs 1,000,000/= to Kshs 600,000/=.
 23. In the case of Dedan Njoroge Mwangi & Another vs Jane Wanjiru [2020] eKLR, the court upheld an award of Kshs 600,000/= for a single fracture of the right radius ulna and a few soft tissue injuries while in the case of Waweru & Another vs NMN alias NM (Suing through the father & next friend JNG [2022] eKLR, the appellate court upheld an award of Kshs 1,000,000/=.



24. It was his case that from the cases aforementioned, the Trial Court's award was within the range of awards or even below and hence should not be tampered with. He pointed out that for a court to disturb an award on quantum, it had to be inordinately high or low so as to warrant rattling. He urged the court to ascertain whether the Trial Court award was unusually or disproportionately excessive or too large (sic) before reducing or retaining it.
25. Notably, an award of damages was not meant to enrich the victim but to compensate such victim for the injuries that he sustained as was held in the case of Boniface Waiti & Another vs Michael Kariuki Kamau [2007] eKLR. Indeed, similar injuries should attract comparable awards. However, in the quest for consistency, courts must also recognise that no case is exactly the same as another and each case must therefore be decided on its own peculiar circumstances but keeping in mind that any monies awarded must be sustainable.
26. At the same time, an appellate court must keep at the back of its mind that it does not have the jurisdiction to interfere with the assessment of damages merely by substituting a figure of its own to that awarded by the trial court, even though it could have awarded a higher or lesser sum itself.
27. The rationale was both constitutional and statutory. Where a judgment had been made by a competent court, an appellate court was estopped from asserting the contrary position unless an award of damages was so inordinately high or low as to represent an entirely erroneous estimate or that the trial court had proceeded on wrong principles, or that it had misapprehended the evidence in some material respect as was correctly pointed out in the cases of Butt vs Khan [1981] KLR 470 and Kitavi vs Coastal Bottlers Ltd [1985] KLR 470.
28. In Paragraph 6 of the Plaint dated 14th September 2021 and filed on 23rd September 2021, the Respondent was said to have sustained bruises on both knees, swelling on both legs, fractured left wrist joint and chest tenderness.
29. He was treated at Vihiga County Referral Hospital. He was examined by the Appellant's Dr Walter Adero on 22nd November 2021, about three (3) months after the accident.
30. In his Medical Report, Dr W. Adero observed that the Respondent sustained soft tissue injuries to his back and scalp injuries that were managed with non-steroidal anti-inflammatory drugs and that at the time of the examination, he had healed but complained of exertional back pains. The said Medical Report showed that the Respondent had no permanent disability. He adduced in evidence, Treatment Card and a P3 Form to support his case.
31. In determining if the sum of Kshs 500,000/= general damages that was awarded by the Trial Court was reasonable compensation, this court had due regard to the following cases:-
 1. In Peris Mwikali Mutua vs Peter Muniyao Kimata [2008] eKLR, the respondent therein sustained pain and tenderness of the left hip joint, marked swelling and severe tenderness of the left forearm, bruises on the left forearm and a fracture of the ulna and radius (colles fracture) of the left distal forearm. The appellate court upheld the award of Kshs 450,000/= that was awarded by the trial court therein.
 2. In Issa Transporters Limited vs Chengo Panga Tsama [2019] eKLR, the respondent therein sustained a fracture of the colles on the left wrist and deep cut wound on the left side of the forehead. Both the High Court and the Court of Appeal appellate court upheld the award of Kshs 350,000/= that was awarded as general damages.



3. In Maina vs Kahunga & Another [2023] KEHC 606 (KLR), the appellant therein sustained colles fracture of the left wrist joint, blunt injuries to the left thigh leading to soft tissue injuries. The court enhanced the trial court's award of Kshs 100,000/= to Kshs 300,000/=.
32. Taking into account the injuries that the Respondent herein sustained vis- a- vis the damages in comparable cases and the inflationary trends, this court came to the firm conclusion that the sum of Kshs 500,000/= general damages was not inordinately and/or manifestly high warranting interference by this court.
33. In the premises, Grounds of Appeal Nos (1), (2), (3), (4) and (5) of the Memorandum of Appeal were not merited and the same be and are hereby dismissed.

Disposition

34. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Appeal dated 22nd August 2022 and lodged on 25th August 2022 was not merited. The Appellant will bear the Respondent's costs of this Appeal.
35. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF JULY 2024

J. KAMAU

JUDGE

