



REPUBLIC OF KENYA



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**Njogu & another v Mankone (Civil Appeal E541 of 2022)
[2024] KEHC 10694 (KLR) (Civ) (22 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL APPEAL E541 OF 2022
REA OUGO, J
AUGUST 22, 2024**

BETWEEN

JOHN MUNYUI NJOGU 1ST APPELLANT

JAMES MUIRURI 2ND APPELLANT

AND

KEPHER MISATI MANKONE RESPONDENT

*(Being an appeal from the award of the Honourable D.O Mbeja
delivered on 16/7/2021 in Milimani Civil Suit No 3326 of 2019)*

JUDGMENT

1. This appeal is against the award of damages. The respondent averred that while he was boarding the 1st appellant's motor vehicle, KBP 024 along Muthurwa road when the 2nd appellant suddenly drove off before the respondent was fully on board. The respondent suffered a fracture of the left distal tibia and distal fibula, experienced recurrent pain in the left lower leg, weakness in the left leg, and an inability to lift a heavy load. The respondent was considered to have suffered grievous harm with a permanent incapacity of 30%. The respondent sought general and special damages, costs and interest in the suit.
2. The appellants filed a statement of defence denying the respondent's claim. At the hearing, the respondent called its witnesses and produced exhibits while the appellants did not adduce any evidence to challenge the respondent's case. The trial magistrate found the appellant 100% liable and awarded the respondent general damages of Kshs 1,500,000/-.
3. The appellant dissatisfied with the finding of the trial court on quantum has filled this instant appeal on the following grounds:



1. That the Learned Magistrate in the matter herein delivered judgment on 16th July in favour of the respondent herein thus contrary to the law and facts availing before the Honourable Court.
2. That the Learned Magistrate erred in fact and law in finding that the respondent was entitled to damages of Kshs 1,507,420/- for injuries sustained by the plaintiff that were too high in view of the fact that compared to the injuries suffered by the Respondent.
3. That the 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.
4. That the 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 damages.
5. That the Learned Magistrate erred in law and fact in entering judgment in favour of the respondent against the appellant in spite of the respondent's failure to establish his case.

Analysis and Determination

4. The factors under which an appellate court will interfere with an award in general damages were stated by the Court of Appeal in *Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR* as follows:

‘An appellate court will not disturb an award for general 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..’

5. The appellant in their submissions cited the case of *S.D.V Transami K. Limited v Scholastic Nyambura [2012] eKLR* where the court awarded Kshs 200,000/- for similar injuries. The appellant argues that the respondent's injuries are in the range of those sustained in the *S.D.V Transami K. Limited* case (supra). Therefore, the award of Kshs 1,500,000/- is way too excessive.
6. The respondent in their submissions argue that damages of Kshs 1,500,000/- were reasonable and appropriate. In *Dorcas Wangithi Mwaura v Samuel Kiburu Mwaura & Another 2015 eKLR*, the plaintiff was awarded Kshs 2,000,000/- for similar injuries. The respondent however noted that the case is 5 years old. In *Dickson Githae Kibue v Lucy Wanjiku Nderitu [2019] eKLR, Civil Appeal No 12 of 2015*, the plaintiff was awarded Kshs 2,000,000/-.
7. In this case, the injuries sustained by the appellant are not in dispute. The appellant suffered a fracture of the left distal tibia and distal fibula, soft tissue injuries and permanent incapacity were assessed at 30%.
8. The *S.D.V Transami K. Limited* case (supra) cited by the appellant was of a plaintiff who sustained a compound fracture of the right tibia and fibula with no permanent incapacity. I also note that the case is more than 10 years old. The case of *Dorcas Wangithi Mwaura v Samuel Kiburu Mwaura & Another 2015 eKLR* cited by the respondent is also dated and the plaintiff therein has more severe injuries. Although the judgment of the trial court was based on the holding in the *Dickson Githae Kibue v Lucy Wanjiku Nderitu* (supra) case, the injuries sustained by the plaintiff therein were much more severe than those sustained by the respondent herein.
9. In *Mwachia v Kamau (Civil Appeal E570 of 2021) [2023] KEHC 25994 (KLR) (Civ) (1 December 2023) (Judgment)* - Civil Appeal E570 of 2021 the respondent sustained a fracture of the left tibia,



fracture of the left fibula, recurrent pains on the left leg, surgical scars on the left lower leg and degree of permanent incapacity of 30%. The court in the Mwachia case (supra) upheld the award of Kshs 1,500,000/-I find that the injuries sustained in the Mwachia case (supra) and therefore the award by the trial magistrate cannot be said to be inordinately too high.

10. In conclusion, I find the appeal unmeritorious and is consequently dismissed. The respondent shall have the cost of the appeal.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 22ND DAY OF AUGUST 2024

R.E. OUGO

JUDGE

In the presence of:

Mr. Kabita h/b for Miss Nanjira -For the Appellant

Miss Kasina -For the Respondent

Diana -C/A

