



REPUBLIC OF KENYA



**Kyoga Hauliers Kenya Limited & 2 others v Mohamed (Civil Appeal E015 of 2023) [2024] KEHC 11733 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11733 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E015 OF 2023  
REA OUGO, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**KYOGA HAULIERS KENYA LIMITED ..... 1<sup>ST</sup> APPELLANT**

**UNIQUE LOO LIMITED ..... 2<sup>ND</sup> APPELLANT**

**IBRAHIM KAZI KAMZEE ..... 3<sup>RD</sup> APPELLANT**

**AND**

**MOHAMED FARAH MOHAMED ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. Mutai delivered on 3/3/2023 in Bungoma CMCC No 122 of 2021)*

**JUDGMENT**

1. The background to this appeal is that the respondent was driving his vehicle registration number KBC 480F along Webuye-Bungoma road when the appellants carelessly controlled their vehicle KCC 676E-ZE 8851 causing it to lose control and, veer off its lane and knock the respondent. The respondent sustained soft tissue injuries and psychological trauma. The parties settled the issue of liability by consent in the ratio of 90:10 in favour of the respondent.
2. The trial court in its judgment awarded the respondent general damages of Kshs 380,000/=-, Kshs 59,098 as special damages less 10% liability.
3. The memorandum of appeal dated 9/3/2023 challenges the trial court award of damages on the following grounds:
  1. That the learned trial magistrate erred in law and fact in making an award which was manifestly excessive having regard to the injuries sustained by the plaintiff.



2. That the learned trial magistrate erred in law and fact in adopting the wrong principles in making a determination on the damages payable to the respondent thereby arriving at an erroneous decision.
  3. That the learned trial magistrate erred in law and fact in failing to take into account relevant issues and/or factors in making a determination as to the damages payable thereby arriving at an erroneous decision.
  4. That the learned trial magistrate erred in law and fact by failing to take into account consideration and/be guided by relevant authorities and/or precedents with comparable injuries like the ones sustained by the respondent thereby arriving at an excessive amount payable for the general damages.
4. The appeal was canvassed by way of written submissions. The appellant submits that an award of Kshs 100,000 – 200,000/- would suffice as opposed to Kshs 380,000/-. They relied on the case of *Francis Omari Ogaro v Jao (Minor suing through Next Friend and Father God* [2021] eKLR where the plaintiff suffered soft tissue injuries and the award of Kshs 230,000/- was set aside and substituted with Kshs 180,000/-. In *Pascal v Ouko* (Civil Appeal No E005 Of 2022) [2023] KEHC 24463 (KLR) (18 October 2023) the respondent therein was awarded Kshs 155,000/- for chest contusion, blunt trauma to the back, scalp, neck, upper limbs, lower limbs and lacerations on the right knee. In *FM (Minor suing through Mother and next Friend MWM) v JNM & another* [2020] eKLR the court awarded the plaintiff therein Kshs 100,000/- who had sustained blunt object injuries to the head, neck, thorax, abdomen and to the limbs.
  5. The respondent on the other hand submits that he sustained the injuries captured in paragraph 7 of his plaint. He submits that the general damages of Kshs 380,000/- should not be disturbed as the same is neither too low nor too high to call for interference by the court. The respondent submitted that the appellants have not demonstrated to the court why the award of the subordinate court should be interfered with.

### Analysis and Determination

6. This appeal only challenges the award of general damages. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court’s discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & Another v Lubia & Another* (No 2) Civil Appeal No 21 of 1984 [1985] eKLR thus:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

7. I am guided by the principle in the assessment of damages that an award must reflect the trend of previous, recent and comparable awards. In the case of *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR, the Court of Appeal held:

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should



be 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. In this case it is not disputed that the respondent sustained only soft tissue injuries. He sustained multiple lacerations and bruises on the forehead and face; friction burns/bruises on his right forearm distal 1/3 on the anterior; and a cut wound on his right knee joint. The trial court in his judgment made an award of Kshs 380,000/- without providing reasons for his decision. In *Rege v LA* (2022) KEHC 16634 (KLR) the court awarded a sum of Kshs 150,000/- to the respondent who had sustained bruises on the right hand, blunt trauma to the right hand and chest contusion.
9. In conclusion, I find that the award of Kshs 380,000/- as general damages was excessive in light of the respondent’s injuries and is hereby set aside and substituted with an award of Kshs 150,000/-. The appellant shall have the cost of the appeal.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Miss Nyabuto -For the Appellant

Miss Wanyama -For the Respondent

Wilkister -C/A

