



**Onyango v Obura (Civil Appeal E180 of 2023)  
[2024] KEHC 11506 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11506 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E180 OF 2023  
RE ABURILI, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**MICHAEL ONYANDO ONYANGO ..... APPELLANT**

**AND**

**MICHAEL OUMA OBURA ..... RESPONDENT**

*(An appeal arising out of the Judgment & Decree of the Honourable  
Cheruiyot in the Chief Magistrate's Court at Kisumu delivered  
on the 29th September 2023 in Kisumu Civil Suit No. 72 of 2021)*

**JUDGMENT**

**Introduction**

1. The appellant was sued by the respondent vide a plaint dated 5.3.2021 in which the respondent prayed for general and special damages as a result of injuries sustained following a road traffic accident.
2. The respondent averred that on the 24<sup>th</sup> February 2021 as he was lawfully riding a motorcycle registration number KMEX 308T along Kisumu – Nairobi road, at around Nyamasaria, the appellant's motor vehicle registration number KCN 854L was so negligently, carelessly and recklessly driven, managed and/or controlled as to enter the highway from the feeder road and violently hit the respondent's motorcycle.
3. The parties entered into a consent on liability at 75:25% in favour of the respondent on the 6th April 2023. The trial court proceeded to award the respondent Kshs. 460,000 as general damages.
4. Aggrieved by the trial court's judgement on quantum, the appellant filed his appeal dated 19<sup>th</sup> October 2023 in which he raised the following grounds of appeal:



- a. The learned trial magistrate grossly misdirected himself in treating the evidence and submissions on a quantum before him superficially and consequently coming to a wrong conclusion on the same.
  - b. The learned trial magistrate misdirected himself in ignoring the principles applicable in awarding quantum of damage and the relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
  - c. The learned trial magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondent (if any) and failed to apply precedents and tenets of law applicable.
  - d. The learned trial magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis a vis the respondent's claim.
  - e. The learned trial magistrate failed to apply himself judicially and to adequately evaluate the evidence and exhibits tendered on quantum and thereby arrived at a decision unsustainable in law.
5. The appeal was canvassed by way of written submissions.

### **The Appellant's Submissions**

6. The appellant submitted that award of general damages was inordinately high considering the injuries sustained by the respondent which were soft tissue injuries and thus the award amounts to an erroneous estimate, abuse of discretionary power of the trial court and a miscarriage of justice as against him.
7. It was submitted that an award of Kshs. 120,000 in general damages would be sufficient in the case. Reliance was placed on the cases presented before the trial court as well as the cases of:
  - a. Daniel Gatana Ndungu & Another v Harrison Angore Katana [2020] eKLR where the respondent sustained a cut wound on the head, blunt injury to the right knee, multiple bruises on the right knee and the appellate court set aside the finding by the subordinate court that awarded Kshs. 350,000 on general damages and substituted it with an award of Kshs. 140,000.
  - b. Justine Nyamweya Ochoki & Another v Jumaa Karisa Kipingwa [2020] eKLR where the respondent suffered a blunt object injury to the lower lip, blunt object injury to the chest and blunt object injury to the left wrist and was awarded Kshs. 300,000 that was reduced to Kshs. 150,000 on appeal.
  - c. John Wambua v Mathew Makau Mwololo & Another [2020] eKLR where the plaintiff sustained blunt injury to the right shoulder and a blunt injury to the right big toe and the trial court awarded Kshs. 120,000 that was affirmed at appeal.
8. The appellant submitted that the appeal should be allowed with costs and the award by the trial court be set aside.

### **The Respondent's Submissions**

9. The respondent submitted that he suffered multiple soft tissue injuries with present complains of pain on the affected body parts as well as painful psychological trauma, with extensive post injuries scar. The respondent relied on the cases placed before the trial court as well as the following cases:



10. Vincent Cheruiyot Rono v Mombasa Maize Millers Ltd [2006] eKLR in which the Plaintiff was awarded Ksh. 400,000 for a deep cut on the face, multiple pain on both legs, arms and shoulders, abrasion on the lower chin, back ache and chest pain.
11. Catherine Wanjiru Kingori & 3 others v Gibson Theuri Gichubi [2005] eKLR was awarded Kshs. 100,000.00 where she suffered injury on the back. In the same case the 3rd Plaintiff who suffered multiple soft tissue injuries, injury on the left elbow joint, and injuries on both ankles was awarded Kshs 350,000.00.
12. Charles Gichuki v Emily Kawira Mbuba & another [2018] eKLR, the respondent suffered a blunt injury (tender) on the right side of the face, a blunt injury (tender) on the shoulders, a blunt injury (tender) on the chest and a blunt injury (tender) to the left thigh. Serگون J. substituted the trial court's award of Kshs 400,000/= with Kshs 300,000/=
13. It was submitted that the appellant had not shown how the trial magistrate acted upon some wrong principle of law, or that the amount awarded was so extremely high in the judgment of the Court, an entirely erroneous estimate of the damage to which the Respondent was entitled as was held by the Court of Appeal in the case of Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja [1986] eKLR.
14. The respondent submitted that the appeal ought to be dismissed with costs to him.

#### **Analysis and Determination**

15. This being a first appeal, this court is under a duty to re-evaluate and re assess the evidence and make its own conclusions. It must, however, bear in mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, the court stated as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

16. In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in Mkube v Nyamuro [1983] LLR at 403, where Kneller JA & Hancox Ag JJA held that-

“A Court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”

17. In Kemfro Africa Limited T/A Meru Express Services & Gathongo Kanini v A.M. Lubia & Olive Lubia (1982-88) I KAR 727 at page 730, Kneller J.A. stated:

“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. See *Ilango V Manyoka* [1967] E.A. 705, 709, 713; *Lukenya Ranching and Farming Cooperative Society Limited Vs Kalovoto* [1970] E.A. 414, 418, 419. This court follows the same principles.”

18. The principles espoused in the above Court of Appeal decision have stood the test of time and continue to be applied by all appellate courts.
19. In the case of *P. J. Dave Flowers Ltd v David Simiyu Wamalwa Civil Appeal No. 6 of 2017* [2018] eKLR rendered itself on the matter of assessment of quantum as below:

“... it is generally accepted from the laid down legal principles on assessment of quantum that personal injuries are difficult to assess with precision and accuracy so as to satisfy the claimant. The courts discretion has been left to individual judges to exercise judicious in respect of the circumstances of each specific case. The sum total of the evidence and the medical reports positive findings will form part of the consideration in the award of damages. The trial court will also be expected to apply the principles in various case law and authorities decided by the superior courts on the matter.”
20. I have considered the evidence adduced in the trial court on the injuries sustained by the respondent and the submissions for and against this appeal. I find issue sole issue for determination to be whether the trial court made an award that was too high as contended by the Appellant.
21. General damages are damages at large whose purpose is to compensate the injured to the extent that such injury can be assuaged by a money award. It has been stated that money cannot renew a physical frame that has been injured and crushed hence the courts can only award sums which must be viewed as giving reasonable compensation. Awards ought to be reasonable and must be assessed with moderation bearing in mind that the large and inordinate awards may injure the body politic. Furthermore, it is desirable that so far as possible comparable injuries should be compensated by comparable awards putting into consideration the current prevailing economic circumstances including inflation (see *Tayab v Kinanu* [1983] KLR 114 and *West (H) & Son Ltd v Shephard* [1964] AC 326, 345).
22. It is not in dispute that the respondent was injured, hence the question is, what was the nature and extent of the injuries and what award should they should attract. In his statement of claim filed on the 5<sup>th</sup> March 2021, the respondent pleaded that he sustained the following injuries:
  - i. Swollen right fore head with deep cut wound with active bleeding
  - ii. Swollen right orbital margins upper and lower
  - iii. Reddish right eye
  - iv. Swollen left orbital margin and tender
  - v. Swollen upper lips with cut wounds and tender
  - vi. Tender chest wall
  - vii. Bruised right hand and tender
  - viii. Swollen right knee joint with multiple bruises and tender
23. The respondent further complained that at the time of going to court, he was suffering pain on the affected body parts as well as psychological trauma with extensive post injuries scar.



24. The said injuries were confirmed in the P3 form and treatment note attached to the respondent's plaint. The treatment notes from St. Georges Medical Centre produced by the respondent stated that the respondent had sustained deep cut wounds and multiple soft tissue injury. No medical expert was called by either of the parties to testify on the said injuries. However, the medical report produced as an exhibit by the respondent filled by one Dr. S.R. Patel concluded that the respondent had sustained "soft tissue injuries with scarring of forehead cut wound of harm in nature." I note that the P3 form produced by the appellant described the degree of injury sustained by the respondent as harm.
25. Taking all the above into consideration it is my opinion that the nature of injuries sustained by the respondent were soft tissue.
26. I have considered the authorities relied on by both parties and it is my view that those relied on by the respondent related to more serious injuries while those by the appellant were more comparable.
27. The appellant submitted that the trial court's award of Kshs. 460,000 was excessive, inordinately high and erroneous. The appellant urged this Court to set aside the award of the trial magistrate and award Kshs. 120,000 in general damages for soft tissue injuries.
28. I have considered comparative awards in other cases where general damages for soft tissue injuries were made. In *Maimuna Kilungwa vs Motrex Transporters Ltd [2019] eKLR Makueni Civil Appeal No. 11 of 2017*, the court awarded Kshs. 125,000/= for injuries to the neck, left ear and left shoulder.
29. In the case of Ephraim Wagura Muthui & 2 others V Toyota Kenya Limited & 2 others [2019] eKLR Majanja J set aside the lower court award of Kshs. 55,000 for cut wound on the parietal area of the head, contusion on the neck, blunt trauma to the chest, cut wound on the left leg and blunt trauma to the back, injuries that were soft tissue in nature, and substituted it with an award of Kshs. 100,000.
30. In *Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 Others (2019) eKLR* where Majanja J set aside the lower court's award of Kshs. 55,000/= for a deep cut on the scalp extending to the maxillary area, blunt injury to the left side of the chest, contusion on the back and contusion on both legs and substituted with an award of Kshs. 90,000/-.
31. Considering that the respondent had sustained a deep cut wound on the head as well as other soft tissue injuries, I am of the view that a sum of Kshs. 180,000/= is sufficient compensation for the injuries sustained. In the premises the award of the trial court is set aside and substituted with an award of Kshs. 180,000/= less 25% contribution leaving a balance of Kshs Kshs 135,000 plus costs and interest at court rates on general damages from the date of judgment in the lower court until payment in full.
32. On costs of this appeal, as the award made has been significantly reduced, I order that each party bear their own costs of this appeal.
33. This file is now closed.

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

**R.E. ABURILI**

**JUDGE**

