



**Muiruri & another v Munyithia (Civil Appeal E119 of 2021)
[2024] KEHC 13039 (KLR) (Civ) (28 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E119 OF 2021

JM NANG'EA, J

OCTOBER 28, 2024

BETWEEN

JAMES MUTHAKA MUIRURI 1ST APPELLANT

ANDREW NDEGWA 2ND APPELLANT

AND

CATHERINE MUTHINI MUNYITHIA RESPONDENT

*(Being an appeal from the judgement and decree of the Chief
Magistrate's court at Nairobi Milimani Commercial Courts (Hon.
D.N Kivuti- SPM) delivered on 5/3/2021 in CMCC NO. 4021 of 2019)*

JUDGMENT

Grounds of Appeal and reliefs sought

1. By a Memorandum of Appeal dated 5/3/2021, the appellants fault the trial court's judgment, on the quantum of general damages assessed only, on grounds as set out hereunder:
 1. That the Learned Magistrate's judgement is unjust, based on misguided points of fact and wrong principles of law, and thus resulted in a miscarriage of justice.
 2. That the Learned Magistrate erred in law and fact in awarding the respondent general damages of Ksh. 300,000 that are excessive in light of conventional awards in similar cases.
 3. That the learned Magistrate erred in law and fact in assessing general damages against the weight of evidence.
2. The appellants therefore seek the following orders;



- a) That the appeal be allowed.
- b) That this Honourable court sets aside the findings of the trial court on general damages.
- c) That without prejudice to prayer b) above this Honourable court re-assesses and reduces the trial Court's findings on general damages and substitutes it with its own reasoned finding. (sic)
- d) That the costs of this Appeal and that of the trial court be awarded the Appellants.(sic)

Analysis and determination

3. It would appear that only the learned Counsel for the respondent filed submissions which I have perused together with the trial court's record. In the impugned judgment, the trial magistrate granted the appellants, the plaintiffs in the suit before the lower court, general damages for pain and suffering in the sum of Kshs. 300,000. The judgement followed the respondent's suit in which she sought general damages, special damages of Kshs. 3,550, the costs of the suit and interest on account of injuries she sustained after the 1st appellant's motor vehicle registration number KBH 845 K , driven at the time by the 2nd appellant, knocked her down owing to negligent driving.
4. The appellants filed a joint defence traversing inter alia the allegation of negligence and loss occasioned to the respondent and prayed for dismissal of the suit with costs.
5. The respondent's evidence at trial underscored the averments in the suit. Based on medical evidence presented before the trial court including Dr Cyprianus Okoth Okere's medical report dated 13/2/2019, the respondent suffered a fracture of the midshaft of the left humerus. At the time of examination she complained of recurrent pains and inability to lift heavy loads with the left hand. The fracture site was tender on palpation. Dr Okere classified the injury as grievous harm and resultant permanent incapacity was assessed at 10%.
6. The appellants did not offer evidence. The learned trial magistrate assessed general damages for pain and suffering in the sum of Kshs. 300,000.
7. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters vs. Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus;-
 - “i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
8. The respondent's advocates submit that the trial court correctly exercised its discretion in assessing and awarding general damages. Citing my brother Justice PJ Otieno's decision in *Peter Njeru V. Philemone*



Mwagoti (2016) eKLR, Counsel observe that the appellants have not shown that in exercising its discretion the trial court made an award of general damages that is so inordinately high as to be a wholly erroneous estimate of damages suffered, or took into account irrelevant factors or failed to consider relevant factors. The respondent also continued to place reliance on cases cited before the lower court to wit; Global Allied Industries Limited V. Gerald Mwangi Muiruri (2015) eKLR and Kiru Tea Factory & Another V. Peterson Watheka Wanjohi (Civil Appeal No. 1045 of 2004) in which general damages in the sum of Kshs. 700,000 and Kshs.800,000 respectively were assessed and awarded to the claimants therein who suffered more or less similar injuries as the respondent herein. It must be noted that general damages are damages at large and no case is exactly the same as the other. The general method of approach in assessing general damages ought to 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 (see the often cited case of Kemro Africa Ltd & Another Lubia & Another (1982-88) KLR).

9. The appellant has not filed submissions in reply.
10. Having perused the Record of Appeal, it is does not contain the proceedings and judgement of the trial court which are no doubt very crucial in the determination of the Appeal. The original record of the trial court which would be expected to contain the proceedings and the judgement was not also availed to this court. It was the responsibility of the appellants to follow up with the lower court to ensure that the critical records are included in the Record of Appeal or seek this court’s assistance if the trial court failed to act. On these grounds alone, the appeal is liable to be struck out. Moreover, seeing that the appellants have not put in their submissions and looking at the case law relied upon by the respondent in the lower court against the injuries sustained by the respondent, the award of Ksh. 300,000 was reasonable compensation for the latter.

Determination

11. I don’t therefore find the trial court’s assessment of general damages in the sum of Kshs. 300,000 to be unreasonable. The court has not misdirected itself in any material manner. All the Grounds of Appeal accordingly fail.
12. Consequently, the Appeal is dismissed with costs to the respondent.

J. M. NANG’EA, JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 28TH DAY OF OCTOBER, 2024

In The Presence Of :

The Appellants’ Advocate, Ms Nanjira

The Respondent’s Advocate, Mr. Odhiambo

