



**Karanja v Kenya Tea Development Authority Ltd t/a Makomboki Tea Factory Limited
(Civil Appeal 134 of 2013) [2024] KEHC 14970 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 134 OF 2013
CW GITHUA, J
NOVEMBER 28, 2024**

BETWEEN

CYRUS KARIUKI KARANJA APPELLANT

AND

**KENYA TEA DEVELOPMENT AUTHORITY LTD T/A MAKOMBOKI TEA
FACTORY LIMITED RESPONDENT**

*(Being an appeal against the judgement of Hon. B Khaemba (SRM),
delivered on the 21st of March, 2013, in Kigumo Civil suit no. 107 of 2012)*

JUDGMENT

1. This appeal challenges the judgement and decree of the lower court in which the appellant, Cyrus Kariuki Karanja, was awarded Kshs. 60,000 as general damages for pain and suffering and Special damages in the sum of Kshs. 5, 520. The appellant was also awarded costs of the suit and interest on general damages from date of judgement.
2. The record of the lower court shows that the suit which culminated in the impugned award was instituted by the appellant against the respondent. The appellant sought both general and special damages for personal injuries sustained while in the course of his employment with the respondent as a casual labourer. The respondent, then the defendant, did not defend the suit. Interlocutory judgement was entered after which the suit proceeded for formal proof.
3. After close of the hearing, the learned trial magistrate entered final judgement in favour of the appellant against the respondent at 100%.

He also made the above award which is what is contested in this appeal.



In his Memorandum of Appeal dated 28th March 2013, the appellant advanced two grounds of appeal in which he faulted the learned trial magistrate for having not considered his submissions and for awarding him general damages that were inordinately low considering the injuries he had sustained.

4. The appeal was canvassed by way of written submissions. Those of the appellant were filed on 4th November 2021 while the respondent filed its submissions on 24th April 2024.
5. In his submissions, the appellant emphasized his complaint that the award of Kshs. 60,000 general damages for a fracture of the distal phalange of the right thumb was inordinately low. He asserted that in making the award, the learned trial magistrate erred as he did not follow the guiding principles used in the assessment of damages for personal injuries.
6. Further, the appellant proposed an award of Kshs.250,000 as general damages which in his view was commensurate with the injury he had sustained. For this proposition, he placed reliance on the authority cited before the trial court namely, Samuel Kariuki Kinyua & Another HCC No. 520 of 187 and an additional authority of *Telcom Kenya Limited V Stephen Ndolo Civil Appeal 92. Of 2007*.
7. The respondent in its written submissions dated 24th of April 2024 supported the award made by the trial court and denied the appellant's contention that the award was too low given the injuries he had sustained.

In addition, the respondent submitted that the award of damages was at the discretion of the trial court and urged this court not to disturb the contested award.

8. As what is challenged in this appeal is only the quantum of damages awarded by the trial court, it is important to set out the principles that lay down the parameters within which an appellate court can interfere with an award made by the trial court. It is trite, as correctly submitted by the respondent, that the award of damages is at the discretion of the trial court and an appellate court can only interfere with a trial court's award if certain circumstances are shown to exist.
9. The circumstances alluded to above have been discussed in a plethora of authorities but for purposes of this judgement, it will suffice to cite only one of them, the case of *Catholic Diocese of Kisumu V Tete [2004] eKLR* in which the Court of Appeal expressed itself as follows:

“.... It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a difference figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles. As by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate (see *Kemro v A M Lubia & Olive Lubia (1982-88) 1 KAR 727* and *Kitavi v Coast Bottlers Limited [1985]KLR 470*).”

10. In *Stanley Maore V Geoffrey Mwenda [2004] eKLR*, the Court of Appeal guided thus;

We must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in the 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.



11. In this case, the appellant pleaded that as a result of the accident, he sustained a fracture of the distal phalange of the right thumb. The injury was confirmed by Dr. Ikonya 's medical report dated 7th March 2012. Upon examining the appellant on the aforesaid date, Dr. Ikonya formed the opinion that the fracture had healed well leaving only residual pain which would subside with time. He further made a finding that the appellant had suffered a lot of pain and temporary incapacity for about two months but no permanent incapacity was anticipated.
12. Contrary to the appellant's complaint that the learned trial magistrate did not consider his submissions, a reading of the trial court's judgement shows clearly that before making his award, the learned trial magistrate considered the submissions made by the appellant including his proposal for an award of Kshs. 250,000 and the authority cited in support thereof.
13. The court record further shows that in arriving at his decision, the learned trial magistrate considered the authority relied on by the appellant, that is, Samuel Kariuki Kinyua V Mackenzie & another, HCCC 520 of 1987 in which the claimant was awarded Kshs.100,000 for a fracture of his right index finger and deep abrasions on his right arm but declined to apply it on grounds that the injuries suffered by the claimant in that case were more severe than those sustained by the plaintiff.
14. The learned trial magistrate however proceeded to be guided by another authority not cited by the appellant namely, Simba Posho Mills Ltd V Onguti (2005) eKLR. There was nothing wrong with the learned trial magistrate considering an authority not cited by the parties but the authority chosen for guidance should have been for an award made for injuries comparable to those sustained by the appellant in this case.
15. In the Simba Posho Mills Ltd V Onguti case [Supra], the High Court reduced an award of Kshs. 360,000 to Kshs. 180,000 as compensation for an amputated distal phalanx, comminuted fracture of the right index finger of the right hand, decloving minor injury palp of the middle finger of the right hand and cut wound on the right thumb. As a result of the injuries, the claimant suffered a permanent disability of 8%. These injuries were different and not comparable with the injuries the appellant had sustained. After citing this authority, the learned trial magistrate found, and correctly so I must add, that those injuries were more severe than those suffered by the appellant and proceeded to award the appellant KShs.60,000 without giving any justification or reason for settling on such an award.
16. In view of the foregoing, besides not giving any reason to justify the above award, I find that the learned trial magistrate erred by considering previous awards made in respect of injuries which were different and not comparable to those sustained by the appellant. He thus went against the legal principle that comparable injuries should be compensated by comparable awards.
17. The authority cited by the respondent of Telkom (K) Limited V Stephen Ndolo Owango (2012) eKLR is also not helpful as the injuries suffered by the plaintiff in that case were also much more severe as his thumb was amputated and the injury healed with some residual incapacity. In our case, the appellant suffered a fracture on the distal phalange of his right thumb which healed without any residual incapacity.
18. On my part, I have considered comparable awards made in the following authorities which I find relevant:
 - i. Emmanuel Ithau Nyamai & another V Paul Kipsang Samoei [2021] eKLR. In this case, the court revised downwards an award of Kshs. 300,000 to Kshs. 200,000 for fracture of one finger and multiple soft tissue injuries. The injuries healed without any permanent disability.
 - ii. Lucy Kagwera Mwenda & another V Zacharia Njue Njiru [2020] eKLR.



In this case, the court also reduced an award of Kshs. 300,000 to Kshs. 200,000 for a fracture of the proximal phalanx to the middle finger and soft tissue injuries which healed without any disability.

19. For the above reasons and guided by the above authorities, I agree with the appellant that the award of Kshs.60,000 in this case was inordinately low as to lead to an inference that it was an erroneous estimate of the injuries suffered. Taking into account the doctor's finding that the appellant had experienced lots of pain and temporary incapacity for about two months as a result of the injuries as well as inflationary trends, I find that an award of Kshs.200,000 would have been fair and adequate compensation for the appellant's injuries.
20. Consequently, I find merit in this appeal and it is hereby allowed. The award made by the trial court on general damages is hereby set aside and is substituted with an award of Kshs.200,000. The award shall attract interest at court rates from date of judgement of the lower court until payment in full. The award on special damages was not contested on appeal and it will thus remain undisturbed.
21. Costs follow the event and are awarded at the discretion of the court. Each party shall bear its own costs of the appeal but the respondent will bear the appellants costs in the lower court.
22. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 28TH DAY OF NOVEMBER 2024.

HON. C. W GITHUA

JUDGE

In the Presence of :

Mr. Gachoka for the appellant

Mr. Ngang'a holding brief for Mr. Karuga for the respondent

Ms. Susan Waiganjo Court Assistant

