



**Board of Management Stanley Godia Secondary School v Akuku (Civil Appeal  
4 of 2024) [2024] KEHC 14943 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL 4 OF 2024  
WM MUSYOKA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**THE BOARD OF MANAGEMENT STANLEY GODIA SECONDARY  
SCHOOL ..... APPELLANT**

**AND**

**STELLA ODONGO AKUKU ..... RESPONDENT**

*(An appeal arising from the judgment of Hon. HA Kassim, Resident Magistrate,  
RM, delivered on 15th January 2024, in Busia SCCC No. E011 of 2023)*

**JUDGMENT**

1. The suit, at the primary court, was initiated by the respondent, against the appellant, for compensation, arising from a motor vehicle accident, which allegedly happened on 27<sup>th</sup> August 2023, along the Busia-Mumias road, at Kisoko, involving the respondent and motor vehicle registration mark and number KBZ 876D, which was allegedly owned or controlled by the appellant at the material time. The respondent was allegedly a pillion passenger in motor cycle registration mark and number KMEH 223K, when motor vehicle KBZ 876D was allegedly so negligently driven, that it caused an accident, wherein the respondent sustained injury. The appellant filed a response, in which it denied everything pleaded in the statement of claim. In the alternative, it attributed negligence on the respondent.
2. A trial was conducted, on 21<sup>st</sup> December 2023. The respondent testified, and called 1 witness, the police officer who investigated the incident. The appellant called 1 witness, the driver of the accident motor vehicle. Judgment was delivered on 18<sup>th</sup> January 2024, where liability was settled at 80:20 in favour of the respondent and against the appellant, general damages were awarded at Kshs. 200,000.00, subject to contribution, while special damages were assessed at Kshs. 6,000.00, with costs and interests.
3. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 23<sup>rd</sup> January 2024, turned on the respondent being a minor who lacked capacity to sue or be sued;



- police records not reflecting the name of the respondent; the evidence not being analysed by the trial court; the quantum of damages being excessive and exorbitant; and the decision being plainly wrong and against the weight of evidence.
4. Directions, on the disposal of the appeal, were given on 20<sup>th</sup> May 2024, for canvassing of the appeal by way of written submissions. Both sides have filed written submissions.
  5. The appellant has submitted on only 1 ground, that the quantum of general damages, assessed by the trial court, was inordinately high or excessive, and the decisions, in Joseph Wambura vs. Joseph Mwangi Obai [2018] eKLR (Nyakundi, J), Sheikh Mushtaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 others [1986] eKLR (Kneller, Hancox & Nyarangi, JJA), HB (minor suing through mother & next friend DKM) vs. Jasper Nchonga Magari & another [2021] eKLR (Nyakundi, J) and Ndungu Dennis vs. Ann Wangari Ndirangu & another [2018] eKLR (J. Ngugi, J), are cited in support.
  6. The respondent wholly supports the award by the trial court, and relies on Nyambura vs. Njuguna & another [2024] KEHC 4185 (KLR)(Nzioka, J), Kimatu Mbuvi vs. Benson Nguli [2010] eKLR (Lenaola, J), Benson Charles Ochieng & another vs. Patricia Atieno [2013] eKLR (Kimaru, J) and Patrick Mwiti M’Imanane & another vs. Kevin Mugambi Nkunja [2013] eKLR (JA Makau, J). On liability, Bonface Ouma Olando vs. Gemini Stores Limited [2023] KEHC 19254 (KLR) (Musyoka, J) is cited, for the argument that liability cannot be attributed on a pillion passenger, in the event of a collision between the motorcycle, on which he was a passenger, and another vehicle.
  7. The appeal turns only on assessment of general damages, as the appellant has apparently dropped the other grounds, in its written submissions.
  8. The injuries sustained by the appellant were particularised in the plaint, as blunt injuries to the neck, chest and back, and bruises on the right elbow and left knee. A bundle of documents, inclusive of a medico-legal report by Dr. Sokobe, undated, was filed as proof of the injuries.
  9. The trial court concluded, based on the medical records, that the respondent had sustained severe soft tissue injuries. The assessment of general damages was founded on the decisions in Francis Omari Ogaro vs. JAO (minor suing through next friend and father GOD [2021] eKLR (Maina, J) and Lilian Anyango Otieno vs. Philip Mugoya Ogila [2022] eKLR (F. Ochieng, J).
  10. It would appear that this was a case of blunt injuries and bruises.
  11. I note that the injuries sustained in the 2 authorities cited by the appellant, HB (minor suing through mother & next friend DKM) vs. Jasper Nchonga Magari & another [2021] eKLR (Nyakundi, J) and Ndungu Dennis vs. Ann Wangari Ndirangu & another [2018] eKLR (J. Ngugi, J), are similar to those sustained by the respondent herein. Most of the decisions relied upon by the respondent are dated.
  12. I have perused the authorities relied upon by the trial court, Francis Omari Ogaro vs. JAO (minor suing through next friend and father GOD [2021] eKLR (Maina, J) and Lilian Anyango Otieno vs. Philip Mugoya Ogila [2022] eKLR (F. Ochieng, J), for comparison purposes. In Lilian Anyango Otieno vs. Philip Mugoya Ogila [2022] eKLR (F. Ochieng, J), the injuries sustained were an injury on the right hand, minor lacerations on other parts of the body, lacerations on the chest and elbow joint, which were classified as soft tissue injuries. The court awarded Kshs. 150,000.00. In Francis Omari Ogaro vs. JAO (minor suing through next friend and father GOD [2021] eKLR (Maina, J), the injuries were a cut wound with bruises on the temporal region, laceration with inflammation of the frontal part of the head, right umbilical region tenderness, left illiac region cut wound with bruises, bruises on the posterior aspect of the elbow joint bilaterally, right lower limb (lateral ankle joint) and a cut wound with bruises and inflammation, which left the claimant with ugly scars. An award of Kshs. 180,000.00 was made.



13. There should be no doubt that the injuries in Francis Omari Ogaro vs. JAO (minor suing through next friend and father GOD [2021] eKLR (Maina, J) were far more serious than those in Lilian Anyango Otieno vs. Philip Mugoya Ogila [2022] eKLR (F. Ochieng, J). The injuries sustained in Lilian Anyango Otieno vs. Philip Mugoya Ogila [2022] eKLR (F. Ochieng, J) are comparable to those suffered by the respondent herein, while those in Francis Omari Ogaro vs. JAO (minor suing through next friend and father GOD [2021] eKLR (Maina, J) were more severe.
14. I have done a survey of recent decisions, where claimants had sustained blunt injuries to the neck, chest and back, and bruises on the right elbow and left knee, or comparable injuries.
15. In *Marube & another vs. Nyamboga* [2024] KEHC 3395 (KLR) (Chigiti, J), the claimant had sustained a head injury, deep cut wounds on the occipital region, chest contusion, blunt trauma to the back, bruises on the right upper limb, bruises on the left upper limb, bruises on the left lower limb, bruises on the right lower limb and cut wounds on the right lower limb, and the court awarded Kshs. 350,000.00. In *Anthony Nyamwaya vs. Jackline Moraa Nyandemo* [2022] eKLR (F. Ochieng, J), the claimant suffered rugged cut wounds on the temporal region of the head, tenderness on the neck, tenderness on the anterior chest, tenderness on the lower back, tenderness on the shoulders, swelling and tenderness on the right hand, bruises on right index finger and swelling tenderness and bruises on both legs, and Kshs. 250,000.00 was awarded.
16. In *Adembesa & another vs. Gweno* [2024] KEHC 5379 (KLR) (Aburili, J), the injuries were injury to the head, chest injury, neck injury, bruises on shoulders, bruises both knees and bruises both legs, and the award was Kshs. 120,000.00. In *Otieno & another vs. Mwanga* [2023] KEHC 26648 (KLR) (Nyakundi, J), the injuries suffered were a blunt injury to the head, blunt injury to the chest, blunt injury to the abdomen, bruises on the left wrist joint, blunt injury to the left wrist joint and blunt injury to the right ankle, and the court awarded Kshs. 300,000.00.
17. The decisions that I have reviewed above provide very wide variations in exercise of discretion in assessment. For some very severe soft tissue injuries, some courts have made very low awards; while in others, where the soft tissue injuries were relatively minor, quite high awards were made. I am of the persuasion that the soft tissue injuries sustained by the respondent herein were fairly minor, and did not warrant an award of Kshs. 200,000.00, which I hereby reduce to Kshs. 150, 000.00. I have found guidance in *Lilian Anyango Otieno vs. Philip Mugoya Ogila* [2022] eKLR (F. Ochieng, J) and *Adembesa & another vs. Gweno* [2024] KEHC 5379 (KLR) (Aburili, J)
18. The appeal herein is disposed of in the terms proposed in paragraph 17 above. Each party shall bear their own costs. Orders accordingly.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 27<sup>th</sup> DAY OF NOVEMBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Oyugi, instructed by Omay & Company, Advocates for the appellant.

Mr. Omondi, instructed by Omondi & Company, Advocates for the respondent.

