



REPUBLIC OF KENYA



KENYA LAW
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Nyakundi v Board of Management Friends Mukuyu Secondary School (Civil Appeal 39 of 2021) [2023] KEHC 426 (KLR) (26 January 2023) (Judgment)

Neutral citation: [2023] KEHC 426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 39 OF 2021
REA OUGO, J
JANUARY 26, 2023**

BETWEEN

WILFRIDAH NYAKUNDI APPELLANT

AND

**THE BOARD OF MANAGEMENT FRIENDS MUKUYU SECONDARY
SCHOOL RESPONDENT**

*(Appeal from the Judgment and Decree of Hon. S. Lutta
(CM) dated and delivered on the 24th March 2021)*

JUDGMENT

1. This appeal is against quantum. The appellant is challenging the award of damages by the trial magistrate after she sustained injuries following a road traffic accident along Kisii –Kisumu road. A brief summary of the facts before the trial court is that the appellant was walking along the verge of the road when she was hit by motor vehicle registration no KBW 695V belonging to the respondent. The respondent filed his statement of defence dated 9th September 2019. However on 20th January 2021, the parties by consent agreed on liability in the ratio of 70:30 in favour of the appellant.
2. The trial magistrate made an award of Kshs 400,000/- for general damages. The appellant dissatisfied with the finding of the trial court raises the following grounds of appeal in her memorandum of appeal dated 21st April 2021:
 1. The Learned Trial Magistrate erred in law and in fact by failing to apply the doctrine of stare decisis and making a decision in general damages that is not comparable to those made by previous precedents with respect to the nature and extent of injuries sustained by the appellant.



2. The learned trial magistrate erred in law and in fact by awarding general damages that were inordinately low in the circumstances which were not commensurate with the injuries sustained by the appellant.
 3. The amount of quantum awarded of Kshs 400,000/- as a general damage is inordinately low and not comparable to similar awards that could be awarded to the appellant.
 4. The learned Trial Magistrate erred in law and in fact by not taking into consideration the submissions and authorities of the appellant filed in the trial court in making his decision on the general damages awardable.
 5. The learned trial Magistrate erred in law and fact by not considering the gravity of the injuries sustained by the appellant in making his decision on general damages.
3. The appeal is challenging the award of quantum and I now turn to consider whether the damages awarded was inordinately low. The parameters under which an appellate court will interfere with an award in general damages were stated by the Court of Appeal in *Bashir Ahmed Butt vs. Uwais Ahmed Khan* (1982-88) KAR as follows:
- ‘An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low...’
4. According to paragraph 5 of the plaint, the appellant alleged to have suffered contusion to the right shoulder joint and lower back; dislocation of the right shoulder; blunt trauma to the pelvic region; and a pelvic fracture. The dislocation of the right shoulder joint and the fractured pelvis are captured in her discharge summary from Kisii Teaching and Referral Hospital. According to the medical report by Dr Daniel Nyameino, the appellant sustained the injuries alleged and was at the risk of developing habitual right shoulder dislocation as a complication of the injury. It was his recommendation that further orthopaedic follow up and management and physiotherapy was needed to achieve full functional status.
 5. The appeal was dispensed by way of written submissions and both parties have filed their respective submissions. The appellant in her submissions has proposed that an award of Kshs 900,000/- would be sufficient compensation for the injuries sustained. She relied on the case of *Joseph Njeru Luke & 3 Others v Stellah Muki Kioko* [2020] eKLR where the court held that Kshs 750,000/- would suffice where the plaintiff sustained a pelvic fracture and soft tissue injuries.
 6. The respondent in its submission proposed that a sum of Kshs 300,000/- would be most sufficient as the medical report had no indication of a permanent disability. The respondent cited the case of *Civicon Limited v Richard Njomo Omwanja & 2 Others* (2019) eKLR where the court substituted an award of Kshs 1,000,000/- with Kshs 450,000/- where the plaintiff sustained a fracture. In *Simon Kimote v Agro Solutions Limited* [2021] eKLR the court maintained an award of Kshs 350,000/- where the plaintiff sustained severe injuries with 65% permanent disability after fracturing the right femoral bone and the tibia plateau bone.
 7. The respondent cited the decision of Majanja J in *Civicon Limited v Richard Njomo Omwanja* (supra) where the Judge found that Kshs 450,000/- was sufficient for a plaintiff with a fractured pelvis. However, in the later case of *Joseph Njeru Luke* (supra) in 2020, the same court held that Kshs.



750,000/- was most appropriate for the respondent who sustained soft tissue injuries and a fractured pelvis. In *Barnabas v Ombati* (Civil Appeal E43 of 2021) [2022] KEHC 12136 (KLR) (28 July 2022) (Judgment), I affirmed an award of Kshs 800,000/- for a broken pelvis and humerus. A fractured pelvis is considered a serious injury and the current awards by courts range between Kshs 700,000/- to Kshs 800,000/-.

8. In this instant case, the appellant sustained a fracture of the pelvis and soft tissue injuries which include dislocation of the right shoulder. Having taken into account the injuries sustained by the appellant, comparable awards by courts and the rate of inflation, I find that an award of Kshs 400,000/- awarded by the trial magistrate as inordinately low warranting interference by this court. I set aside the award of general damages by the subordinate court and substitute it with an award of Kshs 800,000/-. The award is subject to the agreed contribution before the trial court.
9. The appellant is awarded cost of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 26TH DAY OF JANUARY 2023.

R.E. OUGO

JUDGE

In the presence of:

Appellant

Respondent

Wilkister C/A

