



**Chege v Gacheru (Civil Appeal E095 of 2021)
[2023] KEHC 1580 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E095 OF 2021
JM CHIGITI, J
FEBRUARY 28, 2023**

BETWEEN

JOSEPH KIARIE CHEGE APPELLANT

AND

PETER KIBUNYI GACHERU RESPONDENT

(Being an appeal from the Judgment of the Chief Magistrates Court at Gatundu (Hon. L.M Wachira) delivered on 3rd May, 2021 in Gatundu C.M.C.C NO. 245 of 2017)

JUDGMENT

Brief Background:

1. The cause of action arose out of a traffic accident that occurred on 12th August 2016 along Exit Kimbo Superhighway at Kimbo involving The Respondent and Motor Vehicle Registration Number KBA 315 M.
2. Before the matter proceeded for hearing, the parties herein entered into a consent that apportioned liability 70:30 % in favour of the Respondent. The matter proceeded into hearing on the issue of quantum of general damages.
3. The court then proceeded to render judgment in favour of the Respondent on 12th February 2020 at Kshs.1, 500,000 special Damages Kshs. 40,714 and for future medical expenses Kshs.120,000 less contribution.
4. Being dissatisfied with the award of general damages, the Appellant has filed the instant appeal.

Analysis and Determination

5. Awarding damages is largely an exercise of judicial discretion and the instances that would make an appellate court interfere with that discretion are well established.



6. In Court of Appeal case of *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No.284 of 2001 (2004) 2KLR 55 as quoted in Mumbi Ngumbi Kasamu (Suing as the legal representative of the *Estate of Boniface Mulinge Mbithe (deceased v Mutua Mula* & Another (2019) eKLR stated 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 considering 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.

7. I have analyzed the authorities as set out in the Appellants submissions in support of his argument to reduce the damages noting that the said authorities are for cases where the plaintiffs sustained less severe injuries as compared to the injuries sustained by the Respondent.

8. I am convinced that the trial magistrate misdirected and misapprehended the extent and severity of the injuries suffered in arriving at an inordinately high award for general damages which in my estimation goes over and above what would be a fair compensation to the litigants.

Disposition:

9. Noting that comparable injuries should be as far as possible compensated by comparable awards as held in Kisumu Court of Appeal Civil Appeal No.344 of 2001 Arrow Car Limited and another, I am of the view that there is a need to interfere with the findings of the trial court.

10. I have carefully considered the nature of the injuries sustained as highlighted in the medical report and factored in the inflationary trend of the Kenya Shillings and I am of the view that the trial court award of Kshs. 1,500,000/= was inordinately high giving me the authority to interfere with the discretion of the trial court.

Orders

11. The Appeal succeeds and I award the Respondent damages in the following terms:

1. Liability 80%:20% in favour of the Respondent.
2. General damages for injuries sustained by the Respondent at Kshs.1,000,000/= less 20%.
3. Special damages Kshs. 40,714.
4. Future medical expenses 120,000.
5. Costs of the lower court to the Respondent and of the appeal to the Appellant.

DATED, SIGNED AND DELIVERED AT KIAMBU THIS 28TH DAY OF FEBRUARY, 2023

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J. CHIGITI (SC)

JUDGE

In the Presence of;



For Applicant:

For Respondent:

C/A:

