



**Ogikoro v Kibware (Civil Appeal E012 of 2022)
[2023] KEHC 1280 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E012 OF 2022
CW GITHUA, J
FEBRUARY 23, 2023**

BETWEEN

PATRICK MACHUKA OGIKORO APPELLANT

AND

DUNCAN OBURE KIBWARE RESPONDENT

JUDGMENT

1. This appeal is against the quantum of damages awarded to the respondent who was the plaintiff in Kisii CMCC NO 799 of 2019 while the appellant was the defendant.
2. The Respondent sued the appellant claiming general and special damages following personal injuries allegedly sustained by him in a road traffic accident on July 20, 2019 whose occurrence was blamed on the negligence of the appellant's driver or servant in managing motor vehicle Registration No xxxx (the subject vehicle).
3. The trial court's record shows that the parties entered into a consent on liability in the ratio of 80:20% in favour of the respondent against the appellant. Hearing proceeded for assessment of damages and on January 21, 2022, the learned trial magistrate awarded the respondent general damages in the sum of Kshs 800,000 and special damages of Kshs 73,750. The total amount payable was thus Kshs 873,750 less 20% share of his contribution to liability.
4. In his memorandum of appeal filed on February 18, 2022, the appellant complained that the award of general damages was manifestly and inordinately excessive and faulted the learned trial magistrate for failing to properly evaluate the evidence on record before arriving at the award. The appellant further asserted that the learned trial magistrate erred by misapprehending the principles applicable in the assessment of damages for personal injuries and made an award that occasioned a miscarriage of justice.
5. On July 27, 2022, directions were given that the appeal be prosecuted by way of written submissions which both parties duly filed.



In his submissions, counsel for the appellant reiterated the appellant's complaint that the award of general damages was inordinately high bearing in mind the nature of injuries suffered by the respondent and comparable awards made for comparable injuries. Counsel argued that the trial court should have been guided by the authorities cited by the appellant namely, *Gabriel Kariuki Kigathi & Another v Monica Wangui Wangechi [2016] eKLR* where the plaintiff was awarded Kshs 400,000 and *David Kimathi Kaburu v Dionisius Mborogo Itirai [2017] eKLR* where the plaintiff was awarded Kshs 300,000 for more serious injuries. It was further submitted that an award of Kshs 500,000 would have been reasonable and sufficient.

6. On his part, and as would be expected, counsel for the respondent supported the trial court's award and urged the court to uphold it as the appellant had not laid a good basis for the court to interfere with it. He argued that award was reasonable given the injuries sustained by the respondent and invited the court to dismiss the appeal for lack of merit.
7. This being an appeal on quantum only, the general principle applicable is that an appellate court should be slow to interfere with the discretion of the trial court to award damages save where it was satisfied that in arriving at its decision, the trial court acted on wrong principles of law by taking into account irrelevant factors or failing to take into account relevant factors.

An appellate court can also interfere with an award if it was convinced that it was either inordinately high or low as to lead to an inference that it was a wholly erroneous estimate of the damage suffered.

See: *Mariga v Musila [1982-88] IKAR 507*, *Kemfro Africa Ltd T/A Meru Express Service & others v AM Lubia & Another [1982-88] ILAR 727*.

8. In order to ascertain whether the impugned award was reasonable or inordinately high and excessive as submitted by the parties in their rival written submissions, it is important to reproduce the injuries suffered by the respondent which were not disputed.

According to paragraph 5 of the plaint, the respondent sustained serious injuries which are particularized as follows;

- i. Chest contusion
 - ii. Fracture of the ribs
 - iii. Fracture of the right radius and ulna
 - iv. Pelvic contusion
 - v. Fracture of the pelvic
9. According to the medical report of Dr Daniel Yameno who confirmed the injuries after examining the respondent on August 20, 2019, a month after the accident, the injuries were at the time in the process of healing but no indication was made that they may heal leaving any residual disability.
 10. As stated earlier, in his submissions before the trial court and in this court, the appellant proposed an award of Kshs 500,000 relying on the following authorities,
 1. Gabriel Kariuki Kigathi & Another v Monica Wangui Wangechi (supra) where the plaintiff was awarded Kshs 400,000 for the following injuries; fracture of the neck, bilateral rib fractures, bilateral lung contusion, injuries to both hands and legs.



2. David Kimathi Kaburu v Dionisius Mburugu Itira[2017 eKLR where the plaintiff was awarded Kshs 630,000 for the following injuries; plated fracture midshaft femur, intertrochanteric fracture. The award was upheld by the High Court.
11. The respondent in his submissions before the trial court proposed an award of Kshs 1,500,000 relying on the following authorities;
 1. [*The board of trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Elalgado \[2019\] eKLR*](#) where an award of Kshs 2,000,000 was set aside on appeal and substituted with an award of Kshs 1,400,000 for a pelvic fracture and open back facial bruises.
 2. [*Peter Namu Njeru v Philemone Mwajoti \[2016\] eKLR*](#) where an award of Kshs 700,000 was upheld on appeal for a fracture of the radial ulna and soft tissue injuries.
 3. [*Blue Horizon Travel Co. Ltd vs Kenneth Njoroge \[2020\] eKLR*](#) where the trial court's award of Kshs 650,000 was set aside on appeal and substituted with an award of Kshs 400,000 where the plaintiff had sustained fractured ribs and multiple soft tissue injuries.
12. Though the award of damages for personal injuries are at large and depend on the trial court's discretion, it is now settled law that in the exercise of that discretion, the trial court should be guided by comparable awards made in cases where claimants had sustained similar or comparable injuries. Although no two cases can be exactly alike, courts should strive to ensure that so far as possible, comparable injuries are compensated by comparable awards in order to create some semblance of uniformity in the making of awards.
13. When arriving at the impugned award, the learned trial magistrate stated as follows;

' Taking into account the injuries in the cited authorities and the degree of injuries suffered by the plaintiff herein, I find that an award of Kshs 800,000 would be adequate compensation for the plaintiff herein as general damages for pain and suffering'.

Having considered the parties rival submissions and the injuries sustained by the plaintiffs in the authorities cited by both parties, I find that the respondent sustained multiple fractures in the ribs, right radius and ulna, and on the pelvic in addition to other soft tissue injuries which affected several parts of his body as opposed to the one or two fractures suffered by the plaintiffs in the cited authorities. I find the cases of the Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Elalgado (supra) and [*Joseph Njeru Lukene & 3 others v Stellah Muki Kioko \[2020\] eKLR*](#) where the plaintiffs were awarded Kshs 1,400,000 and Kshs 750,000 respectively for only a pelvic fracture and other soft tissue injuries relevant and a good guide in the assessment of damages in this case. It is however important to note that these decisions were made in the year 2019 and 2020 respectively.
14. Considering that the respondent sustained other multiple fractures in addition to the pelvic fracture and other soft tissue injuries and taking into account the rate of inflation, I am persuaded to find that the award of Kshs 800,000 in this case was both reasonable and fair compensation for the pain and suffering the respondent must have endured after the accident. I thus find that the award was not excessive or inordinately high as submitted by the appellant. And as the learned trial magistrate did not act on any wrong legal principle or considered an irrelevant factor or failed to consider a relevant one in arriving at the award, I find no basis upon which I can interfere with the award. The award is consequently upheld.

There was no challenge on special damages and the amount awarded is hereby sustained.



15. The upshot of the foregoing is that the trial courts judgment is hereby upheld and the appeal is dismissed for lack of merit with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF FEBRUARY 2023.

C.W. GITHUA

JUDGE

In the presence of:

No appearance for the Appellant

No appearance for the Respondent

Ms. Aphline Court Assistant

