



REPUBLIC OF KENYA



**Mahero v Barasa (Civil Appeal 54 of 2019) [2023] KEHC 3478 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3478 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA**

**CIVIL APPEAL 54 OF 2019**

**WM MUSYOKA, J**

**APRIL 28, 2023**

**BETWEEN**

**MAUREEN MAHERO ..... APPELLANT**

**AND**

**VALLARY INZANIACHI BARASA ..... RESPONDENT**

*(Appeal from judgment and decree by Hon. FM Nyakundi, Senior Resident Magistrate, SRM, in Mumias SPMCCC No. 193 of 2016, of 29th April 2019)*

**JUDGMENT**

1. The appellant had been sued by the respondent, at the primary court, for compensation arising out of a traffic road accident on 27<sup>th</sup> February 2016, along Mumias-Bungoma Road. The respondent was a pedestrian, and was knocked down by motor vehicle registration mark and number KAT 130S, said to have belonged to the appellant, and liability was attributed to the appellant on account of negligence. The appellant filed a defence, denying the accident, and everything else pleaded in the plaint. In the alternative, the appellant pleaded that, if any accident occurred, it must have been due to negligence on the part of the respondent, or she contributed to it, or it was beyond the control of the appellant.
2. Liability was agreed upon at 85:15 against the appellant. A trial was conducted on quantum, and the court found in favour of the respondent, and awarded Kshs. 600, 000.00 general damages and Kshs. 6, 000.00 special damages.
3. The appellant was aggrieved, hence the appeal. She has raised several grounds: that the trial court did not appreciate the evidence tendered; the award of general damages was excessive; among others. She sought the setting aside of the judgment and decree, and a re-assessment of the quantum of compensation.
4. On 23<sup>rd</sup> May 2022, directions were given, for canvassing of the appeal by way of written submissions. Both parties filed written submissions.



5. The appellant argues that the injuries sustained by the respondent were soft tissue in nature, and should have attracted no more than Kshs. 100, 000.00 in general damages. She cited several decisions to support her case. The respondent defended the award by the trial court, and also cited authority.
6. At the trial, the respondent indicated her injuries to have been on the mouth and head. She said 1 tooth was cut, 1 was hit out and she had scars. The doctor, who produced the medico-legal report, described the injuries as soft tissue and dental in nature, and as involving loss of 1 incisor tooth and the fracture of another tooth. The P3 form detailed the injuries as a scar on left side of forehead, a scar on upper lip, missing left upper first incisor replaced with artificial, and fracture of left 2<sup>nd</sup> upper incisor. The same injuries are reflected in the medico-legal report, by Dr. Andai, of 19<sup>th</sup> April 2016.
7. The current judicial trends are for awards in the region of Kshs. 300, 000.00 to Kshs. 600, 000.00 for soft tissue injuries, with loss of incisors. In *Joseph Mutua Nthia vs. Fredrick Moses M. Katuva* [2019] eKLR (Odunga, J), the respondent lost 2 teeth, 2 were left loose, and he had soft tissue injuries. He was awarded Kshs. 400, 000.00. In *Justine Nyamweya Ochoki & another vs Prudence Anna Mwambu* [2020] eKLR (Nyakundi, J), there was loss of 1 incisor tooth, loosening of other teeth, and other soft tissue injuries. The High Court found the award of Kshs. 650, 000.00, by the trial court, to be excessive, and reduced it to Kshs. 300, 000.00. Going by these trends, I find the award made herein to be excessive. I shall accordingly reduce general damages to Kshs. 400, 000.00.
8. I find merit in the appeal herein. Appeal is disposed of in the terms proposed in paragraph 7 above. Each party to bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF APRIL 2023**

**W MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

**Appearances**

Mr. Kurgat, instructed by Mose & Mose, Advocates for the appellant.

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

