



**Lake Trans Limited & another v Ndanyi (Civil Appeal E015 of 2021)
[2023] KEHC 3651 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E015 OF 2021**

**JN KAMAU, J
APRIL 27, 2023**

BETWEEN

LAKE TRANS LIMITED 1ST APPELLANT

NICHOLAS NDETI 2ND APPELLANT

AND

EDWARD INGATI NDANYI RESPONDENT

(Being an appeal from the Judgment and Decree of Hon C.N.C Oruo (SRM) delivered at Maseno in Principal Magistrate's Court Case No 100 of 2019 on 26th January 2021)

JUDGMENT

Introduction

1. In his decision of January 26, 2021, the Learned Trial Magistrate, Hon CNC Oruo (SRM), entered Judgment in favour of the Respondent herein against the Appellants jointly and severally as follows:-
General damages Kshs 400,000/=
Special damages Kshs 16,060/=
Kshs 416,060/=
Less 15% contribution Kshs 62,409/=
Kshs 353,651/=
Plus costs and interest of the suit
2. Being aggrieved by the said decision, on February 26, 2021, the Appellants filed a Memorandum of Appeal dated February 24, 2021. They relied on two (2) grounds of appeal.



3. Their Written Submissions were dated and filed on October 26, 2022 while those of the Respondent were dated November 1, 2022 and filed on December 1, 2022. The Judgment herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the respective parties' Written Submissions, it appeared to this court that the Appellant had only challenged the Trial Court's award on quantum. This court dealt with both Grounds of Appeal as they were related.
7. The Appellants submitted that in assessing general damages, the method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but that it must be recalled that no two cases are alike as was stated in the cases of *Stanley Maore vs Geoffrey Mwenda* [2004]eKLR and *Mbaka Nguru & Another vs James George Rakwar*[1998]eKLR.
8. It was their case that the injuries the Respondent sustained were soft tissue injuries and that the Medical Report that was produced by Dr Andai showed that he had healed from the same. They argued that the cases the Respondent and the Learned Trial Magistrate relied upon did not match the present case because the injuries therein were severe. They therefore submitted that the Learned Trial Magistrate was not justified in awarding the Respondent general damages in the sum of Kshs 400,000/= considering that he suffered soft tissue injuries which healed with no permanent incapacity.
9. They placed reliance on the case of *Daniel Gatana Ndungu & Another vs Harrison Angore Katana* [2020]eKLR where the appellate court set aside an award of Kshs 350,000/= by the trial court for soft tissue injuries and substituted it with an award of Kshs 140,000/=. They urged the court to set aside the damages awarded herein by the Trial Court.
10. On its part, the Respondent relied on the case of *Kenfom Africa Limited t/a Meru Express Services Gathogo Kanini vs A.M.M Lubia & Another*, Nairobi CA No 21of 1984(eKLR citation not given) where it was held that the principles to be observed by an appellate court in deciding whether it was justified in disturbing quantum of damages awarded by a trial judge were that it had to be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out a relevant one or that, short of this, the amount was inordinately low or inordinately high that it must have been a wholly erroneous estimate of the damages.
11. He was emphatic that the award by the Learned Trial Magistrate was not excessive and as such this court ought to uphold the same. He asserted that the Learned Trial Magistrate considered the authorities that the parties relied on but abandoned them because he had proposed excessively high awards while the Appellants relied on the case of *Mwavita Jonathan vs Silvia Onunga* Kisumu HCCA No 17 of 2017 (eKLR citation not given) where the plaintiff therein sustained left hip commuted intertrochanteric fracture, blunt chest injury, dislocated right knee joint, sprain at the cervical spine of the neck and



lumbar-sacral spine of the back and deep wound on the left lower leg and was awarded general damages in the sum of Kshs 400,000/=.

12. He further submitted that the Learned Trial Magistrate was justified in awarding the damages considering the effect of inflation and the fact that he suffered serious soft tissue injuries, specifically the subdural hematoma, a conclusion that was arrived at in both the 1st and 2nd Medical Reports. He pointed out that he produced receipts in proof of his special damages.
13. He placed reliance on the case of *Lake Naivasha Growers vs Muigai Thuka Naivasha* HCCA No 36 of 2017 (eKLR citation not given) where the appellate court therein upheld an award of 250,000/= general damages in August 2017 where the plaintiff therein suffered serious soft tissue injuries which were not as life threatening as the ones he had suffered.
14. He asserted that the Appellants did not demonstrate that the Learned Trial Magistrate applied the wrong principles in arriving at the impugned award and thus urged this court to dismiss the Appellant's appeal for lack of merit.
15. It is well settled in law that an appellate court will not disturb an award of general damages unless the same was so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended the law, a principle that was dealt with in the case of *Margaret T. Nyaga vs Victoria Wambua Kioko* [2004] eKLR.
16. It must be understood that money can never really compensate a person who has sustained any injuries. No amount of money can remove the pain that a person goes through no matter how small an injury may or may appear to be. It would in fact be difficult to say with certainty that a particular amount of money would be commensurate with the injuries that a person has sustained. It is merely an assessment of what a court would find to be reasonable in the circumstances to assuage a person who has suffered an injury.
17. However, this assessment is not without limits. A court must have presence of mind to ascertain to itself the sum of general damages that courts and especially appellate courts would ordinarily award in respect of a particular injury. A court must therefore be guided by precedents.
18. Indeed, in the case of *Kigaraari vs Aya* (1982-88) 1 KAR 768, it was stated as follows:-

“Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford. Large awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees.”
19. This court also had due regard to the case of *Lim vs Camden* HA [1980] AC 174 where it was held that:-

“Even in assessing compensatory damages, the law seeks at most to indemnify the victim for the loss suffered, not to punish the tortfeasor for the injury he has caused.”
20. Going further, an award of damages was also not meant to enrich the victim but to compensate such victim for the injuries he or she had sustained. Similar injuries should attract comparable awards. However, in the quest for consistency, courts must also recognise that no case is exactly the same as the other and therefore each case must be decided with its own peculiar circumstances but keeping in mind that any monies awarded must be sustainable.
21. Notably, it is not mandatory that a trial court must analyse each and every case that has been submitted by a party. It will suffice if the trial court considers what is most comparable to the injuries a plaintiff



has suffered with a view to coming up with an appropriate assessment to compensate such a plaintiff for the injuries he or she would have sustained. It must be noted that cases cannot contain exact injuries and they are merely for comparison purposes.

22. It is important to point out that an appellate court ought not to interfere with the discretion of a trial court merely because it could have awarded a lower or higher sum than that which was awarded by the trial court. An appellate court can only interfere where the award of general damages is so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended as was held in the case of [Margaret T. Nyaga vs Victoria Wambua Kioko](#) (supra).
23. According to the Plaintiff dated August 20, 2019, the Respondent was said to have sustained a cut wound to the right supra orbital region, bruises to the right parietal region, intracranial bleeding (subdural haematoma), deep abrasions to the right hand and bruised right leg which injuries. He was first rushed to Coptic Hospital and thereafter referred to Jaramogi Oginga Odinga Teaching and Referral Hospital.
24. The injuries the Respondent sustained were confirmed in the P3 Form dated June 12, 2019 and Dr Charles Andai's Medical Report dated 27th June 2019. In his Medical Report, Dr Andai observed that the Respondent suffered moderately severe soft tissue injuries and that he was expected to heal within a year.
25. Remaining faithful to the doctrine of *stare decisis* and taking the inflationary trends into consideration, this court took the view that the award of Kshs 400,000/= for the moderately severe soft tissue injuries was excessive and that a sum of Kshs 250,000/= general damages was more fair in the circumstances of the case necessitating interference by this court.
26. In arriving at the said conclusion, this court had due regard to the cases the parties relied upon during trial and the following cases with comparable awards to come to a fair and reasonable assessment of the general damages that ought to be awarded herein:-
 1. In the case of [Fred Barasa Matayo vs Channan Agricultural Contractors](#) [2013] eKLR, the court reviewed an award of Kshs 250,000/= downwards to Kshs 150,000/= where the respondent therein had sustained moderate soft tissue injuries that were expected to heal in eight months' time.
 2. In the case of [Dickson Ndungu vs Theresia Otieno & 4 Others](#) [2014] eKLR, the appellate court reviewed the award of Kshs 250,000/= general damages downwards to Kshs 127,500/= where the respondent had sustained soft tissue injuries which produced no complaints.
 3. In the case of [Purity Wambui Muriithi vs Highlands Mineral Water Company Ltd](#) [2015] eKLR, the appellate court reduced the award of Kshs 700,000/= general damages to Kshs 150,000/= where the respondent therein had sustained injuries to the left elbow, pubic region, lower back and right ankle.
 4. In the case of [Rosemary Waithira Mwangi vs Samuel Kiplangat Kipchumba & Another](#) [2021] eKLR, where the appellate court upheld an award of Kshs 650,000/= general damages where the appellant had sustained blunt injury with bilateral subdural haematoma, loss of consciousness and deep cut on the right lower leg.
 5. In the case of [Onyango & Another vs Muriu](#) [2022] KEHC 232 (KLR), the appellate court upheld an award of Kshs 950,000/= general damages where the plaintiff therein sustained chronic subdural haematoma left frontal parietal, loss of hair on scalp and other multiple soft tissue injuries.



27. In the circumstances, this court found and held that Grounds of Appeal Nos (1) and (2) of the Memorandum of Appeal were merited and the same be and are hereby allowed.

Disposition

28. For the foregoing reasons, the upshot of this court's decision was that Appellants' appeal lodged on February 26, 2021 was merited. The effect of this decision was that the Judgment and Decree of Hon CNC Oruo (SRM) delivered at Maseno in Principal Magistrate's Court Case No 100 of 2019 on January 26, 2021 be and is hereby set aside and/or vacated and the same be and is hereby replaced with an order that judgment be and is hereby entered in favour of the Respondent herein against the Appellants herein joint and severally for Kshs 226,151/= made up as follows:-

General damages Kshs 250,000/=

Special damages Kshs 16,060/=

Kshs 266,060/=

Less 15% contribution Kshs 39,909/=

Kshs 226,151/=

Plus costs and interest on the special damages at court rates from the date of filing suit until payment in full and interest on general damages at court rates from the date of judgment until payment in full.

29. In view of the disparity in the financial might between the Appellants and the Respondent herein, this court will deviate from the general principal that costs follow the events and direct that each party bears its own costs of this Appeal.

30. It is so ordered.

DATED AND SIGNED AT KISUMU THIS 27TH DAY OF APRIL 2023

J. KAMAU

JUDGE

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF APRIL 2023

M. SHARIFF

JUDGE

