



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyasani v Okwoyo (Civil Appeal E067 of 2021)  
[2023] KEHC 3726 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3726 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E067 OF 2021**

**WA OKWANY, J  
APRIL 27, 2023**

**BETWEEN**

**JUSTUS NYAKUNDI NYASANI ..... APPELLANT**

**AND**

**PETER MONG'ARE OKWOYO ..... RESPONDENT**

*(Being an Appeal against the Judgment of Hon. W. C. Waswa (Mr.) – RM Nyamira dated and delivered at Nyamira on the 12th day of August 2021 in the original Nyamira Chief Magistrate's Court Civil Case No. E003 of 2021)*

**JUDGMENT**

**Introduction**

1. Through a plaint dated 30<sup>th</sup> December 2020, the Respondent sued the Appellant before the Lower Court seeking general and special damages arising out of a road traffic accident that occurred on 4<sup>th</sup> July 2020. The Respondent's case was that he was on the material day travelling along Kisii – Kericho Road in the Appellant's motor vehicle Registration No. KBB 215W when near Nyaramba area, the Appellant's driver/agent drove the Appellant's said motor vehicle so recklessly and negligently thereby permitting it to collide with motor vehicle Registration No. KBB 583D as a consequence of which he sustained serious injuries.
2. The Lower Court heard the case and entered judgment on liability at 100% in favour of the Respondent. The said court also awarded the Respondent general damages of Kshs. 750,000/= and special damages of Kshs. 15,820/= thereby triggering the filing of the instant appeal in which the Appellant mainly challenges the trial court's findings on quantum.
3. Parties canvassed the appeal by way of written submissions which I have considered.



4. The Appellant's case is that the award of Kshs. 750,000/= general damages is inordinately high considering the injuries that the Respondent suffered in the accident.
5. The Respondent, on the other hand, argued that the court should not interfere with the award of general damages as the same was in line with comparable decided cases and commensurate with his injuries.
6. The Respondent pleaded that he sustained the following injuries: -
  - i. Chest contusion with pain on chest.
  - ii. Multiple bruises and scars on the knuckles.
  - iii. Fracture to the right tibia fibula on x-ray and a dislocation of the left ankle joint.
  - iv. There is a crack of the left tibia and multiple wounds on both lower limbs bilaterally.
7. I have perused the Discharge Summary and the Medical Report that the Respondent produced as exhibits before the trial court and I note that they confirm that the respondent sustained the injuries listed in the plaint. I also note that the Appellant subjected the Respondent to a second medical examination by Dr. Jenipher Kahuthu who confirmed that the Respondent suffered fractures of the tibia/fibula, swelling of the limbs, soft tissue injuries and dislocated left ankle joint.
8. The Appellant cited the decisions in:
  - a. *Robert Kithinji Kithaka v AG* [2018] eKLR where the court awarded Kshs. 250,000/= for a fracture on the left leg involving both tibia and fibula, fracture of the left collar bone and bruises all over the body.
  - b. *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] eKLR where the plaintiff sustained compound fractures of the tibia/fibula bones on the right leg; deep cut wound and tissue damage on the right leg; head injury with cut wound on the nose; blunt chest injury and soft tissue injury on the left lower limb involving the high and ankle region. The court set aside the trial court award of Kshs. 600,000/= and substituted it with an award of Kshs. 400,000/=.
  - c. *Atunga v Mogambi* (Civil Appeal E009 of 2021) [2021] KEHC 9854 (KLR) (3 June 2022) (Judgment) Bruises on the frontal part of the head; cut wound on the parietal region; chest trauma; dislocation of the right wrist; bruises with multiple cut wounds on the upper limbs; fracture of the right tibia/fibula bones; dislocation of the right hip joint; and multiple cut wounds on the lower limbs. The High Court awarded Kshs. 450,000/=.
9. The Appellant urged this court to substitute the Lower Court's award of Kshs. 750,000/= with an award of Kshs. 400,000/= general damages.
10. The Respondent, on his part, urged the court to uphold the trial court's award of Kshs. 750,000/= general damages. The Respondent relied on the following cases: -*Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo* [2021] eKLR where the court upheld an award of Kshs. 350,000/= for the plaintiff who sustained only soft tissue injuries.*Dennis Matagaro v NKO (Minor suing through next friend and father WOO)* [2021] eKLR where the court held that Kshs. 700,000/= shall suffice where the plaintiff sustained only a fracture of the tibia fibula and soft tissue injuries.*Veronica Mkanjala Nyapara vs Patrick Nyasinga Amenyia* [2021] eKLR, where the court upheld an award of Kshs. 300,000/= where the plaintiff sustained a single dislocation and soft tissue injuries.



11. My finding is that the authorities cited by the Respondent do not correspond with his injuries or his prayer, before the trial court, for an award of Kshs. 1,500,000/=.
12. My view is that an award of Kshs. 450,000/= would be sufficient to compensate the Respondent for the injuries he suffered in the accident. I am guided by the decision in *Jitan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR where the respondent sustained injuries of lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur. In that case, a medical report was produced where the doctor noted that the Plaintiff complained severe headache, severe pains on the chest, back, right hand and right leg. The Plaintiff could also not walk without crutches and was still on plaster of paris. The Court set aside the trial court's award of Kshs. 1,000,000/- and substituted the same with an award of Kshs. 450,000/-
13. Consequently, I allow the appeal and set aside the Lower Court's award of Kshs. 750,000/= and substitute it with an award of Kshs. 450,000/= general damages. I uphold the award of Kshs. 15,820/= special damages.
14. General damages will attract interest, at court rates, from the date of judgment in the lower court until payment in full. Special damages will earn interest from the date of filing suit until payment in full. Because the appeal is partly successful, I award the Appellant half of the costs of the appeal which I assess at Kshs. 30,000.
15. This file is marked as closed.
16. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS  
THIS 27TH DAY OF APRIL 2023.**

**W. A. OKWANY**

**JUDGE**

