



REPUBLIC OF KENYA



Sansora Bakers & Confectioners Limited v Nyambarora (Civil Appeal E061 of 2021) [2023] KEHC 3460 (KLR) (27 April 2023) (Judgment)

Neutral citation: [2023] KEHC 3460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E061 OF 2021
WA OKWANY, J
APRIL 27, 2023**

BETWEEN

SANSORA BAKERS AND CONFECTIONERS LIMITED APPELLANT

AND

HELLEN NYAMBARORA RESPONDENT

(Being an Appeal against the Judgment of Hon. M. O. Wambani (Mrs.)– CM Nyamira dated and delivered at Nyamira on the 22nd day of July 2021 in the original Nyamira Chief Magistrate’s Court Civil Case No. 12 of 2020)

JUDGMENT

1. The Respondent herein, who was the Plaintiff before the trial court, sued the Appellant in Nyamira CMCC 12 of 2020 seeking general and special damages.
 2. The Respondent’s case was that she was on June 21, 2019 walking along Miruka – Nyamira Road when at Nyabite area, the Appellant’s motor vehicle (Lorry) Registration No xxxx lost control and hit her thereby causing him serious injuries.
 3. The Appellant defended the suit and at the close of case the trial court entered judgment in favour of the Respondent as follows: -
 1. Liability – the plaintiff will bear a 25% contribution.
 2. General Damages for pain and suffering and loss of amenities – Kshs 800,000/=
 3. Special Damages – Kshs 87,239/=Subtotal – Kshs 887,239/=
- Less 25% i.e $25/100 \times 887,239/=$



is equal to – Kshs 177,467.8cts

So net Sum is – Kshs 887,239/=

Minus – Kshs 177,467.8 cts

NET SUM – Kshs 709,771. 2cts

4. The judgment of the Lower Court triggered the filing of the instant appeal in which the Appellant listed the following Grounds of Appeal in the Memorandum of Appeal: -
 1. That the award of general damages awarded to the Respondent was manifestly and inordinately excessive in the circumstances.
 2. That the Learned Trial Magistrate acted in error when the same failed to properly evaluate the evidence on record thus reaching erroneous decisions.
 3. The Learned Trial Magistrate erred when the same misapprehended the principle applicable in assessment of damages in personal injuries claims thus occasioning miscarriage of justice.
 4. That the Learned Trial Magistrate erred in law and fact when the same relied on extraneous issues as a basis of his determination on liability.
5. Parties canvassed the appeal by way of written submissions. As can be seen from the Grounds of Appeal, the appeal is only on the aspect of quantum as parties had agreed on liability at 25% to 75% in favour of the Respondent.
6. On quantum, the Appellant submitted that the award of Kshs 800,000/= general damages made to the Respondent is manifestly excessive when compared to award of damages made in other similar cases.
7. It was submitted that the Respondent had fully healed from the injuries that she suffered in the accident as at the time of the hearing and that there was no justification for the hefty award of damages.
8. The Appellant cited several authorities on the principles governing the award of damages including the case of *Ossuman Mohamed & Another vs Saluro Bundit Mohamed, Civil Appeal No 30 of 1997 (unreported)* wherein the passage in *Kigaragari vs Aya (1982 – 1988)* was cited as follows: -

' Damages must be within limits set out by decided cases and also within limits the Kenyan economy can afford. Large awards are inevitably passed on to the members of the public, the vast majority of whom cannot afford the burden, in the form of increased costs for insurance or increased fees.'
9. The Appellant proposed that an award of Kshs 250,000/= would be sufficient to compensate the Respondent for the injuries.
10. The Respondent, on the other hand, submitted that the assessment of general damages falls on the discretion of the trial court and that an appellate court should be slow to interfere with such discretion unless it is satisfied that the trial court applied the wrong principles or misapprehended the evidence and arrived at an award too low or too high as to represent an entirely erroneous estimate.
11. The Respondent argued that the trial court correctly analyzed the evidence presented before it, applied the correct principles and relied on past similar decisions before arriving at the award of damages. It was the Respondent's case that the award of Kshs 800,000/= was commensurate with the injuries she suffered in the accident.



1. The duty of the first appellate court is to re-evaluate and re-analyze the evidence tendered before the trial court in order to arrive at its own independent findings while bearing in mind the fact that it neither saw nor heard the witnesses testify. In *Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR*, the Court of Appeal stated that: -

' [A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.'
12. Since the appeal is on the issue of quantum only, I will consider the evidence tendered before the trial court on the injuries the Respondent's injuries.
13. The Respondent pleaded that she suffered the following injuries in the accident: -Avulsion of the upper incisors.Deep cut wound on the right parietal region.Deep cut wound on the right temporal region.Blunt trauma to the lower back.Blunt trauma to the left shoulder.Blunt trauma to the knees.Head injury.Laceration on the lower lip.Cut wounds on the right thigh.Bruises on frontal region.Right shoulder dislocation.Bruises on right elbow joint.Fraction and mobile lower two incisors and one canine tooth.Blunt trauma to the right iliac region.Traumatic subdural hemorrhage.
14. The Respondent produced exhibits; to wit; Treatment Notes, Discharge Summary, P3 Form and a Medical Report in support of the claim that she suffered the injuries highlighted in the plaint.
15. The Appellant did not call any witness before the trial court but produced the Respondent's second Medical Report as its Exhibit.
16. I have perused the treatment records and medical reports produced by the parties as exhibits and I note that the records confirm the Respondent's claim that she suffered multiple soft tissue injuries as a result of the accident. The trial court held as follows on the award of damages: -

' So this court has the duty to determine on the issue of quantum and costs payable to the plaintiff. To settle the aforesaid issue, this court has keenly considered the plaintiff's injuries, evidence and submissions, opinion and the law as laid down in the authority relied upon by the plaintiff vide;

BO (A minor suing through his next friend DOO v Nathan Khamala and Another eKLR.

The court has further considered the defendant's premises on record, the submissions dated June 7, 2021, the defence's opinion and the law relied upon by the defence more so, the authorities of: -

1. *Isaac Muringi Mbataru v Silas Kalumani [2017] eKLR.*
2. *Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 others [2019] eKLR.*

After factoring the above stated premises this court is of the considered final finding that an award of Kshs 800,000/= will be fair, just and reasonable requital to the plaintiff as the general damages. The said award is subject to 25% contribution by the plaintiff.'

2. Courts have taken the position that the appellate court should be slow to interfere with the trial court's decision on damages except where the award is low or too high as to present an erroneous outcome. The principles upon which an appellate court can interfere with an award



of damages were stated in *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini vs AMM Lubia & Ano (1982-88)1 KAR 777* where the Court of Appeal stated as follows:

‘The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.’

17. In awarding damages, courts are governed/guided by precedents set in similar claims. Such awards ought to be within the limits that the economy can afford. (See *Ossuman Mohamed & Another (Supra)*).
 18. On damages the Appellant cited the case of *Isaac Muriungi Mbataru vs Silas Kalumani [2017] eKLR* wherein for similar injuries, the court awarded the claimant Kshs 350,000/= which amount was reviewed downwards to Kshs 200,000/= on appeal.
 19. The Respondent, on her part, argued that the trial court correctly relied on the authorities that she had cited and those cited by the Appellant.
 20. I note that the trial court, in its judgment merely made a general statement that she had considered the authorities cited by the parties but did not specify the distinguishing factors that made her arrive at the award of Kshs 800,000/=. I find that while it is not possible to find 2 or 3 cases with exactly the same nature of injuries, it would have been desirable for the trial court to point out the salient points of emphasis which are similar or peculiar to the injuries in question before relating them to the authorities cited. This is to say that the trial court ought to have pin-pointed the similarities in the injuries of the claimant before it and compare them to the injuries in the cited authorities before arriving at its reasonable determination on quantum. I find this aspect to be lacking in the trial court’s judgment thus justifying the Appellant’s position that the award is excessive. I therefore find that there is reason to interfere with the discretion of the trial court and hereby set aside the award of Kshs 800,000/= for general damages and substitute it with an award of Kshs 500,000/=. I am guided by the decision in *Poa Link Services Co Ltd & another vs Sindani Boaz Bonzemo [2021] eKLR* where the court upheld an award of Kshs 350,000/= for the plaintiff who sustained only soft tissue injuries. Similarly, in *Francis Ochieng & Another vs Alice Kajimba [2015] eKLR* the Plaintiff was awarded Kshs 350,000/= for multiple soft tissue injuries.
 21. In conclusion, I allow the appeal and set aside the Lower Court’s findings on General Damages only and substitute it with a find of Kshs 500,000/=. I therefore make the following final orders/awards: -
 - a. General Damages – Kshs 500,000/=
 - b. Special Damages – Kshs 87,239/=Sub-total – Kshs 587,239/=
 - Less 25% contribution – Kshs 164,809/=
 - Net Total – Kshs 440,430/=
22. 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.



23. This file is marked as closed.

24. It is so ordered.

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

W. A. OKWANY

JUDGE

