



**Said & another v Kamau (Civil Appeal 108 of 2014)
[2023] KEHC 20045 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 108 OF 2014
SC CHIRCHIR, J
JUNE 29, 2023**

BETWEEN

ABDULLAHI SAID 1ST APPELLANT

SAID ABDI 2ND APPELLANT

AND

BONIFACE NDUNG’U KAMAU RESPONDENT

*(Being an appeal from the Judgment of Hon. B. Ochieng, Chief Magistrate,
Murang’a delivered on the 23rd May, 2014 in Muranga CMCC No. 283 of 2013)*

JUDGMENT

1. The Respondent filed Civil Suit No. 283 of 2013 at the Chief Magistrate’s court at Muranga seeking damages for injuries sustained as a result of a road traffic accident which occurred on 26th November 2010 along Kenol- Sagana road. He was a pedestrian along the said road when he was allegedly hit by the Appellant’s Motor Vehicle Registration No. KBL 131M.
2. In a Judgment delivered on 23rd may 2014, the trial court found the Appellants fully liable for the accident. On quantum of damages the respondent was awarded Ksh 600,000 as general damages and special damages of Ksh 131,899.
3. Aggrieved by the Judgment, the Appellant filed this Appeal and set out the following grounds:
 - a. That the learned Magistrate erred in both law and in fact when he awarded a sum of Kshs 600,000/= as damages for injuries which amount, is manifestly excessive in the circumstances and connotes an erroneous estimate of the damage suffered.



- b. That the learned Magistrate erred in law and in fact in failing to consider or even adequately adopt and appreciate the written submissions of the defendant on record and the authorities annexed therein in support of the defendant's case.
 - c. That the learned magistrate erred in fact and in law by failing to follow rules of precedents in awarding general damages.
 - d. That the learned magistrate erred both in law and in fact for considering irrelevant matters in arriving at the said decision in favour of the Respondent as against the Appellants.
4. The Appeal proceeded by way of written submissions.

Appellant's submissions

5. On the general damages, it is the appellant's submission that the amount awarded was inordinately high in the circumstances.
6. It is further contended that although the respondent is alleged to have suffered a lot of pain, it was established that the bones united and the fracture was classified as simple closed fracture.
7. Reliance has been placed on the court of appeal decision in *Sosphinaf Company Limited v James Gatiku Ndolo* NRB CA Civil Appeal No. 315 of 2001 (2006) eKLR.
8. According to the appellant, an award of Kshs 400,000/= would have been reasonable. To buttress his submissions, he has relied on the following authorities;
 - a). *Erick Ratemo v Joash Nyakweba Ratemo* (2018) Eklr
 - b). *Rayan investments Limited v Jeremiah Mwakulegwa Kasha* (2017) eKLR
 - c). *Kenyatta University v Isaac Karumba Nyuthe* NRB HCCA No. 193 of 2012 (2014)
 - d). *TAM (a minor suing through her father next friend JOM) v Richard Kirimi Kenobi & Another* NRB HCCA no. 82 of 2008 (2015) eKLR
 - e). *Bhacha Industries Limited v Peter Kariuki Mutura* NRB HCCA No. 503 of 2009 (2015) eKLR

Respondent's submissions

9. The Respondent has set out the injuries sustained and submits that the Appellant has chosen to ignore the nature of the injuries and the decided cases cited by the Respondent. He further asserts that the award was a fair estimate of the injuries sustained. The respondent has relied on inter alia, the following decisions to back up their submissions:
 - a). *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M Lubia and Olive Lubia* (1987) e KLR 30.
 - b). *L.L & another v Jared A. Ayuku & Another* (1986) e KLR.
 - c). *David Githuu Kuria v Equity Bank (Kenya) Limited & 2 others* (2019) e KLR.



Summary the evidence at the Trial Court.

10. PW1 was the Respondent. He told the court that as a result of the accident he suffered injuries on the forehead, the left hand ,and the right leg was fractured on the thigh and on the knee. He produced a discharge summary from Thika Hospital.
11. PW2, was Dr. Kanyi Gitau. He examined the Respondent and found that he had sustained injuries on the forehead, lacerations on both forearms and fracture to the right femur bone. At the time of the examination, he had 2 scars on the forehead, left fore arm and on the right thigh . He concluded that the plaintiff suffered a lot of pain and he had permanent scar which in his opinion would affect his physical attributes. He would also be predisposed to arthritis
12. The Appellant did not call any witness.

Determination

13. I have considered the parties submissions and the Authorities relied on. I have also considered the lower court record as well as the grounds of Appeal. Based on his grounds of Appeal, the Appellant is challenging the award on general damages only.
14. The Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms: “It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”
15. According to Dr. Kanyi, the Respondent suffered the following injuries:
 - a. Lacerations on the forehead
 - b. Lacerations on both forearms
 - c. Fracture of the right femur
 - d. Predisposition to early arthritis.
16. It is the Appellant’s submission that the respondent should be awarded of Kshs 400,000/= since the injuries were sustained in 2010 and relied on the decisions referred to earlier in this judgment.
17. The respondent on the other hand, urges the court to uphold the award of the lower court. They have equally relied on several decisions which I have considered.
18. Past decisions are replete with the guiding principles when assessing general damages. In the case of *Jacktone Ouma v Moureen Achieng* (2016) e KLR the court held inter alia : “comparable injuries should attract comparable awards.”
19. With the above guiding principle in mind, can the award of Ksh 600,000 be said to have been excessive?
20. In the case of *Pestony Ltd v Samuel Itonye* (2022)eKLR the court awarded Ksh 800,000 for injuries consisting of a fracture of the femur and soft tissue injuries.



21. In *Jackson Mbaluka v Onemus Nzioka* (2021) e KLR an award of Ksh 600,000 was made for fairly similar injuries.
22. In view of the above decisions and considering the inflationary trends since the said decisions were made, of Ksh 600,000 was in my view, quite modest.
23. I have not found any merit in this Appeal. The same is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 29TH DAY OF JUNE, 2023.

S. CHIRCHIR.

JUDGE.

In the presence of :

No appearance by the parties.

