



REPUBLIC OF KENYA



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**Muthuri v Mwenda (Civil Appeal E056 of 2022)
[2023] KEHC 19441 (KLR) (27 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E056 OF 2022
LM NJUGUNA, J
JUNE 27, 2023**

BETWEEN

LAWI KAUME MUTHURI APPELLANT

AND

STELLA MWENDA RESPONDENT

*(Being An Appeal Against the Judgment of D. Endoo R.M
Delivered on 11.10.2022 In Embu CMCC No. E063 of 2020)*

JUDGMENT

1. The Appellant herein filed in this court a memorandum of appeal against the judgment of the learned trial magistrate Hon. D. Endoo (RM) in Embu CMCC No. 063 of 2020 delivered on 11.10.2022. The grounds upon which the appeal is based are as enumerated on the face of the memorandum of appeal.
2. The appellant thus prayed that the appeal be allowed with costs and the judgment of the trial court be set aside.
3. The court directed that the appeal be canvassed by way of written submissions and all the parties complied with the directions.
4. The appellant faulted the trial court for reaching an erroneous finding on damages arguing that the same was excessive and unsupported by the evidence on record. The appellant submitted that the amount awarded on general damages for pain and suffering, was inordinately high and unsupported by the evidence and submitted that the injuries sustained by the respondent as particularized at para 5 were not capable of attracting the amount awarded. It was submitted that the respondent sustained injuries classified as grievous harm which contrasts the testimony of their doctor. The appellant was also aggrieved by the trial court's decision for the reason that the trial court did not compare the authorities submitted by the parties in relation to the respondent's injuries and proposed awards but instead, the trial court engaged in its own adventure to source relevant case law. That by adopting such an approach,



the trial court portrayed the perception that the parties' submissions' were irrelevant and/or merely a technical requirement with no relation to the substantive decision of the court.

5. On special damages, it was submitted that the trial magistrate awarded the respondent Kes. 21,820.00 when it is trite that the same ought to be specifically claimed and proved. Reliance in support of the same was placed on the case of David Bagine Vs Martin Bundi [1997] eKLR. It was submitted that the alleged special damages claimed by the respondent had no corresponding receipts as the same were faded and illegible and they could not be verified. Additionally, that the tendered receipts were issued to a stranger and not the plaintiff and further that, the same did not have revenue stamps. Reliance was placed on the case of Leonard Nyongesa Vs Derrick Ngula Righa [2013] eKLR.
6. On the interest on general damages, it was submitted that interest on general damages for pain and suffering, having noted that the award for general damages is already speculative and inflated, any amount in terms of interest would be double compensation. Reliance thus was placed on Article 159 (2) (a) of *the constitution*. In conclusion, it was submitted that the appeal herein be allowed.
7. The respondent on the other hand sought to rely on the submissions as filed in the lower court and further stated that the main issue for determination is whether the award on general damages is excessive. That the trial court did not err by making an award of Kes. 1,000,000.00 on account of general damages for pain and suffering as the same was not contrary to the principles and law governing the making of such award. It was submitted that it was worth noting that the respondent was subjected to a 2nd medical examination by the appellant and wherein the appellant chose to produce the medical report without calling the maker. That the said medical report was of no evidentiary value as compared to the one produced by the respondent's doctor who testified on oath and thereafter, taken through cross examination. Therefore, it was submitted that the trial court correctly addressed its mind to the evidence of both the respondent and the appellant.
8. On general damages, it was the respondent's submission that the appellant did not demonstrate how the trial court abused its discretion in awarding the respondent general damages and therefore, this court was urged not to interfere with the same. It was submitted that the Honourable trial magistrate cannot be faulted for sourcing for independent authorities if she was of the considered view that the authorities cited by both parties were not comparable with the facts of the case.
9. That the injuries suffered by the respondent were grave and the same was corroborated by the respondent as she stated that she could no longer don her favorite hair styles as the salon machines affect her. It was the respondent's evidence that the appellant did not call any witness to controvert the respondent's evidence in this line. The respondent defended the finding of the trial court by submitting that an award of general damages is discretionary and the appellant did not demonstrate how the trial court misused its discretion in awarding the respondent general damages and therefore, this court should not interfere and/ or re-assess the said award since the appellant did not proffer any reasons to do so. Reliance was placed on the case of Gitobu Imanyara & 2 others Vs Attorney General [2016] eKLR].
10. On special damages, it was submitted that the trial court was right in awarding Kes.21,820.00 being the amount that was strictly proven in law. That the appellant did not raise the issue of the receipts that were produced before the trial court and the appellant did not indicate to the subordinate court that the same were inadmissible at any point. It was the respondent's case that the trial court upon scrutiny of both the originals and copies thereof, rightly held that the respondent had proved special damages of Kes.21,820.00 instead of Kes.22,250.00 as prayed and disallowed the uproven balance.
11. On interest, it was submitted that the award on the same was proper as the respondent had proved her case on a balance of probability as required. This court's attention was drawn to the ground herein as the same was not part of the grounds of appeal as per the memorandum of appeal by the appellant



herein. It was stated that the respondent was rightly awarded general damages and interests thereon as this is ideally an amount that should have been settled by the appellant upon issuance of the demand letter. That the trial court was very lenient by allowing interest thereon from the date of judgment instead of from the time of the filing of the suit and/or issuance of a demand letter. The respondent thus urged this court to uphold the decision of the trial court by dismissing the appeal.

12. As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of *Selle & Ano. Vs Associated Motor Boat Co. Ltd* [1968] EA 123). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni Vs Kenya Bus Service Ltd.* (1982-88) 1 KAR 278 and *Kiruga v Kiruga & Another* (1988) KLR 348). This authority echo section 78 of the [Civil Procedure Act](#) and by dint of the same, it is clear that this court is not bound to follow the trial court's finding of fact if it appears that either it failed to take into account particular circumstances or probabilities or if the impression of the demeanor of a witness is inconsistent with the evidence generally.
13. However, in the re-evaluation of the trial court's evidence, there is no set format to which this court ought to conform to but the evaluation should be done depending on the circumstances of each case and the style used by the first Appellate Court and that what matters in the analysis is the substance and not its length. (See Supreme Court of Uganda's decision in *Uganda Breweries Ltd v Uganda Railways Corporation* [2002] 2 EA 634 and *Odongo and Another v Bonge* Supreme Court Uganda Civil Appeal 10 of 1987 (UR).
14. I have certainly perused and understood the contents of the pleadings, proceedings, judgment, grounds of appeal, submissions and the decisions referred to by the parties herein. The court thus forms the view that it has been called upon to determine whether the appeal herein has merits.
15. The court has noted that the appeal herein is on quantum only.
16. There is no doubt that the respondent suffered the following injuries:
 - i. Swelling on the forehead, with marked frontal scalp injuries.
 - ii. Loss of consciousness.
 - iii. Deep cut wound on the parietal region of the scalp.
 - iv. Chest pains.
 - v. Bilateral hip pains with inability to use the lower limbs.
 - vi. GCS of 12/15
17. It was submitted by the appellant that an amount of Kes. 75,000/= would suffice under this subhead based on the authority of *Mbati John & Combo Dvd Coach Ltd Vs China Zhongxing Construction Co. Ltd & Ngolua Mukuri Imuru* [2016] eKLR where the plaintiff therein featured similar injuries and no permanent disability just like the respondent herein.
18. It must be noted that injuries will never be fully comparable and therefore, what a court needs to consider is that as far as possible "the injuries are reasonably comparable" to the other person's injuries, and the after effects. [See *Stanley Maore Vs Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR].



19. In Bungoma HCCA No. 123 of 2011 Abbas A Robie & Another Vs Charles Nyati Waliuba the Court of Appeal upheld the award by the High Court of Kshs.600,000/- for head concussion, cut wounds on the scalp, chest pain and cut wound, back pains, lacerations on left buttock and painful swollen knee joints.
20. Telkom Orange Kenya Limited Vs I S O minor suing through his next friend and mother J N [2018] eKLR where the injuries sustained by the child were; head injury occasioning a depressed skull, fracture of the skull, loss of consciousness, scars of the left tempo-parietal area and bruises on the left leg. The two doctors who examined the child concluded that the child sustained serious head injuries, which put him at risk of developing seizures as a long-term complication together with disfiguration resulting from the scalp and leg scars. The High Court awarded a sum of Kshs. 500,000/- general damages in December 2018.
21. In Elizaphen Mokaya Bogonko Vs Fredrick Omondi Ouna [2022] eKLR, the respondent had suffered head injury with loss of consciousness, fracture of the right facial bone, multiple facial lacerations, blunt injury to the shoulders and blunt injury and bruises to both lower limbs, the court proceeded to award an amount of Kes. 500,000.00.
22. In the case herein, the appellant submitted that the amount awarded by the trial court was inordinately high in the circumstances, and thus proposed an amount of Kes. 75,000.00.
23. I am therefore in agreement with the appellant that in deed the trial magistrate's determination was against the law and weight of the evidence on record. I am of the considered view that a sum of Kshs. 600,000.00 would be reasonable taking into account the inflation and the passage of time from when the authorities cited above were decided.
24. In reference to special damages and while relying on the case of Hahn Vs Singh [1985] KLR 716, the appellant argued that special damages must not only be pleaded but, they must also be strictly proved. He again relied on Wakim Soda Limited Vs Sammy Aritos [2017] eKLR citing Total Kenya Limited Vs Janevams Limited [2015] eKLR, that a party claiming special damages must demonstrate that they actually made payments or suffered the specific injury before compensation will be permitted.
25. The appellant also raised the issue of unstamped payment receipts. This issue has been put to rest in numerous court decisions.
26. Under the *Stamp Duty Act*, Cap 48 Laws of Kenya, it is a mandatory requirement that any receipts produced in evidence must have a revenue stamp by a collector for them to be admissible except in criminal proceedings;
27. Sections 19(1) (a) (b) of the Act.
See HCCA No. 71 of 2015 Eunice Auma Onyango -Vs- Salin Akinyi Oluoch (2015) e KLR & Leonard Nyongesa -Vs- Derrick Ngula Right – Civil Appeal No. 168 of 2008 at Mombasa (unreported).
28. It is also trite that a receipt ought to be stamped by the Receiver of the payment, and not the giver or the payee.
29. Section 88 of the Act places that duty upon the receiver, not the payee to affix revenue stamps on a receipt.
30. In the instant appeal, the Respondent incurred an amount of Kes. 21,795.00 as medical expenses. On interest, I find that the respondent is entitled to interest at court rate on general damages from the date of judgment and on special damages from the date of filing the plaint.



31. For the foregoing reasons, the upshot of this court's decision is as follows:

- i. That the appellant's appeal partially succeeds.
- ii. The decision by the learned trial magistrate on general damages is hereby set aside, varied and/or vacated in the manner herein below;
General damages Kes. 600,000.00
Special damages Kes. 21,920.00
- iii. Liability ratio 90:10
- iv. Each party to bear its own costs of the appeal.

32. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF JUNE, 2023.

L. NJUGUNA

JUDGE

.....for the Appellant

.....for the Respondent

