



Gakinya v Njambi (Civil Appeal 2 of 2021) [2023] KEHC 20811 (KLR) (26 June 2023) (Judgment)

Neutral citation: [2023] KEHC 20811 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU**

CIVIL APPEAL 2 OF 2021

CM KARIUKI, J

JUNE 26, 2023

BETWEEN

RICHARD GITUTU GAKINYA APPELLANT

AND

JACKSON IKINU NJAMBI RESPONDENT

JUDGMENT

1. The Respondent lodged a running down claim seeking general and special damages against the Appellant.
2. Before the matter was concluded, a similar case arose from the same accident, CMCC case 126/2014, in which there was an agreement that the element of liability to apply in the instant matter was determined, and the Appellant was held 100% liable.
3. Thus, the trial court had only the task of determining the quantum.
4. After hearing parties on quantum, the Respondent was awarded Kshs. 400,000 for General damages and Ksh. 18,240 as special damages.
5. The General damages award aggrieved the Appellant and thus challenged the same.
6. The appeal was canvassed via submissions per the Court's directions.

Appellant Submissions

7. The appeal herein arises from the Judgment of Honourable J. Wanjala delivered on 26th September 2016 in Nyahururu CMCC No. 127 of 2014.
8. It was submitted that this Court being the first appellate Court, is mandated to re-evaluate, re-assess, and re-analyze the facts and evidence on record and then determine whether the conclusion reached



by the trial court is to stand or not and give a reason as was held in *Abok James Odera t/a A.J Odera and Associates v John Patrick Machira t/a Machira and Co. Advocates* [2013] eKLR.

9. It is further submitted that the Court in *Charles Oriwo Odeyo -v- Appollo Justus Andabwa* and another [2017] eKLR held that the principles to be observed by an appellate court while assessing damages awardable in a personal injury case, which includes; an award of damages is not meant to enrich the victim but to compensate such victim for injuries sustained, the award should be commensurate with the injuries sustained, previous awards in similar injuries sustained are mere guides and that each case ought to be treated on its own, previous awards be taken into account to maintain the stability of awards, but factors such as inflation should be considered. The award should not be inordinately low or high.
10. In its judgment, The trial magistrate did not consider the principles above and awarded the inordinately high respondent damages compared to the injuries sustained.
11. The plaintiff allegedly sustained;
 - i. Cut wound on the lateral aspect of the right foot
 - ii. Cut wound on the medial aspect of the right elbow
 - iii. Bruises on the left wrist
 - iv. Bruises on the right hip region
12. It is submitted that the trial court erred in law and fact on the quantum issues by awarding Kshs. 400,000 as general damages for soft tissue injuries.
13. The trial magistrate awarded Kshs. 400,000 without giving the basis of how she arrived at the said amount. Order 20 Rule 4 of the Civil Procedure Rules requires that judgments in defended suits contain a concise statement of the case, the points for determination, the decision to it, and the reasons for such decision.
14. In the above case, it is obvious that the magistrate relied on the wrong principles as she failed to summarize the case for both the plaintiff and defendant. Thus, she needed to analyze the evidence before making her determination, reasoning, and judgment. Reliance was made on the cases of *Joseph Mavulu Mutua v Samuel Njoroge Mwangi* [2003] eKLR.
15. In the case of *Kithoka Youth Polytechnic v Lucy Kithira Riungu* [2008] eKLR, the learned magistrate awarded Kshs. 100,000 where the plaintiff had suffered; Bruises on the right shoulder, Cut wound on the right forearm at the wrist, Bruises on the right gluteus, Bruises on the right leg.
16. Considering inflation, the amount would have risen to at least Kshs—200,000 but not to Kshs.400,000 as was awarded in our present case.

Respondent Submissions

17. It was submitted that the Court should be guided by the cited decisions below;
18. In the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, the Court of Appeal held that —

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the number of damages merely because they think that if they had tried the case in the first instance, they would have given a larger sum.” An appellate court will not



disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low."

19. See also in *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v AM. Lubia and Olive Lubia* [1982-88] 1 KAR 727. Also, in *Ugenya Bus Service v James Gachohi* CR Appeal No. 66 of 1981
20. According to the medical report prepared by Dr. Mburu, the plaintiff sustained the following injuries; -Cut wound on the lateral aspect of the right foot, Cut wound on the medial aspect of the right elbow, Bruises on the left wrist, and Bruises on the right hip region.
21. The trial magistrate considered all the necessary facts, the evidence, the applicable law, and precedents to conclude awarding the Respondent Ksh 400,000/ = as general damages and Kshs. 18,240/ as special damages.
22. The trial court exercised its discretion appropriately and arrived at the right award. In any case, the trial court's award bordered on the lower side and invited this Court not to disturb the award.

Issues,analysis And Determination

23. After going through the proceedings and parties submissions, I find the issues are; whether the award is so inordinately high as to represent an erroneous estimate. What is the order as to costs?
24. This Court being the first appellate Court is mandated to re-evaluate, re-assess, and re-analyze the facts and evidence on record and then determine whether the conclusion reached by the trial court is to stand or not and give a reason as was held in *Abok James Odera t/a A.J Odera and Associates v John Patrick Machira t/a Machira and Co. Advocates* [2013] eKLR.
25. According to the medical report prepared by Dr. Mburu, the plaintiff sustained the following injuries; -Cut wound on the lateral aspect of the right foot, Cut wound on the medial aspect of the right elbow, Bruises on the left wrist, and Bruises on the right hip region.
26. The trial magistrate relying on injuries disclosed by the evidence adduced, concluded that the appropriate award to the Respondent was Ksh 400,000/ = as general damages and Kshs. 18,240/ as special damages.
27. It is apparent on the record that she needed to give the basis of how she arrived at the said amount. Order 20 Rule 4 of the Civil Procedure Rules requires that judgments in defended suits contain a concise statement of the case, the points for determination, the decision to it, and the reasons for such decision.
28. In the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, the Court of Appeal held that —

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the number of damages merely because they think that if they had tried the case in the first instance, they would have given a larger sum.” An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”



29. In the case of Charles Oriwo Odeyo v Appollo Justus Andabwa and another [2017] eKLR held that the principles to be observed by an appellate court while assessing damages awardable in a personal injury case, which includes; an award of damages is not meant to enrich the victim but to compensate such victim for injuries sustained, the award should be commensurate with the injuries sustained, previous awards in similar injuries sustained are mere guides and that each case ought to be treated on its own, previous awards be taken into account to maintain the stability of awards, but factors such as inflation should be considered. The award should not be inordinately low or high.
30. In the case of Kithoka Youth Polytechnic v Lucy Kithira Riungu [2008] eKLR, the learned magistrate awarded Kshs. 100,000, where the plaintiff had suffered; Bruises on the right shoulder, a Cut wound on the right forearm at the wrist, Bruises on the right gluteus, and Bruises on the right leg.
31. Considering inflation, the amount would have escalated to an estimate of about Kshs—200,000 but not to Kshs.400,000 as was awarded by the trial court.
32. Thus, the Court makes the following orders;
 - i. The award of general damages of ksh 400,000 is reduced to ksh 200,000
 - ii. The Respondent to get the costs of the appeal on a lower scale.

DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 26TH DAY OF JULY 2023.

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CHARLES KARIUKI

JUDGE

