



REPUBLIC OF KENYA



KENYA LAW
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**Njoroge & another v Irungu (Civil Appeal 98 of 2020)
[2023] KEHC 21716 (KLR) (Civ) (24 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 98 OF 2020

AN ONGERI, J

AUGUST 24, 2023

BETWEEN

PETER NJOROGE 1ST APPELLANT

SAMUEL KAGIKA MWANGI 2ND APPELLANT

AND

BEDAN MWANGI IRUNGU RESPONDENT

*(Being an appeal from the decree and judgment of Hon. D. W. Mburu
(SPM) in Milimani CMCC no. 8561 of 2020 delivered on 14/2/2020)*

JUDGMENT

1. The respondent was the plaintiff in Milimani CMCC 8561 of 2020 where he sued the appellant for general damages for injuries he sustained in a road traffic accident which occurred on October 29, 2017 involving the respondent and the appellant's motor vehicle registration no xxxx.
2. The parties entered into a consent on liability and apportioned the same at 90:10% in favour of the respondent against the appellant.
3. The trial court assessed general damages as follows
General damages Kshs 1,200,000
Special damages Kshs 2,000
Total Kshs 1,202,000
Less 10% contributory liability Kshs 120,000
Net Kshs 1,081,800



4. The appellant is aggrieved on the award and has filed this appeal on the grounds that the assessment of general damages was too high and further that the same are not justified since the respondent did not suffer any disability.
5. Further, the Appellant raised the issue of the Trial court failing to consider the Appellant's submissions in assessing damages and also failing to consider conventional awards in similar cases.
6. The appellants submitted that according to the plaint dated September 17, 2018, the respondent sustained pelvic injuries that the trial court awarded Kshs 1,200,000 which is inordinately high.
7. The appellant further submitted that Kshs 600,000 would be sufficient.
8. The appellant on the case of *Power & Lighting Company Ltd & Ano. Vs Zakayo Saitoti Naingola & Another (2008) e KLR* cited in *Jennifer Mathenge Vs Patrick Muriuki Maina (2020) e KLR*
9. The appellants also referred to the following authorities
 - a. Daneva heavy trucks & Another vs Chrispine Otieno – where Kshs 800,000 was substituted for 1,000,000 for fracture of the pelvis and fractures of the left tibia and fibula.
 - b. *Anthony Keriga Mogeni vs Florence Nyomenda Tumbo (2015) eKLR* where 600,000 was awarded was substituted for 1,500,000 for cut wound on the left upper eye lid, open book fracture of pelvic bone and weak lower limb.
 - c. *Peter Gakere Ndiangui vs Sarah Wangeci Maina (2021) eKLR* where an award of Kshs 1,300,000 was reduced to kshs 800,000 for fracture of the pelvic bone and cut wounds on ears with incapacity of incapacity of 40%.
10. The respondents did not file any submissions.
11. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and reach at its own conclusion whether the support the findings of the trial court.
12. The sole issue for determination in this appeal is whether the quantum of damages is too high in view of the respondent's failure to produce a medical report.
13. The appellant submitted that the respondent did not produce any medical report and the he did not suffer any disability.
14. Further that the trail court failed to consider the appellant's submission.
15. I have considered the judgment at page 38 and it states as follows;

' Counsel for the plaintiff proposed an award of Kshs 3,000,000/= for pain and suffering citing NBI HCCC No 209 of 2013; *Peace Kemuma v Michael Thuo & Another* where an award of Kshs 2,500,000/= was made for fracture of the right superior pubic bone, fracture of the right inferior pubic ramus of pelvic bone, fracture of the sacrum bone. The plaintiff further relied on *Millicent Atieno v Easy Coach Bus (2015) e KLR* where the plaintiff suffered fracture dislocation of the right little finger and fracture of the pelvic involving both superior and inferior public rami bilaterally. He was awarded kshs 1,500,000/= on January 21, 2014 which was on appeal enhanced by Justice Majanja to Kshs 2,000,000/= in a judgment dated September 5, 2016.

The defendants' counsel proposed kshs 300,000/= for pain and suffering citing the following cases:-



Joshua Mwaniki Nduati v Samuel Muchiri Nuguna (2005) eKLR where the plaintiff was awarded Kshs 250,000/= in the year 2005.

Samuel Ndirangu Ng'ang'a v Lucy Wambui Wachirra (2013) eKLR where an award of Kshs 250,000/= was made.

I have carefully considered the submissions and the authorities that were cited in support thereof. I have also considered the following cases which I found to be relevant

Millicent Atieno Ochuonyo v Katola Richard (2015) eKLR in which the plaintiff was awarded Kshs 2,000,000/= for injury to the pelvis involving fracture of pubic ramus and diastasis of the symphysis pubis.

Michael Maina Gitonga v Serah Njuguna (2012) eKLR in which the plaintiff sustained multiple fractures of the pelvis and was awarded Kshs 1,500,000/= in the year 2012.

Dennis Nyamweno Openda v Anwarali & Brothers Limited and Another (2015) eKLR where the plaintiff was awarded general damages of Kshs 1,800,000/= for multiple fractures which included fracture of the left clavicle, fracture right humerus and unstable multiple fractures of the pelvic bones (open book pelvic fracture)

The plaintiff herein sustained severe injuries involving fracture of the pelvic bone which was classified as grievous harm. I do hereby assess general damages for pain, suffering and loss of amenities in the sum of Kshs 1,200,000/'.

16. I have considered the authorities relied on by the Trial court and also those submitted by the Appellants and I find that the award of Kshs 1,200,000 is on the higher side.
17. I reduce the general damages to Kshs 800,000.
18. The special damages of Kshs 2,000 were not contested. The total award is 802,000 less 10% contributory negligence =721,800.
19. I set aside the award of the Trial court and I substitute it with an award of Kshs 721,800.
20. Judgment be and is hereby entered in favor of the respondent against the Appellant in the sum of Kshs 721,800 plus costs and interest from the date of judgment of the original suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF AUGUST, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent

