



**Gatati v Kinyanjui (Civil Appeal 148 of 2018)
[2023] KEHC 21558 (KLR) (3 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 148 OF 2018
PM MULWA, J
AUGUST 3, 2023**

BETWEEN

ANNIE NYAMBURA GATATI APPELLANT

AND

DAVID KINYANJUI RESPONDENT

*(Being an appeal from the judgment delivered by Hon. T. Murigi,
CM in Thika Civil Case No. 146 of 2014 on 30th October 2018)*

JUDGMENT

1. The Appellant was the plaintiff in the trial court. She sued the Respondent vide a Plaint dated 6th March 2014 for the injuries she sustained in a road traffic accident on 6th July 2013, along Nkuruma Road in Thika Town. According to the appellant she was pedestrian and was lawfully walking along the said road when the driver of motor vehicle KBP 622A negligently managed and controlled the said motor vehicle and caused it to knock her as a result of which she sustained injuries.
2. The appellant blamed the respondent, the lawful and beneficial owner of the motor vehicle for the injuries sustained. She sought general damages and special damages of Kshs 20,639.00/=.
3. The respondent filed as statement of defence and denied the occurrence of the accident and the averment in the plaint and the particulars of negligence. He averred that the plaintiff was to blame for the accident and listed the particulars of negligence.
4. At the hearing the plaintiff urged the court to enter liability at 100% in her favour against the respondent and award general damages of in the sum of Kshs 800,000/=.
5. After the trial the learned magistrate found as follows:

Liability 100% in favour of the Plaintiff as against the Respondent.



General- Kshs 100,000/=

damages
Special - Kshs 2,000/=

6. Aggrieved by the judgment of the trial court the appellant, on 22nd November 2018 filed a Memorandum of Appeal citing the following grounds:
- i. The learned magistrate grossly under-estimated the amount of general damages in awarding to the appellant a global sum of Kshs 100,000/= only by way of general damages which award is manifestly low and /or wholly erroneous estimate of damages in view of the serious nature of injuries suffered by the appellant.
 - ii. That the learned magistrate misdirected herself and failed to give proper consideration and weight to the relevant decided authorities on the quantum of general damages for pain, suffering and loss of amenities of life given in comparable cases in Kenya relating to similar injuries as those suffered by the appellant in making an award for general damages.
 - iii. That the learned magistrate erred in law in failing to accord the Appellant's submissions due consideration.
 - iv. That the learned magistrate failed to evaluate properly the evidence on record and particularly failed to appreciate the appellant's injuries, evidence tendered and the effect of medical evidence relating to the seriousness of the injuries suffered by the appellant and future incapacity in awarding the damages.
 - v. The learned magistrate erred in awarding special damages of Kshs 2000 contrary to the amount prayed for in the Plaint and proved in court.
 - vi. The learned magistrate erred in assessing damages and failed to apply the trite principles in awarding and specifically on general and special damages and comparable awards. For analogous injuries.
 - vii. The learned magistrate erred in law and in fact in awarding damages which are manifestly low in the circumstances by misapprehending the principles applicable in the assessment of damages in personal injuries claims thus occasioning a miscarriage of justice.
7. The appeal was heard by way of written submissions which parties respectively filed.

Appellant's submissions

8. Mr. Jessie Kariuki for the appellant submitted that the trial magistrate erred in awarding a global sum of Kshs 100,000/= which was inordinately too low considering the injuries suffered by the appellant. He drew the court's attention to the Court of Appeal holding in *Bashir Ahmed Butt v Uwais Ahmed Khan* (1982-88) KAR.
9. Counsel further submitted that the trial court failed to evaluate and appreciate the injuries suffered by the appellant which included blunt injury to the head, right hand, right knee joint and both thighs and on the right ankle joint, plus the evidence of the medical report and medical receipts tendered in support of the injuries.
10. That the trial magistrate failed to consider comparable cases. He pleaded with the court to allow the appeal and award the costs thereof to the appellant.



Respondent's submissions

11. It was submitted for the respondent that the court should not interfere with the trial court's judgment as the appellant had failed to demonstrate that the trial court applied the wrong principles and arrived at a wrong conclusion. And that the authorities cited by the appellant had more serious injuries than the appellant sustained.
12. The court was urged to be guided by the case in *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018) where Ngugi, J (as he then was) reduced the general damages for soft tissue injuries from Kshs 300,000/= to Kshs 100,000/=.
13. It was submitted for the respondent that the appellant only proved special damages of Kshs 2,000/= and urged the court to dismiss the appeal.

Analysis and determination

14. It is settled law that a first appellate court must evaluate afresh the evidence adduced before the trial court to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify - see *Selle & another v Associated Motor Boat Co Ltd & others* [1968] EA 123
15. I have considered the memorandum of appeal, the evidence tendered in the trial court and the submissions as filed. The issue for determination is whether the trial magistrate erred in awarding the quantum of damages.
16. The appellant testified that after the accident she sustained injuries and as at the time of her testimony she had not properly recovered as the right side of the body usually gets numb.
17. The respondent's witness David Kinyanjui Gitau - DW1 testified he was a nurse by profession and was the driver of the accident motor vehicle. That the appellant sustained soft tissue injuries, was treated and discharged.
18. In assessing an award of damages, comparable injuries should as far as possible be compensated by comparable awards keeping in mind the level of awards in similar cases.
19. In *Daniel Gatana Ndungu & another v Harrison Angore Katana* (2020) eKLR the respondent sustained a cut on the head, blunt injury to the right knee, multiple bruises on the upper limbs and bruises on the right knee and was awarded Kshs 140,000/-.
20. In the instant appeal, the appellant sustained a blunt injury on the head, right hand, blunt injury to the right knee joint and both thighs and a blunt injury to the right ankle joint.
21. The trial court having evaluated the evidence on record and other comparable authorities awarded the appellant Kshs 100,000/=. The learned trial magistrate opined that the injuries suffered in the authorities cited were more severe compared to the injuries sustained by the appellant.
22. I have re-evaluated the authorities cited by the appellant. It is my finding that the said authorities were not comparable in the award of damages. Further, the authorities cited by the respondent were more similar and compared well to the injuries sustained by the appellant in the instant case.
23. In the case of *Kigaraari v Aya* (1982-88) 1 KAR 768 it was held that: "Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford. Large awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees."



24. In *Godwin Ireri v Francline Gitonga Meru* HCCA 47/2015 [2018] eKLR the plaintiff was awarded Kshs 90,000/= for the following injuries - two cuts on the forehead, cuts on the scalp to the occipital region, bruises on the left ankle and bruises on the right knee.
25. In *Mbati John & another v China Zhongxing Construction Company Limited and another* [2016] eKLR the plaintiff was awarded Kshs 75,000/= for the following injuries - blunt trauma to the occipital region of the head, bruises of the right shoulder girdle, blunt trauma to the anterior chest, cut wounds on the lumbar region of the back and bruises of the knuckles of the left hand.
26. In view of the above and considering comparable authorities, the age and the inflation, I find the award of Kshs 100,000/= was sufficient compensation. I am not persuaded that the trial magistrate erred in the assessment of damages.
27. On the issue of special damages, the trial court found the appellant only proved Kshs 2,000/= as opposed to the Kshs 20, 639/= pleaded.
28. At the hearing, the appellant adopted her list of documents and witness statements. In her list of documents, she attached receipts as proof of the money spent. I have computed the money in the various receipts which totals to Kshs 5,800/=. In the circumstances therefore, this court finds the trial court erred in finding that the appellant only proved Kshs 2,000/= as special damages.
29. Consequently, this court finds the appeal herein partly succeeds only to the extent of the award of special damages which the court award at Kshs 5,800/=.

Final Orders:

30.

- i). The trial court's judgment on the award of general damages is upheld.
- ii). This court awards the amount of Kshs 5800/= as proved special damages.
- iii). The appellant will have the costs of the appeal.

Orders accordingly.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF AUGUST 2023.

P.M. MULWA

JUDGE

In the presence of:

Duale – court assistant

Mr. Jessy Kariuki- for the appellant

Ms. Kariuki - for the respondent

