



REPUBLIC OF KENYA



**Sikara v Sambula (Civil Appeal E007 of 2022)
[2023] KEHC 24705 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E007 OF 2022
SC CHIRCHIR, J
OCTOBER 26, 2023**

BETWEEN

IBRAHIM JOMO SIKARA APPELLANT

AND

JOHN SAMBULA RESPONDENT

*(An appeal from Judgment and Decree of Senior Principal magistrate's court
in Butali PMCC No. 28 of 2019 delivered on the 27th day of January 2022)*

JUDGMENT

1. The Appellant instituted a suit against the respondent at the chief Magistrate's court in Butali seeking damages for injuries sustained in a traffic road accident involving the Defendant's motor vehicle registration No KCG 425 A and his motorbike registration No. KMEC 800Q. The Appellant sustained injuries as a result for which he attributes them to the respondent's negligence.
2. The Respondent filed a statement of defence in which he denied the allegations and the matter proceeded to full hearing. At the conclusion of the hearing, the trial court found the Respondent fully liable for the accident and awarded the appellant general damages of Kshs. 750,000/=, special damages of Kshs. 17,550/= and Future medical costs of Kshs. 80,000/= bringing the total to Kshs. 847,550/=
3. The appellant being aggrieved by the judgment filled this Appeal and set out two grounds which were;
 1. The learned magistrate erred in fact and in law by completely disregarding the appellant's submission on the evidence, facts and issues before the court, the extent, gravity and nature of appellant's injuries and thereby erred in law in her assessment of general damages which was inordinately low.



2. The learned magistrate erred in assessing general damages and failed to apply the trite principles in awarding general damages.
4. The Appeal proceeded by way of written submissions
5. This being the first appeal the court is required to reconsider evidence adduced, evaluate it and draw its own conclusions. (see *Gitobu Imanyara & 2 others vs A.G* (2016) eKLR)
6. It is evident from the memorandum of Appeal that the Appellant is contesting the award of damages only.

Summary of the Evidence.

7. PW1 was the Appellant herein . He told the court that as a result of the accident he was injured on the right leg, which was fractured, his right hand had dislocated and that he sustained injuries on the head. He was treated at Malava County Hospital. He produced a receipt for Ksh. 20,482 on account of cost of treatment.
8. PW2, was a Clinical Officer based at Malava County Hospital. He produced the discharge summary of the appellant. He testified that the appellant sustained injuries on the chest, lower limbs, blunt injury on the chest and lower limbs. On the lower limb there was a fracture on the right tibia/ Fibula bone. He produced the X-ray report.
9. On cross examination by the court, he stated that the fracture was on the leg and that the time of healing depended on the patient's immunity and placed it around 3-6 months from the time of the accident. He confirmed that the patient had fully healed.
10. PW3, was Dr. Charles Andai who prepared the medical report for the appellant. He told the court that he relied on the treatment notes, the X-ray and the case summary notes from Malava County Hospital to prepare the medical report. He confirmed that the fractures were fixed using a screw and were to be removed at an approximate cost of Kshs.80,000/=. He further produced the P3 form which he filled with the receipt for Kshs. 12,000/= and confirmed that he had been paid Kshs. 5,000/=.
11. On cross examination, he confirmed that the plaintiff suffered Soft tissue injuries and a fracture. At the time of examination, he had projected that the healing would take 1 ½ years. That was in the year 2018 and based on this projection he told the court that the Appellant should have fully recovered as at the time of the hearing.
12. The defence did not submit any evidence on the issue of damages.

The Appellant's Submissions

13. It is the Appellant's submissions that the award of the general damages was entirely an erroneous estimate of the appellant's injuries as the award was inordinately low.
14. The Appellant then set out particulars of the injuries as follows:
 1. Blunt injury to the chest
 2. Blunt injury to the back
 3. Fracture (colle's fracture) of the right radius
 4. Closed comminuted fracture of right tibia



5. Closed comminuted fracture of right fibula
15. It is further submitted that the trial court failed to have sufficient regard to the appellant's injuries as well as the period of admission in hospital
16. The Appellant faults the Trial court for failing to consider the relevant decided cases as well as considerations of inflation and that the award of Kshs. 2,500,000/= would be a fair compensation for the injuries sustained.
17. The Appellant has relied on the case of Madina Gathoni Vs. Ali Shalo Shosi & Another (2009) eKLR where the court awarded Kshs. 3,200,000/= as general damages and *James Gathirwa Ngungi vs. Multiple Hauliers (EA) Limited & another* eKLR where the court assessed the general damages at Kshs. 1,500,000/=

The Respondent's submissions

18. The respondent submits that according to the medical evidence emanating from the Appellant's witnesses, the Appellant had fully healed at the time of the hearing.
19. The Respondent has referred the court to the case of *George William Awuor vs. Beryl Awuor Ochieng* (2020) eKLR where the court revised the award of damages from Kshs. 2,000,000/= which was considered inordinately high to Kshs. 840,000/=. They also relied on the case of *Daniel Otieno owino & another vs. Elizabeth Atieno Owuor*, where the court revised an award of Kshs. 600,000/= to Kshs 320,000/= for fairly similar injuries. And finally the case of *Daneva Heavy Trucks & another vs. Chrispine Otieno* (2022) eKLR court revised from Kshs. 1,000,000/= to Kshs. 560,000/=
20. It is the respondent submissions that the trial court award was neither inordinately low nor high but it was commensurate to the injuries sustained by the appellant; that the proposed award of ksh. 2,500,000 is against the principle that an award of damages is not meant to enrich but to compensate the victim

Determination

21. The only issue for determination by the court is whether the award of general damages of Kshs. 750,000.00/= in light of the injuries stated above is inordinately low, to warrant the intervention of this court.
22. Assessment of damages is an act of discretion and the principles upon which an appellate court can interfere with the exercise of the said discretion has been a subject of a host decisions of the superior courts .
23. In the case of *Gitobu Imanyara & 2 Others vs. A.G* (*supra*) 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 amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.....”
24. The injuries suffered by the appellant were listed in the treatment notes, the P3 form and the Medical report by the clinical officer, from Malava County Hospital and Dr. Charles Andai as:



- a. Blunt injury to the chest
 - b. Blunt injury to the back
 - c. Colle's fracture of the right radius
 - d. Closed comminuted fracture of right tibia and fibula
25. It is trite law that "comparable injuries should attract comparable awards".(see [*Odinga Jacktone Ouma vs Moureen Achieng odera*](#) (2016) eKLR)
26. From the evidence adduced by the Appellant, it is clear that injuries suffered were soft tissue injuries and two fractures involving the radius and the tibia/ fibula bones. The fractures did not result in any form of permanent disability and according to PW2 and PW3 the Appellant had healed as at the time of the hearing.
27. On the authorities relied upon by the Appellant, I note that the injuries therein were more severe in comparison to the present case. For example, in Civil Suit 11 of 2006, High court Malindi [*Madina Gathoni vs. Ali*](#) (2006), the plaintiff was incapacitated at 60% and she was confined to a wheel chair for the rest of her life. The other Authorities too, reflected more severe injuries in comparison to the present case.
28. Further, in dealing with an appeal on quantum I stand guided by the decision In the case of [*Savanna Saw Mills Ltd vs. Gorge Mwale Mudomo*](#) (2005) eKLR the court stated as follows: -
- "It is the law that the assessment of 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 simply because it would have awarded a different figure if it had tried the case at the first instance ..."
29. Further the award by the trial court compares well with the awards in the following past decisions:
- a. In [*Ndwiga & another v Mukimba*](#) (Civil Appeal E006 of 2022) [2022] KEHC 11793 (KLR), where Njuguna J. reduced an award of Kshs 1,200,000/= to Kshs 500,000/= where the Respondent had sustained tenderness and swelling of the left leg and fracture of tibia and fibula left leg.
 - b. In [*Daniel Otieno Owino & another v Elizabeth Atieno Owuor*](#) [2020] eKLR where the respondent had suffered a fracture of tibia and fibula bones of the right leg, deep cut wound and tissue damage of the right leg, head injury with cut wound on the nose, blunt chest injuries and soft tissue injury on the lower left leg and the High Court set aside the award of Kshs 600,000/= and replaced it with Kshs 400,000/=.
 - c. In [*Tirus Mburu Chege & Another v JKN & Another*](#) (2018) eKLR where the Respondent suffered fractures on the tibia and fibula on both legs, blunt injury on the forehead, broken upper right second front tooth, nose bleeding and consistent loss of consciousness the court reduced the award for general damages from Kshs 800,000/= to Kshs 500,000/=.
30. Compared to the above decided cases, the present cases consisted of slightly more severe injuries but the award herein is also slightly higher. I do not find that the Trial Magistrate misdirected herself in any way. The award is not too low to warrant the intervention of this court.
31. In conclusion, I have not found any merit in this Appeal. The same is dismissed with costs to the Respondent.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 26TH DAY OF OCTOBER, 2023.

S. CHIRCHIR

JUDGE

In the presence of :

E. Zalo

No appearance by the parties.

