



REPUBLIC OF KENYA



**Roadtainers Mombasa Limited v Nato (Civil Appeal 17 of 2022)
[2023] KEHC 24484 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 17 OF 2022
SM GITHINJI, J
OCTOBER 25, 2023**

BETWEEN

ROADTAINERS MOMBASA LIMITED APPELLANT

AND

MITCHEL SYLVIA NATO RESPONDENT

*(Being an Appeal of the Judgment and Decree of Honourable Ms. N.C.Adalo -
SRM delivered in SPM No.E036 of 2020 Mariakani on 22nd February, 2022)*

JUDGMENT

CORAM: Hon. Justice S.M. Githinji

Mr Anjigo Advocate for the Appellant

Mr Mwangi Njoroge Advocate for the Respondent

1. This appeal arises from the judgment and decree of Hon. N. C Adalo-SRM delivered on 22nd February 2022 in Mariakani SPMCC No. E036 of 2020 where judgment was entered in favour of the respondent herein in the following terms;
 - a. General damages Kshs. 550,000/=
 - b. Special damages Kshs. 2,000/=
 - c. Future Medical Expenses Kshs. 36,000/=
2. Aggrieved by the judgment, the appellant brought this appeal premised on the following grounds;
 1. That the learned trial magistrate erred in law by treating the appellant's submissions in superficial manner and thereby arriving at an erroneous decision.



2. That the learned trial magistrate erred in law and fact by awarding an excessive sum on quantum to the respondent which was not in conformity with decided cases.
3. That the learned trial magistrate erred in law and fact by awarding an excessive sum on quantum and future medical expenses without any legal backing whatsoever.
4. That the learned trial magistrate's final award was baseless as it did not conform with the requisite ingredients in a defended suit as set out under the express provisions of the law.

Evidence at Trial

3. Pw1 Dr. Darius Kiema produced a medical report dated 15/10/2020 as PEX 1. He told the court that he assessed the plaintiff's permanent partial disability at 7%.
4. Pw2 Mitchell Sylvia Nato the plaintiff adopted her witness statement as her evidence in chief. She added that following the accident she sustained a fracture on her left foot, a cut on the hip and injuries on the forehead, right arm and thighs.
5. Pw3 No. 23669 Mohammed Hassan of Mariakani police station told the court that on 29/09/2020 they received a report of a serious road traffic accident along Mombasa- Nairobi highway involving motor vehicle Kxxx Beiben and motor vehicle KBU 306Y where six passengers including the plaintiff sustained injuries and one fatality. He produced as PEX 4 a police abstract and stated that the driver of Kxxx was to blame for accident.
6. Dw1 Pharis Mureithi Mugo a driver with Roadtainers, adopted his statement dated 31/02/2021 as his evidence. He stated that he was not charged with a traffic offence before court and was not to blame for the accident.

Analysis and Determination

7. I have carefully considered the appeal herein, its grounds and the parties' submissions. The court is alive to the fact that it did not hear the witnesses testify nor did it observe their demeanor and therefore should make due allowance for that. This court is also alive to the fact that an appeal is in a way a retrial and the court must therefore reconsider the evidence, evaluate it and draw its own conclusions. In [*Peter M. Kariuki v Attorney General*](#) (2014) eKLR the court held inter alia as follows:

“We have also, as we are duty bound to do as a first appellate court to reconsider the evidence adduced before trial court and re-evaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence.”

8. The issues for determination here are whether the award of general damages of Kshs. 550,000.00/ = in light of the injuries stated above is inordinately high to persuade this court to interfere with it and whether the trial court erred in awarding Kshs. 36,000 for future medical expenses. The Court of Appeal in [*Odinga Jacktone Ouma V Moureen Achieng Odera*](#) (2016) eKLR stated that

“comparable injuries should attract comparable awards”.

9. To begin, the injuries suffered by the respondent were listed in the treatment notes, the P3 form and the medical report by Dr. Darius Kiema as:
 - a. Fracture of the left foot 3rd metatarsal bone without displacement



- b. Laceration of lower lip buccal aspects.
- c. Blunt trauma to the head, both shoulders, right forearm/hand and both thighs.
10. The medical report further opines that the respondent’s permanent partial disability is at 7% as a result of the injuries sustained. Further, that the respondents would incur Kshs. 50,000 for physiotherapy and Kshs. 3,000 per month for a year being money for painkillers.
11. On the issue of quantum, I shall rely on the Court of Appeal’s decision in the case of *Gitobu Imanyara & 2 Others v Attorney General* (2016) eKLR, where 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. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:
- “An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely 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.”
12. I am alive to the fact that an award of general damages is always at the discretion of the trial court. That discretion must however be exercised judiciously in accordance with the law. The mandate of an appellate Court to interfere with damages awarded by a trial court is not unlimited. It is confined to certain circumstances.
13. I have had an opportunity to go through the authorities availed by both parties to the trial Court supporting their respective proposals on quantum. I note that the injuries sustained by the Respondent were severe going by the medical reports by both doctors. I further note that the learned trial magistrate in her judgment clearly indicated that she had considered the submissions made by each of the parties, the nature of the injuries sustained and cost of inflation in awarding Kshs. 550,000/= as sufficient compensation for the injuries sustained.
14. Given the evidence on record, I find no reason to fault the learned trial magistrate’s award for general damages, considering the injuries that were suffered by the Respondent. It is my considered view that the finding of the Learned Magistrate was well within the acceptable limits and reflects the nature and gravity of the injuries suffered by the Respondent.



Future Medical Expenses

15. The law on future medical expenses is well settled. The Court of Appeal in the case of *Tracom Limited & Another v Hassan Mohamed Adan* [2009] eKLR stated: -

“ ... We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v Gituma* (2004) 1 EA 91, this Court, stated:

“ And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require... ”

16. The trial court awarded Kshs. 36,000 for future medical expenses being the cost of pain killers for a period of one year. I have reviewed the plaint filed by the respondent at the trial court. The plaintiff pleaded for painkillers and joint care medication for a period of one year. The medical report assessed the same at the rate of Kshs. 3,000 per month thus the award by the trial court. In my view, the trial court made a careful consideration in awarding the same and I therefore find no reason to upset the same.
17. In the end, the appeal lacks merit and the same is hereby dismissed with costs to the Respondent.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 25TH DAY OF OCTOBER, 2023.

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S.M.GITHINJI

JUDGE

In the Presence of; -

Mr Busieka for the Appellant

Mr Kazungu is for the Respondent

Mr Busieka; -I pray for 30 days stay.

Court; -30 days’ stay is granted.

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S.M.GITHINJI

JUDGE

25/10/2023

