



REPUBLIC OF KENYA



**Asad Motors Limited & 2 others v Yaa (Civil Appeal 92 of 2022)
[2023] KEHC 24279 (KLR) (24 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 92 OF 2022
KW KIARIE, J
OCTOBER 24, 2023**

BETWEEN

ASAD MOTORS LIMITED 1ST APPELLANT

OMAR YARROW ABDI 2ND APPELLANT

THOMAS MICHAEL CHARO 3RD APPELLANT

AND

DAVID MURE YAA RESPONDENT

*(From the Judgment and Decree in the Malindi Chief Magistrate's
Court Civil Case No. 55 of 2020 by Hon. E. K. Usui- Chief Magistrate)*

JUDGMENT

1. Asad Motors Limited, Omar Yarrow Abdi, and Thomas Michael Charo, the appellants herein, were the defendants in Malindi Chief Magistrate's Civil Case number 55 of 2020. This was a claim that arose from a road traffic accident that involved motor vehicle registration number KCR 161A hauling trailer registration number ZF 9270 and motor vehicle registration number KBN 246 G which was being driven by the respondent. Following the collision, the respondent sustained injuries. The learned trial magistrate delivered judgment dated 19th October 2022 and held that the appellants were 100% liable.
2. The learned trial magistrate made an award of Kshs. 300,000.00 in general damages and special damages Kshs. 2,550.00 in favour of the respondent.
3. The appellants were aggrieved by the said judgment and filed this appeal through the firm of Jengo Associates Advocates. They raised the following grounds of appeal:



- a. That the learned trial magistrate erred in fact and in law in the assessment of general damages by arriving at a sum that was inordinately high, excessive in the circumstances, unsustainable in law hence occasioning a miscarriage of justice.
 - b. That the learned trial magistrate applied the wrong principles of law by taking into account some irrelevant factors and leaving out of account some relevant factors hence arriving at an award that was erroneous.
 - c. That the learned trial magistrate erred in law and in fact in failing to consider judicial precedent and in taking into account things he ought not to have considered hence arrived at an assessment of damages that was erroneous.
 - d. The learned trial magistrate misapprehended the evidence and misapplied misunderstood and or overlooked the correct legal principles and judicial precedent and they made an award of general damages that was erroneous and inordinately high.
 - e. The award for general damages was arbitrarily made without due regard to judicial precedent, the parties' submissions, and in considering the irrelevant factors hence inordinately high.
4. The respondent was represented by the firm of Wambua Kilonzo & Company Advocates. He opposed the appeal and contended that the appeal lacked merit.
 5. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
 6. The appeal is on the quantum of damages awarded.
 7. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs. Khan* [1981] KLR 349 on page 356 Law JA stated:
 ...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 a figure which was either inordinately high or low.
 8. As a result of the complained of accident, the respondent sustained the following injuries:
 - a. Deep cuts on the forehead and upper lip;
 - b. Blunt object injury to the right lower limb;
 - c. Loosening of the upper front tooth; and
 - d. Bruises on the right leg.
 9. Dr. Ajoni Adede opined that the respondent suffered soft tissue injuries and a loose tooth which had a chance of regaining firmness. No permanent disability was anticipated.
 10. The appellants had proposed an award of Kshs.80,000.00 and relied on the following cases:
 - a. *LNK (A Minor Suing through CNK as Next Friend) & 2 others v Simon Gatuni Njukia* [2022] eKLR. In this case, the appellants sustained the following



1st Appellant LN:

Cut wound to the occipital region. Cut wound on the neck. Cut wound on right ankle and foot.

2nd Appellant BG:

Soft tissue injuries occipital region forehead and left cheek. Soft tissue injuries of the left lower limb.

* Soft tissue injuries to the chest.

* 3rd Appellant AW:

* Soft tissue injuries temple and parietal region.

* Soft tissue injuries on right shoulder region joint.

* Soft tissue injuries to the chest.

* Soft tissue injuries of the lower limbs.

An award of Kshs. 80,000.00/= was given for these injuries.

- b. In *Edward Mutevu Maithya & another v Edwin Nyamweya* [2022] eKLR the respondent was awarded Kshs. 100,000/= for the following injuries:
- a) Cut wounds on the scalp;
 - b) Bruises the back;
 - c) Bruises on the right upper limb; and
 - d) Bruises on the left lower limb.

11. After considering the injuries sustained, the medical report of the respondent, and the authorities cited, I find that the award in general damages was inordinately high. I set aside the award by the trial magistrate and substitute it with an award of Kshs. 100,000/=. The appellant is to have half the costs of this appeal.

DELIVERED AND SIGNED AT HOMA BAY THIS 24TH DAY OF OCTOBER, 2023.

KIARIE WAWERU KIARIE

JUDGE

