



**Shilavukha & another v Oduor (Civil Appeal E507 of 2021)  
[2023] KEHC 26049 (KLR) (Civ) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26049 (KLR)

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

**CIVIL**

**CIVIL APPEAL E507 OF 2021**

**DAS MAJANJA, J**

**NOVEMBER 30, 2023**

**BETWEEN**

**FESTUS SHILAVUKHA ..... 1<sup>ST</sup> APPELLANT**

**FACTORY GUARDS LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MILLICENT AUMA ODUOR ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. A. N. Ogonda, SRM dated 16th July 2021 at the Magistrates Court at Nairobi, Milimani in Civil Case No. 1221 of 2019)*

**JUDGMENT**

1. Before the Subordinate Court, the Respondent, a pedestrian, sued the Appellants following a road traffic accident which took place on 2.06.2018 involving motor vehicle KCC XXXA owned by the 2<sup>nd</sup> Appellant and driven by the 1<sup>st</sup> Appellant along Kasarani - Mwiki Road. The parties agreed to settle the issue of liability in the ratio of 70:30 in favour of the Respondent. Based on material before the court, the trial magistrate awarded the Respondent ksh 500,000.00 and ksh 18,450.00 as general and special damages respectively.
2. The Appellants were not impressed by the award terming it inordinately high in light of the injuries sustained by the Respondent and as compared to the authorities on comparable awards. In their memorandum of appeal dated 17.08.2021, they raise 7 grounds of appeal. The thrust of the appeal is that the trial court erred in law and in fact by awarding general damages that are inordinately high in the circumstances of the case taking into account the injuries suffered and comparable cases.
3. According to the Plaintiff dated 26.02.2019, the Respondent sustained the following injuries; -bruises on the upper limbs and back, head injury comprising a deep cut wound at the back of the head, fracture-



left parietal bone, haematoma-brain and loss of memory. These injuries were presented in the medical report of Dr. G.K. Mwaura dated 07.02.2019.

4. In their appeal, the Appellants fault the trial court for failing to consider medical report prepared by Dr. Wambugu P.M dated 21.08.2019 which was produced by consent; failing to consider their submissions and authorities cited therein and failing to give reasons how the award of ksh 500,000.00 was arrived at. They pray that the court reduces it to ksh 250,000.00 as submitted before the trial court. They urge that the Respondent did not adduce evidence to support her claim on memory loss. On the other hand, they point out that Dr. Wambugu, in the medical report, stated that he reviewed the CT scan of the Respondent's head taken and found that it did not reveal any brain lesions and that her short term and long-term memory are intact. In the circumstances, the Appellants submit that the injuries suffered ought to have attracted lesser compensation.
5. To support their case, the Appellant relied on several cases. *Jab Hendricks v David Charo Sirya* [2016] eKLR where the court upheld an award of ksh 480,000.00 in general damages for head injury with blood clot subdural hematoma within the skull; fracture skull at the base; cut on the head and blunt object injury to the right hand. *Sila Tiren & Kimitei Arap Limo v Simon Ombati Omiambo* [2014] eKLR where the court reduced an award of ksh 700,000.00 to ksh 450,000.00 for brain contusion; cut wound on the left parietal region; fracture of the base of the skull and fracture of the left temporal bone with mastoid involvement. *Monica Kori Ndunda v Malindi Taxis Limited* [1997] eKLR where the court awarded ksh 450,000.00 for head injury, injury to the left hip and lower back, soft tissue injury of the chest and massive soft tissue injury of the left thigh. Based on the authorities they submitted, the Appellants pointed out that the plaintiffs in those cases suffered more severe injuries than those sustained by the Respondent.
6. How then, the question begs, did the Appellants expect the trial court to be well guided in its assessment if the authorities provided were dated and not comparable to the present case? Parties to a case have an obligation to guide the court appropriately by citing relevant cases. The court cannot be called out as having erred when it relies on the authorities provided by the litigant who has not provided other alternative and comparative authorities.
7. The Respondent supports the judgment of the trial court. She prays that the court enhance the general damages to ksh 1,500,000.00. Her position is that the trial court under-assessed the general damages payable. The Respondent relies on *Joseph Gichui Thomas v KG (Minor suing through his mother and next friend SNN)* [2018] eKLR where the High Court affirmed an award of ksh 1,800,000.00 for head injury and multiple cuts and bruises on head, face and chest. She also relied on the case of *Jab Hendricks v David Charo Sirya* [2016] eKLR which had been quoted by the Appellants.
8. As stated earlier, the issue in this matter concerns the award of general damages. The award of general damages is in the discretion of the trial court which must exercise its discretion judiciously taking into account the nature and extent of the injuries, relevant and comparative case law to ensure that fairness in the award and where necessary the rate of inflation. The appellate court will therefore only intervene in the circumstances outlined by the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan*. [1982-88] KAR 5 where it observed 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 inordinately high or low.



9. From the submissions, the first issue for consideration is the nature and extent of the injuries sustained by the Respondent. Contrary to the Appellants' contention, the trial court considered both medical reports. Both reports were in consonance with each other save for an assessment of memory loss by Dr. Mwaura. Both medical reports agree that the Respondent suffered trauma to the head which caused a fracture to the skull. It would not be farfetched for the Respondent to have suffered memory loss at the time of the accident. The assessment by Dr. Wambugu was done in August, 2019, 14 months after the accident when the Respondent had substantially recovered from most of the injuries suffered. Full short term and long-term memory at the time of assessment by Dr Wambugu does not rule out loss of memory at the time of the accident. The report by Dr. Mwaura does not state that the loss of memory was permanent.
10. In making the award, the trial court also considered the authorities placed before it. The authorities quoted by the Appellants, though dated are within the range awarded by the trial magistrate. Indeed, considering the injuries suffered in the said authorities, if inflation was to be considered, they would have attracted higher awards at the time of the judgment. It is evident that the trial court disregarded *Joseph Gichui Thomas v KG (Minor suing through his mother and next friend SNN)* (*Supra*) relied on which the Respondent as it appeared to be an outlier.
11. Based on the facts of the case and the reasons of the trial magistrate, I do not find any reason to intervene in the award of damages.
12. The appeal is dismissed. The Appellant shall pay costs of the appeal assessed at ksh 40,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023.**

**D.S. MAJANJA**

**JUDGE**

Mr Mwangi instructed by Wangari Muchemi and Company for the Appellants.

Mr Olunga instructed by Samuel Gitonga and Associates Advocates for the Respondent.

