



REPUBLIC OF KENYA



KENYA LAW
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**Otieno & another v Mwanga (Civil Appeal E090 of 2022)
[2023] KEHC 26648 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E090 OF 2022
RN NYAKUNDI, J
DECEMBER 20, 2023**

BETWEEN

EMILY OTIENO 1ST APPELLANT

JOHN OTIENO OKELLO 2ND APPELLANT

AND

WILBERFORCE MWANGA RESPONDENT

*(Being an Appeal from the Judgement delivered by
Hon. N. Wairimu in CMCC 92 OF2020 on 28.6.2022)*

JUDGMENT

Before Justice R.Nyakundi

Kimondo Gachoka & Co. Advocates

Mwinamo Lugonzo & Co. Advocates

1. The appeal herein arises from the judgement and decree of Hon. N Wairimu (SPM) delivered on 28th day of June, 2022 by Hon. N, Wairimu (SPM) in Eldoret CMCC No. 92 of 2020. The respondent instituted a suit in the trial court vide a plaint dated 31st January 2020 seeking general damages, special damages and costs. The claim arose from an accident that occurred on December 27, 2019 when the plaintiff was traveling as a passenger in M/vehicle registration KAS 422J along Eldoret-Webuye Road when the defendants or driver agent or employee negligently controlled KAS 422J causing the same to be involved in an accident, and as a result the plaintiff sustained the following injuries;

1. Blunt injury to the head
2. Blunt injury to the chest



3. Blunt injury to the abdomen
 4. Bruises on the left wrist joint
 5. Blunt injury to the left wrist joint
 6. Blunt injury to the right ankle
2. The trial court considered the evidence and the testimonies and found the defendant 100% liable. The trial court awarded the plaintiff general damages of Kshs. 300,000/- and Kshs 6,000/- in special damages.
3. The appellant, being aggrieved with the quantum, instituted the present appeal vide a memorandum of appeal dated July 6, 2022 premised on the following grounds;
1. That the learned trial magistrate erred in law and in fact by awarding Kshs. 300,000/= as general damages which award is inordinately high in view of the injuries sustained by the Respondent,
 2. That the learned trial magistrate misdirected herself by failing to take into account the well-established principle requiring comparable awards to be made for comparable injuries sustained thereby falling into an error by awarding Kshs. 300,000/= which award is manifestly excessive.
 3. That the learned trial magistrate erred in law and in fact by awarding Kshs, 300,000/= as general damages which award is excessive in view of the injuries sustained by the Respondent thereby deviating from the principle of stare decisis requiring comparable awards being made for comparable injuries sustained.
 4. That the learned trial magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very high.
 5. That the learned trial magistrate erred in law and in fact by disregarding and failing to appreciate the judicial authorities on quantum cited by the Appellants in their written submissions thereby making an award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the Respondent.
4. The parties prosecuted the appeal by way of written submissions.

Appellant's submissions

5. The appellants filed submissions through the firm of Messrs Kimondo Gachoka & Company Advocates. It is the appellants' case that the trial court awarded Kshs.300,000.00 as general damages which was inordinately high considering the injuries sustained by the Respondent were soft tissue injuries. The appellants urged that the sum of Kshs. 100,000.00 would be reasonable and sufficient compensation. Counsel invited the court to consider the following cases in determining this matter; *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018) eKLR and *HB (Minor suing through mother & next friend PKM v Jasper Nchonga Magari & another* (2021) eKLR and award the respondent Kshs.100,000.00.
6. Citing section 27 of the *Civil Procedure Act*, the appellants urged this court to award them costs of the appeal.



Respondents' submissions

7. The respondent filed submissions through the firm of Messrs Mwinamo Lugonzo & Co Advocates on November 3, 2023. Counsel urged that the trial court's finding on quantum is not inordinately too low or so high so as to amount to a wholly erroneous estimate and the Appellate court should not therefore disturb this award. In view of the injuries sustained the award of Kshs 300,000 made by the trial court sufficed as just and adequate compensation to the Respondent for the injuries sustained. The respondent cited the cases of *Jyoti Structures Ltd & anor v Charles Ogada Ochola*, Nyeri HCCC 320 of 1998 – *Catherine W. Kingori & 3 others vs Gibson T Gichubi* and Nairobi HCCA No. 791 of 1999 – *Martin M Mugi vs Attorney general* among others in support of his submissions.
8. Counsel urged the court to dismiss the appeal with costs to the respondent.

Analysis & Determination

9. The appeal before this court is mainly on quantum of damages. The principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of *Butt v Khan* {1981} KLR 470 where the court pronounced itself as follows;

An appellate court will not disturb an award for damages unless it is 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”.
10. In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in *Mkuba v Nyamuro* [1983] LLR at 403, where Kneller JA & Hancox Ag JJA held that-
11. A Court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.

Whether the trial court erred in its award of damages

12. In assessing an award for general damages it is trite that the court must bear in mind that the plaintiff ought to be placed in the position he or she would have been in had the accident not occurred. I also bear in mind that an award for general damages should be comparable, reasonable and moderate. Damages as used in law is nothing but a sum of money claimed as compensation or awarded by a court as compensation to the plaintiff/claimant for harm, loss or injury suffered by the plaintiff/claimant as a result of the tortuous act or breach of contract committed by the defendant or his agent. Considerations which affect the level of the award
 - i. Age
 - ii. Reduction in normal life expectancy
 - iii. Nature, extent and duration of treatment e.g surgery, chemotherapy, radiation or other mediation



- iv. Impact on work
 - v. Interference with quality of life including social, familial and other relationships
 - vi. Psychological sequelae including depression
13. It is not in dispute that the respondent sustained the following injuries;
- i. Blunt injury to the head
 - ii. Blunt injury to the chest
 - iii. Blunt injury to the abdomen
 - iv. Bruises on the left wrist joint
 - v. Blunt injury to the left wrist joint
 - vi. Blunt injury to the right ankle
14. It is trite law that when awarding damages, courts should consider comparable awards for comparable injuries in similar cases. In *Shabani vs City Council of Nairobi* (1985) KLR 516 the Court of Appeal had the following to say regarding the paramount need for Courts to attempt to give comparable awards in like cases:
15. There is no doubt that, some degree of uniformity must be sought in the award of damages and the best guide in this respect is...to have regard to recent award in comparable cases in the local courts.
16. In the case of *Poa Link Services Co. Ltd & another v Sindano Boaz Bonzemo*, HCCA No. 17 of 2019, Riechi J upheld the general damages of Kshs. 350,000/- for the plaintiff, who had sustained the following injuries: -
- a. Blunt injury to the chest.
 - b. Bruises to lower abdomen.
 - c. Bruises of the right hip joint.
 - d. Bruises of the thigh; and
 - e. Bruises on the knee.
17. In the case of *Peter Njuguna vs Francis Njuguna Njoroge* [2015] eKLR the court awarded Kshs. 230,000/- where the plaintiff sustained the following injuries :-
- a. Bruises on the occipital region of the scalp.
 - b. Deep cut on the forehead.
 - c. Bruises on the chest and lower back.
 - d. Bruises on the right elbow.
 - e. Bruises on both hands.
 - f. Tender left knee joint.
 - g. Broken tooth.



18. I have considered the judgement of the trial court, the authorities tendered by the parties herein and comparable awards for similar injuries and I find no reason to interfere with the award of the trial court. The special damages were not disputed and therefore I shall not interfere with the same.

19. In the premises, the appeal is dismissed with costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20TH DAY OF DECEMBER, 2023.

In the Presence of

Mururi for Mwinamo

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R. NYAKUNDI

JUDGE

