



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kyoga Hauliers v Okoddi (Civil Appeal 57 of 2022)
[2023] KEHC 27107 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 57 OF 2022
SC CHIRCHIR, J
DECEMBER 19, 2023**

BETWEEN

KYOGA HAULIERS APPELLANT

AND

PHILEMON OSURI OKODDI RESPONDENT

*(Being an appeal from the Judgment and decree of Hon. Z.J
Nyakundi delivered on 18/8/2022 in BUTALI SPMCC no 56 of 2021)*

JUDGMENT

1. The Respondent herein filed suit against the appellant in the lower court seeking damages for injuries sustained as a result of a road traffic accident which occurred on 24th March 2021, along Eldoret-Webuye road. The accident involved motor vehicle registration number KZH 622, and KCV 812 Q/ZG 1215
2. The respondent/ plaintiff attributed the accident to the negligence of the Appellant herein.
3. On conclusion of the Trial, the trial court held the appellants fully liable for the accident and awarded the respondent general damages of Kshs.250,000/= and special damages of Kshs. 6,550/=.

Grounds of Appeal

4. The appellant was dissatisfied with the outcome and consequently filed the present Appeal. He has set out the following Grounds:
 - a). That the learned trial magistrate erred in law and in fact in awarding Kshs. 250,000/= as general damages which was manifestly excessive having regard to the injuries sustained by the respondent



- b). That the learned trial magistrate erred in law and in fact in adopting the wrong principles in making a determination on the assessment of damages payable to the respondent thereby arriving at an erroneous decision.
- c). That the learned trial magistrate erred in law and in fact by failing to take into consideration and/or guided by relevant authorities and/or precedent with comparable injuries like the ones sustained by the respondent thereby arriving at an excessive amount payable for the general damages.
- d). That the learned trial magistrate erred in law and in fact in failing to take into account relevant issues and or factors in making a determination as to the damages payable thereby arriving at an erroneous decision.

5. The appeal proceeded by way of written submissions.

Appellant's submissions

- 6. The Appellant highlighted the respondent's injuries as;
 - a. Multiple cut wounds on the scalp
 - b. Head injury with loss of consciousness
 - c. Blunt injury to the chest
- 7. The appellant submits that that during cross examination, Dr. Sokobe who had prepared the medical report testified that the respondent had sustained soft tissue injuries and from which the respondent had fully recovered.
- 8. He avers that this was corroborated by PW3, the clinical officer from Webuye sub- county hospital , who equally confirmed that the Respondent's injuries were soft tissue in nature.
- 9. They finally submitted that award of Kshs. 80,000- Kshs. 100,000/= would be sufficient compensation as there was no permanent disability suffered by the Respondent.
- 10. The Appellant has supported its proposal by citing the case of *LKN (a minor suing through CNK as next friend & 2 others v Simon Gatuni Njukia* (2022) eKLR where an award of Kshs. 200,000/= was set aside and substituted with an award of Kshs. 80,000

Respondent's written submission.

- 11. The respondent submits that the damages awarded by the subordinate court was not inordinately high and that the court should not interfere with the finding of the lower court. They relied in the high court decision in *Kemfro Africa Ltd t/a Meru express & another v. a.m. Lubia & another (No.2)* 1987 KLR 30.
- 12. The respondent has further relied on the case of *Francis Omari Ogaro v JAO (minor suing through next friend and father)* (2021) eKLR where the court held that the proposed amount Kshs. 90,000/= was on the lower side for soft tissue injuries.



13. While urging the court to uphold the lower court award, they have further relied on the following decided cases:
- a. *Francis Ndungu Wambui v Benson Maina Gatia* (2019) eKLR court awarded Kshs. 300,000/=
 - b. *Veronicah Mkanjala Mnyapara v Charles Kibanga Bab* (2020) eKLR the court awarded Kshs. 300,000/
 - c. *Catherine wanjiru Kingori & 3 others v Gibson Theuri Gichubi* (2005) eKLR, the court awarded Kshs. 300,000/= for soft tissue injuries.

Summary of evidence

14. The first witness was the investigations officer. His evidence had no bearing on the assessment of damages.
15. PW2 was the clinical officer. He produced the respondent's treatment notes dated 24.3.21. On cross examination, he stated that he was not the person who treated the patient. He claimed that according to the Radiology report the patient sustained head injury.
16. PW3 was Dr. Sokobe. He testified that he examined the plaintiff on 25/3/2021 and the patient suffered soft tissue injuries
17. The trial court in its judgment dated 18th August 2022 entered judgment in favour of the respondent for Kshs. 250,000/= and special damages of Kshs. 6,550/= as aforesaid.

Determination

18. From the memorandum of Appeal, it is evident that this Appeal is against the assessment of general damages only. The only issue for determination therefore is whether the award on general Damages was excessive.
19. I have considered the grounds of Appeal, the lower court record and the rival submissions of the parties herein.
20. The principles upon which an Appellate court can interfere with the trial court's assessment of damages is well settled. The appellate court will only interfere if the award is too low, too high, or based on the wrong principles as was held in the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, where the Court of Appeal held that –

“.... 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:

Considering the nature of the injuries sustained by the respondent, comparable awards and inflation or passage of time was the award of the trial magistrate inordinately excessive as to warrant this court to interfere?



21. The respondent sustained the following injuries:
 - a. Multiple cut wounds on the scalp
 - b. Head injury with loss of consciousness
 - c. Blunt injury to the chest
22. In his report dated 25.3.2021, Dr. Joseph Sokobe (PW-3) stated that respondent suffered moderate soft tissue injuries, and had recovered well.
23. The guiding principles when assessing damages is that comparable injuries should be compensated by comparable awards as was held in the case of *Morris Mugambi and Another v Isaiab Gituru* Nairobi Court of Appeal 138 of 2002,
24. In *Ndungu Dennis v Ann Wangari & Another*, Kiambu HCCA 54/2016 decided in February 2018, the High Court awarded KShs.100,000/= general damages to the plaintiff who sustained injuries involving a blunt head injury, brain concussion blunt injuries to the chest and both hands.
25. In *PF (Suing as next friend and father of SK (Minor) v Victor O Kamadi & another* [2018] eKLR where the court awarded Kshs 100,000/= for cut wound to the forehead, multiple small abrasions to the face, blunt injury to the head leading to loss of consciousness for some time, abrasions to the back, abrasion wounds to dorsum of the right hand and cut wound to right leg.
26. *George Kinyanjui T/A Climax Coaches & Another v Hussein Mahad Kuyale* [2016] eKLR a high award of Kshs 650,000/= was reduced to Kshs 120,000/= for soft tissue injuries that did not involve a cut wound and residual complications
27. Taking into consideration the above cited cases and making allowance for inflationary trends since the decisions were made I find that ksh. 150,000 would have been an appropriate award. I find the award of ksh. 250,000 therefore to have been too excessive warranting the intervention of this court
28. I conclude by making the following orders:
 - a). The lower court award of ksh. 250,000 in general damages is hereby set aside and substituted with an award of ksh. 150,000
 - b). Each party to meet their own costs in this Appeal.

DATED , SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER , 2023.

S. CHIRCHIR

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

