



**Kyoga Hauliers v Okoddi (Civil Appeal 58 of 2022)
[2023] KEHC 26762 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26762 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 58 OF 2022
SC CHIRCHIR, J
DECEMBER 19, 2023**

BETWEEN

KYOGA HAULIERS APPELLANT

AND

MIRIAM OKODDI RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Z.J
Nyakundi delivered on 18/8/2022 in Butali SPMCC no 54. of 2021)*

JUDGMENT

1. The Respondent herein sued the Appellant seeking damages for injuries sustained as a result of a road traffic accident which occurred on 24th March 2021, along Eldoret- Webuye road. The respondent attributed the accident to the negligence of the defendant
2. The trial court- delivered judgment on 18.8.2022 in which the appellant was held fully liable for the accident and the Respondent awarded ksh. 300,000 on general Damages

Grounds of Appeal

3. The appellant, being dissatisfied with the judgment filed this appeal, limited to the issue of the award on general Damages and set out the following grounds:
 - a). That the learned trial magistrate erred in law and in fact in awarding Kshs. 300,000/= 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.
4. The Appellant prays that the appeal be allowed and that the lower court's judgment be set aside and that the judgment to be substituted with a judgment of this court revising the general damages downwards.
 5. The appeal proceeded by way of written submissions.

Appellant's submissions

6. The Appellant submitted that in assessing of damages, the trial court acted on the wrong principles and took in to account matters which it ought not to have. They relied in the case of *Charles Oriwo Odeyo v. Apollo Justus Andabwa & Another* (2017) eKLR
7. They highlighted the respondent's injuries as:
 - a. Head injury with loss of consciousness.
 - b. Deep cut wound on the forehead
 - c. Blunt injury to the left shoulder with dislocation.
 - d. Blunt injury to the right ribs,
 - e. Bruises and lacerations on the right hand prosperity.
 - f. Deep cut wound on the left knee anteriorly.
8. The Appellant further submits that the said injuries were confirmed by the Dr. Sokobe and Dr. Gaya and both doctors confirmed that the Respondent had recovered well from the injuries.
9. The Appellant further submits that an award of Kshs. 90,000 would be sufficient compensation.
10. The Applicant has supported their proposal with the following past decisions:
 - a. *Godwin Heri v frankline Gitonga* Meru HCCA 47/2015 [2018]eKLR court awarded Kshs.90,000 for soft tissue injuries
 - b. *Christine Kalama v Jane Wanja Njeru v. Martin kega* HCCA E018 [2020] eKLR the court awarded Kshs.70,000 for soft tissue injuries
 - c. *Ephraim Wagura Mutbui & 2 others v Toyota Kenya limited & 2 others* [2019] eKLR the court awarded Kshs. 90,000/= for soft tissue injuries.

Respondent's Submissions.

11. The Respondent submits that the trial court excised its discretion judiciously and that there was no need to interfere with the stated award of Kshs. 300,000/= in general damages.



12. In support of this submission she has cited the following authorities,
 - a. [Francis Ndungu Wambui v. Benson Maina Gatia](#) [2019] eKLR court awarded Kshs. 300,000/=
 - b. [Veronicah Mkanjala Mnyapara v Charles Kihanga Bab](#) [2020] eKLR the court awarded Kshs. 300,000/
 - c. [Veronicah Mkanjala Mnyapara v Patrick Nyasinga](#) [2021] eKLR the court awarded Kshs. 300,000/
 - d. [Catherine wanjiru Kingori & 3 others v Gibson Theuri Gichubi](#) [2005] eKLR, the court awarded Kshs. 300,000/= for multiple soft tissue injuries.

Determination

13. I have considered the memorandum of Appeal, the lower court record and the submissions of the parties. There is no dispute on the nature and extent of the injuries sustained by the respondent. The only issue this court is left to determine is whether the award of ksh. 300,000 was excessive.
14. Assessment of damages is an act of discretion by the Trial court and the basis of interfering with such discretion by the appellate court is well settled. In the case of [Bashir Ahmed Butt v Uwais Ahmed Khan](#) [1982-88] KAR 5 the court held 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”
15. The injuries sustained by the Respondent are as set out in paragraph 7 of this Judgment. Can the award of ks. 300,0000 be said to be too excessive so as to warrant any disturbance by this court? I think not. The injuries may be classified as serious and multiple soft tissue injuries The guiding principles in assessment of damages for personal injuries has been a subject of a host of decisions. In the case of [Boniface Waiti & Ano v Michael Kariuki & Ano](#) [2007] eKLR the principles were stated as follows: :
 - (I) an award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered
 - (ii) The award should be commensurate to the injuries suffered
 - (iii) awards in decided cases are mere guides and each case should be treated on its own facts and merit.
 - (iv) Where awards in the decided cases are to be taken into consideration then the issue and element of inflation has to be taken into consideration.
16. Further comparable injuries should be compensated by comparable awards. (see [Morris Mugambi and Another v Isaiah Gituru](#) Nairobi Court of Appeal 138 of 2002 and [Odinga Jacktone Ouma v Moureen Odera](#) [2016] eKLR.
17. In arriving at the conclusion that the award is not excessive, I have compared the injuries in the present case with those in [Peter Njuguna v Francis Njuguna Njoroge](#) [2015] eKLR where an award of ksh. 230,000 was made in 2015. The injuries were: -
 - a. Bruises on the occipital region of the scalp.



- b. Deep cut on the forehead.
- c. Bruises on the right elbow.
- d. Bruises on both hands.
- e. Tender left knee joint.
- f. Broken tooth.
- g. Bruises on the chest and lower back.

18. Also, in *Michael Okello v Priscilla Atieno* HCCA No. 45 of 2019, Kshs 250,000/= was awarded for fairly similar injuries.
19. In the light of the above decisions as well as the factors of inflation as aforesaid am not convinced that the award of ksh. 300, 000 was too excessive to warrant the intervention of this court.
20. In arriving at this conclusion am further guided by the observation of the court in *Savanna Saw Mills Ltd v Gorge Mwale Mudomo* [2005] eKLR where the court stated as follows: - “ It is the law that assessment of damages is at the discretion of the Trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court simply because it would have awarded a different figure if it had tried the case at the first instance”
21. I don't find any merit in the Appeal, the same is hereby dismissed with costs to the respondent.

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

S. CHIRCHIR

In the presence of:

E.Zalo- Court Assistant.

