



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ras Holdings Limited & another v Ombisi (Civil Appeal E006 of 2021)  
[2022] KEHC 14298 (KLR) (30 March 2022) (Judgment)**

Neutral citation: [2022] KEHC 14298 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E006 OF 2021**

**JN NJAGI, J**

**MARCH 30, 2022**

**BETWEEN**

**RAS HOLDINGS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**RISCILLA BWARI MANONO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DORIS MOKEIRA OMBISI ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. B.M. Kimtai, Principal Magistrate, in Keroka PMC Civil Case No.233 of 2017 delivered on 22/12/2020)*

**JUDGMENT**

1. The appellant has filed this appeal challenging the decision of the lower court in awarding the respondent Ksh 350,000/- in general damages for injuries sustained in a road traffic accident. The grounds of appeal are:
  1. That the learned trial magistrate erred in law and in fact in awarding Kshs 350,000/= as general damages which amount was excessive, unjustified and contrary to the evidence on record.
  2. That the learned trial magistrate erred in law and in fact by failing to consider and appreciate the applicable principles in assessment of damages and thereby arrived at an excessive and unjustified award.
  3. That the trial magistrate erred in law and in fact by failing to consider the appellants' evidence and submissions on record.

**Submissions**

2. The appeal was canvassed by way of written submissions. The advocates for the appellant, Kimondo Gachoka & Co Advocates, submitted that whereas the plaintiff claimed that the respondent had



- sustained extraction of 6 teeth, this was not captured in the treatment notes which only mentioned that the respondent had sustained soft tissue injuries. The advocates relied on the cases of *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018) eKLR and *Timsales Limited v Wilson Libuywa* Nakuru HCCA No 125 of 2006 where the courts emphasized the importance of the initial treatment notes as opposed to medical documents prepared thereafter. Therefore, that the respondent sustained soft tissue injuries as noted in the treatment notes.
3. It was submitted that the award of Ksh 350,000/ for the kind of injuries sustained by the respondent was manifestly high. That the general method of approach for assessing damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases. In that respect the appellant relied on the cases of *Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd* (2013) eKLR and *Millicent Atieno Ochuonyo v Katula Richard* (2015) eKLR.
  4. At the lower court the advocates for the appellant had proposed an award of Ksh. 80,000/ and had relied on two authorities where awards of Ksh 80,000/- and 90,000/- were made. In this appeal they urged the court to reduce the award to Ksh 100,000/-. They relied on the following cases:
    - a. *Godwin Ireri v Franklin Gitonga* (2018) eKLR where Majanja J set aside the lower court's award of Ksh 300,000/- being general damages for a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee and substituted it with an award of Ksh 90,000/=.
    - b. *Jyoti Structures Limited & another v Truphena Chepkoech Too & another* (2020) eKLR where Matheka J set aside the lower court's award of Ksh 250,000/- being general damages for blunt injury to the head, neck, back, both thighs and substituted it with an award of Ksh 125,000/-.
    - c. *Kenya Power & Lighting Company Ltd v Rose Anyango & another* (2020) eKLR where Aburili J upheld the lower court's award of Ksh 100,000/= being general damages for head injury with loss of consciousness and injury on the left knee with swelling.
    - d. *FM (Minor suing through Mother and next friend MWM) v JNM & another* (2020) eKLR Nyakundi J. set aside the lower court's award of Ksh 60,000/- being general damages for blunt object injury to the head, blunt object injury to the neck, blunt object injury to the thorax, blunt object injury to the abdomen and blunt object injury to the limbs and substituted it with Ksh 100,000/-.
  5. The advocates for the respondent, Kulecho & Co Advocates, on the other hand submitted that this being an appeal against an award of damages, the general principle is appellate court should not interfere with the discretion of the trial court to award damages unless it is established that the trial court acted on wrong principles of the law, took into account irrelevant factors and or the award is low or too high. That the appellants have not demonstrated how the trial court erred either in law or fact in arriving at its finding.
  6. The advocates had at the lower court relied on the award in the case of *Naftali Onsere Mang'era v G4S Security Services Kenya Limited* (2019) eKLR where the plaintiff had sustained tender swollen lip, hypememic gums with trauma extraction of two upper incisor teeth, blunt injury on the chin and blunt injury on lower limbs. An award of Ksh 250,000/- was made in that case. The advocates as a result submitted that the award of Ksh 350,000/- was reasonable and cannot be said to be inordinately high.



## Analysis and Determination

7. The principle upon which an appellate court can interfere with an award of damages are settled. In the case of *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M.M Lubia & another* (1982-88)1 KAR 777 the Court of Appeal stated as follows:

“...the principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

8. In the case of *Butt v Khan* (1977) KAR 1 the court said 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.”

9. The respondent was treated at Hema Hospital where a non-contrast CT head scan, Pexh. 6, was taken that showed that she had sustained left eyelid forehead soft tissue injury and right nasal bone fracture.

10. According to the medical report that was prepared by Dr Nyameino, Pexh.2, the respondent had sustained:-

cut wounds on the forehead

cut wounds on the nasal — labial folds

traumatic teeth extraction — 5 upper anterior teeth and 1 lower anterior tooth (total 6) cut wound on the chin

bruises on the left breast

bruises both and posteriorly.

11. The doctor noted that the respondent had a healed irregular scar on the forehead and nasal bridge, hard healed scar on the nasal-labial fold and upper mouth lip, missing upper 5 teeth, missing lower anterior 1 tooth and healed scar on the chin. He remarked that the injuries had healed with scarring.

12. The respondent in her evidence in court stated that she had lost 5 teeth. The P3 form, Pexh1, that was completed on September 27, 2017 indicated that the respondent had lost some teeth.

13. The appellant contended that there was no evidence to prove the loss of teeth as they were not captured in the treatment notes from Hema Hospital.

14. The only document that the respondent produced from Hema Hospital was the head CT scan. The document noted the injuries that the respondent had sustained which were soft tissue injuries and a fracture. It never mentioned loss of teeth. The loss of teeth was noted by the officer who completed the P3 form on September 27, 2017 at Keroka County Hospital which was more than two weeks after the treatment at Hema Hospital. No treatment notes were produced from that Hospital to prove that the respondent had sustained such injuries and if so whether they were related to the material accident. I agree with the submission by the appellant that there was no evidence to prove loss of teeth. The



claim over loss of teeth is thereby dismissed. The other injuries as noted in the plaint were however sustained. These are:

1. cut wounds on the forehead
  2. cut wounds on the naso-labial folds
  3. cut wound on the chin
  4. bruises on the breast
  5. bruises both hands posteriorly.
15. It is to be noted that there was no claim for nasal fracture in the plaint. The advocates appearing for the parties did not mention the nasal fracture in their submissions. The respondent was in effect seeking general damages for cut wounds and bruises as particularized in the plaint.
16. The injuries sustained by the respondent were soft tissue injuries. In his judgment the trial magistrate did put into consideration the loss of 6 teeth when there was no evidence to prove it. There is therefore reason for this court to interfere with the award.
17. In his judgment, the trial magistrate cited the case of *Nyambati Eric v Toyota Kenya Limited & 2 others* (2019) eKLR where Ksh 90,000/- was awarded for deep cut wound on the scalp extending to maxillary area, blunt injury to the left side of the chest and contusion on the back.
18. The court also cited the case of *Hassan Farid & another v Sataiya Eric Mepukori & 6 others* (2018) eKLR where Ksh 150,000/- was awarded for cut wound on the forehead, on the occipital region, facial cut wounds, blunt injury to the chest, blunt injury to the back and blunt injury to both hands.
19. The appellant in this appeal cited authorities where awards for soft tissue injuries ranged between 90,000/- and 125,000/-. I am of the view that the injuries in case relied on by the respondent, *Naftali Onsero Mang'era* (supra), were far more serious than those sustained by the respondent in the instant case. The cases that the trial magistrate cited in his judgment and the ones cited by the appellant in this appeal have comparable injuries to those sustained by the respondent in this matter. Taking into account the awards in those cases, I have no hesitation to hold that the award of Ksh 350,000/- was manifestly high for soft tissue injuries. The magistrate in arriving at that figure seems to have ignored the authorities that he cited in the case and also ignored the authorities cited by the appellant. I am of the considered view that an award of Ksh 120,000/- would be adequate compensation.
20. The upshot is that the award of the trial court is set aside and substituted with an award of Ksh 120,000/-. The appellant to have the costs of the appeal.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF MARCH, 2022.**

**J. N. NJAGI**

**JUDGE**

**In the presence of:**

N/A for Appellants

N/A for Respondent

Court Assistant:



30 days Right of Appeal

