



**Nyamira Luxury Express Co. Limited v Samoita (Civil Appeal
4 of 2018) [2022] KEHC 11654 (KLR) (24 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL 4 OF 2018**

F GIKONYO, J

MAY 24, 2022

BETWEEN

NYAMIRA LUXURY EXPRESS CO. LIMITED APPELLANT

AND

OBED MISAJ SAMOITA RESPONDENT

*(Being an appeal from the Judgement of Hon. T. Gesora (S.P. M)
Delivered on 9th January, 2018 in Narok CMCC No. 94 of 2014)*

JUDGMENT

Quantum of damages

1. The Memorandum of Appeal dated February 6, 2018, challenges only quantum of damages awarded by the trial court in the judgment delivered on the January 9, 2018 in Narok Chief Magistrate's Court Civil Suit No. 94 of 2014 as follows: -
 - i. General damages Kshs. 1,500,000/=
 - ii. Special damages Kshs. 314,075/=
 - iii. Doctor's treatment report and court attendance Kshs. 22,000/=
 - iv. Costs of future treatment Kshs. 120,000/=Total Kshs. 1,956,075/=
Less 20% contribution Kshs. 391,215/=
Grand total Kshs.1, 564,860/=
2. Liability was agreed between the parties on the ratio of 20:80% in favour of the respondent.



Submissions

3. The appeal was canvassed by way of written submissions.

Appellant's submissions

4. The appellant submitted that the trial court erred in awarding Kshs. 1,500,000/= in general damages and Kshs. 120,000/= for future medical expenses as the decision was not based on any authorities. The appellant proposed an award of Kshs. 500,000/= in general damages.
5. The appellant further submitted that the award of the future medical expenses should be set aside given that both doctors did not anticipate disabilities or future treatment.
6. The appellant prayed that the appeal be upheld and they be awarded costs based on section 27(1) of the C.P.A.
7. The appellant relied on the following authorities;
 - i. Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd [2013] eKLR as quoted in Michael Okello v Priscilla Atieno [2021] eKLR
 - ii. Kagaraari vs Aya [1982-88] 1 KAR 768 as quoted in Godfrey Wamalwa Wamba & another v Kyalo Wambua [2018] eKLR
 - iii. Zachariia Mwangi Njeru v Joseph Wachira Kanoga Nyeri HCCA No. 9 of 2012 as quoted in Francis Ndungu Wambui & 2 others v VK (A Minor Suing Through Next Friend and Mother MCWK) [2019] eKLR
 - iv. Harun Muyoma Boge v Dr. Daniel Otieno Agulo Migori HCCA No 86 of 2012 as quoted in Francis Ndungu Wambui & 2 others v Vk (A Minor Suing Through Next Friend and Mother MCWK) [2019] eKLR
 - v. Mbithi Muinde William v Rose Mutheu Mulatia [2019] eKLR as quoted in DG (Minor Suing Through The Next Friend MOR v Richard Otieno Onyisi [2021] eKLR
 - vi. Naom Momanyi vs G4s Security Services Kenya Limited [2018] eKLR as quoted in Gladys Lyaka v Francis Namatsi & 2 others [2019] eKLR
 - vii. Wakim Sodas Limited vs Sammy Aritos [2017] eKLR as quoted in Gladys Lyaka v Francis Namatsi & 2 others [2019] eKLR
 - viii. Jitan Nagra v RDO [2018] eKLR
 - ix. Isaac Mwenda Micheni v Mutegi Murago NRB HCCC 335 of 2004 [2004] eKLR as quoted in Jitan Nagra v RDO [2018] eKLR
 - x. Gogni Construction Company Limited v Francis Ojuok Olewe HB HCCA No 1 of 2014 [2015] eKLR as quoted in Jitan Nagra v RDO [2018] eKLR
 - xi. Gladys Lyaka v Francis Namatsi & 2 others [2019] eKLR
 - xii. Kemfro Africa Limited T/A Meru Express Services & Gathogo Kanini v AM Lubia & Olive Lubia [1982-88] 1 KAR 727 as quoted in Michael Okello v Priscilla Atieno [2021] eKLR.



Respondent's submissions

8. The respondent argued that the award made by the learned trial magistrate was proper in comparison to comparable awards, hence, no need for interference.
9. The respondent prayed that this court considers the future medical expenses of Kshs. 160,000/= for removing the metal plates and screws as opined by the doctor.
10. The respondent urged this court to dismiss the appeal with cost for it lacks merit.
11. The respondent relied on the following authorities;
 - i. The court of appeal in *Henry Hidayya Ilanga v Manyema Manyioka* [1961] 1 EA 705 (CAD) as cited in *Stanley Holdings Limited & another v Rachel Haluku Emanuel (& another)* [2020] eKLR
 - ii. *Hance v British Columbia Electric Railways Company Ltd (4)* [1951] AC 601 At P 613 as cited in *Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Chukulisa Roba Halakha* [2019] eKLR
 - iii. *Arrow Car Limited v Elijah Shamall Bimomo & 2 others* [2004] eKLR
 - iv. *Nyambati Nyaswambu Erick v Toyota Kenya Ltd & 2 others* HCCA No 66 Of 208
 - v. court of appeal for east Africa in *Peters vs Sunday Post Limited* [1958] EA 424 as cited in *Francis Gicharu Kariri v Peter Njoroge Mairu* [2005] eKLR
 - vi. The court of appeal in *Odinga Jactone Ouma v Moureen Achieng Odera* [2016] eKLR
 - vii. *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR
 - viii. *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5
 - ix. *Anna Saw Mills Ltd v Gorge Mwale Mudomo* [2005] eKLR
 - x. *Simon Tavera v Mercy Mutitu Njeru* [2014] eKLR As Cited In *RO (A Minor Suing Through Gok As Next Friend) v John Mwangi* [2021] eKLR
 - xi. *Lim v Camden HA* [1980] AC 174

Analysis and Determination

Duty of court

12. As first appellate court, I must re-evaluate the evidence and come to own conclusions, except, giving allowance of the fact that I neither saw nor heard the witnesses; matters of demeanor are best observed by the trial court. See: *Selle & another v Associated Motor Board Company Ltd* [1968] EA 123.

The threshold

13. As this appeal relates to quantum of damages only: -

“...this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into



consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

14. The trial magistrate awarded Kshs 1,500,000 in general damages. The appellant considers the award to be inordinately high; the respondent, a fair compensation for the injuries sustained.
15. Damages is meant to compensate the victim for the injuries sustained. From the pleading (Plaint dated 2nd April 2014), and the evidence, the respondent herein sustained the following injuries- fracture of the right tibia plateau-knee joint and fracture of the left clavicle.
16. The awards in the judicial authorities cited by the Appellant range from Kshs 300, 000/= to Kshs. 450,000/=. The respondent relied on an authority where the court awarded Kshs. 800,000/= about 20 years ago. I must state here that, even in the law of probabilities, there is hardly two bodily injuries which are exactly the same. Thus, past judicial decisions on damages for personal injuries only act as a guide in assessment of damages for personal injuries. From the authorities cited by the appellant and the respondent, and in light of the injuries sustained, I find the award of Kshs 1,500,000.00 to be inordinately high, and I set it aside. Taking into account inflation and the injuries sustained, an award of Kshs. 1000,000 is commensurate to the injuries sustained, and, thus, fair compensation. Accordingly, I award the respondent a sum of Kshs. 1,000,000 in general damages for injuries sustained, pain and suffering.
17. The appellant has disputed the cost of future medical treatment. It is not correct for the appellant to state that the doctors did not anticipate these costs. DW1-Dr. Jennifer Kahuthu, confirmed the injuries but stated that the cost of future medical treatment would be Kshs. 40,000/= in public hospital and Kshs. 80,000/= in private hospital. PW2- Dr. A.O. Wandungu on the other hand estimated the cost at Kshs. 160,000/=. The trial court stated that the cost of future medical expenses would vary from hospital to hospital and awarded Kshs. 120,000/=. True. Such costs are never static or uniform; they vary from time to time, and hospital to hospital. Accordingly, the trial court was right in awarding a sum of Kshs. 120,000 for future medical treatment.
18. The other awards were not in contestation and were properly grounded and proved in law and evidence. They remain as granted by the trial court. In the upshot, therefore, the appeal succeeds partially. And, I enter final judgment in favor of the respondent as follows: -
 - a. General damages Kshs. 1,000,000/=
 - b. Special damages Kshs. 314,075/= and interest from the date of filing suit
 - c. Doctor’s treatment report and court attendance Kshs. 22,000/=
 - d. Costs of future treatment Kshs. 120,000/=Total Kshs. 1,456,075/=
Less 20% contribution Kshs. 291,215/=
Grand total Kshs.1, 164,860/=
- e. Interest on the other awards from the date of assessment, i.e. today.
- f. Cost of the suit in the lower court.
- g. Each party to bear own costs of the appeal.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 24TH DAY OF MAY, 2022



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F. GIKONYO M.

JUDGE

In the presence of:

Udoto for Respondent

M/s Chuchi for Thairu for the Appellant

Kasaso – CA

