



REPUBLIC OF KENYA



KENYA LAW
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**Meme v Maroo (Civil Appeal E117 of 2021)
[2022] KEHC 10925 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E117 OF 2021
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

HARRISON MEME APPLICANT

AND

CHARLES MAROO RESPONDENT

*(Being an appeal from the judgment and decree in Maua CMCC
NO. 77 OF 2016 by Hon. Tito Gesora (CM) on 27th November, 2021)*

JUDGMENT

1. By a plaint dated May 11, 2017 filed on 15th May, 2017, respondent sought damages as against the Respondent for injuries he suffered on 22.06.2016 when appellant's motor vehicle KCH 125A that he was travelling in was involved in an accident along Chuka-Chogoria Road.
2. By a statement of defence dated 23.08.2017. Appellant denied the respondent's claim.
3. After the trial, the trial court by a judgment dated 27.11.2020 found appellant liable at 100% and awarded respondent was awarded general damages in the sum of Kshs. 1,000,000/- and special damages in the sum of Kshs. 17,370/-.

The Appeal

4. The appellant being dissatisfied has appealed mainly on the ground that the award of general damages in the sum of Kshs. 1,000,000 is inordinately excessive and a wholly erroneous estimate of damages payable.



Submissions By The Parties

5. On December 7, 2021, this court directed that the appeal be canvassed by way of written submission which the parties dutifully filed.

Appellant's submissions

6. Appellant by submissions dated February 25, 2022 holds the view that the award of Kshs. 1,000,000/- for soft tissue injuries suffered by respondent is excessive and urged the court to reconsider it downwards to between Kshs. 50,000/- to Kshs. 100,000/-. Appellant relied on the following case law:
 - 1) Jennifer Mathenge v Patrick Muriuki Maina [2020] eKLR where the court reiterated the principles on assessment of damages that;
 - a Damages should not be inordinately too high or too low
 - b. They are meant to compensate a party for the loss suffered but not to enrich a party and as such should be commensurate to injuries suffered
 - c. Past decisions should be taken as mere guides and each case depends on its own facts
 - 2) Eva Karemi & 5 others v Koskei Kieng & another [2020] eKLR where the court on appeal upheld the award of the trial court as follows:
 - a) The 1st appellant was awarded Kshs. 70,000/- for injuries to her right thigh and bruises on her lower and upper limbs.
 - b) The 2nd appellant was awarded Kshs. 40,000/- for injuries on the right shoulder pain and cut wound on her mouth.
 - c) The 3rd appellant was awarded Kshs. 45,000/- for injuries on her back and right shoulder pain.
 - d) The 4th appellant was awarded Kshs. 40,000/- for cuts on the chin and right shoulder tenderness.
 - e) The 5th appellant was awarded Kshs. 60,000/ for 2cm cut on the forehead, cut wound on the right elbow and right limb (leg and ankle joint).
 - f) The 6th appellant was awarded Kshs. 65,000/- for bruising on the forehead, hip and left ankle.
 - 3) HB (minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another [2021] eKLR where the court on appeal upheld the lower court award of Kshs. 60,000/= for blunt injury to the head, neck, thorax, abdomen and limbs.

Respondent's submissions

7. By submissions dated February 7, 2022, it was submitted for respondent that he suffered a deformed hand and that the sum awarded was comparable to cases with similar injuries. Reliance was placed on DOO v Nathan Khamala & Aga Khan University [2019] eKLR where the court awarded Kshs. 1,500,000/- for
 - a) reduced sensation of the left hand
 - b) reduced power on the left hand.



- c) deformity of the wrist and the fingers of the left hand.
- d) wasting of the muscles of the left hand
- e) Degree of permanent incapacity at 50%.

Analysis and Determination

8. I have considered this appeal in the light of evidence on record, submissions and cited authorities.
9. Quantum is a matter of judicial discretion which can only be interfered with if the court is satisfied that a decision is clearly wrong, because the court 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. (See *Mbogo v Shah* (1968) EA 93 and [Kemfro Africa Limited t/a Meru Express Services \(1976\) & Anor. vs Lubia & Anor, No. 2](#) [1987] KLR 30).
10. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:

Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (Emphasis added).
11. The initial treatment notes from Nyambene hospital disclose that Respondent suffered swollen right hand and tenderness and stiffness on right index finger and the injuries to the legs stated on the P3 form were not noted. The radiology request tendered in evidence is not accompanied by a radiology report and there is therefore no evidence of any fracture as stated in Dr. Njeru's medical report dated 20.01.2017.
12. It is the duty of the advocates to avail relevant authorities to guide the trial court in arriving at a fair award for the injuries suffered.
13. The injuries suffered by the respondent are by far less serious compared to the injuries suffered in [DOO v Nathan Khamala](#) (supra) and the award of Kshs. 1,000,000/- for soft tissue injuries was erroneous and against the weight of evidence,
14. Accordingly, I find that this is a suitable case for exercise of discretion to interfere with the trial court's finding. It is therefore hereby ordered:
 1. The award of general damages in the sum of Kshs. 1,000,000/- is set aside and substituted with an award of Kshs. 200,000/- (two hundred thousand)
 2. Special damages remain as awarded by the trial court.
 3. Appellant is awarded costs of the appeal.

DATED AT MERU THIS 23rd DAY OF June 2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Appellant - Ms. Mwangi for Kimondo Gachoka & Co. Advocates



For Respondent - Mr. Mutembei for Mutembei & Kimathi Advocates

