



REPUBLIC OF KENYA



KENYA LAW
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**Manase & another v Muga (Civil Appeal E040 of 2020)
[2022] KEHC 11064 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E040 OF 2020
FA OCHIENG, J
JULY 28, 2022**

BETWEEN

KOLA MANASE 1ST APPELLANT

CHARLES JUMA ONYANGO 2ND APPELLANT

AND

SAMUEL ODHIAMBO MUGA RESPONDENT

*(Being an appeal from the judgment/decree of the Honourable C. L. Yalwala
(PM) delivered on 2nd December 2020 in Maseno CMCC No. 175 of 2016)*

JUDGMENT

1 The appeal before me is in relation to the quantum of General Damages which the learned trial magistrate had awarded to the Plaintiff.

1. He awarded Kshs 200,000/= as compensation to the Plaintiff, who had sustained the following injuries:-
 - a. Cut wound on the forehead.
 - b. Tenderness of the neck.
 - c. Tenderness of the chest.
 - d. Tenderness of the back.
 - e. Tenderness of the left hand.
 - f. Tenderness of the left elbow.



- g. Bruises on both knees.
2. I note that whilst the Plaintiff also cited the swelling and tenderness of the Plaintiff's left thigh, Dr. L. W. Okombo did not mention that injury in his Report dated 24th August 2016.
 3. In a nutshell, the Plaintiff suffered soft tissue injuries.
 4. As an appellate Court, I am called upon to be slow to substitute the view of the trial court with my own, because the trial court is entitled to exercise its discretion, provided that that is done within an acceptable range.
 5. When I make reference to an acceptable range, I mean that the assessment of damages is not an exact science, in which there is a precise answer. Provided the court applied the relevant principles and therefore arrived at a figure that was comparable to the compensation awarded in other cases, in which the claimants sustained injuries which were comparable, an appellate Court would not interfere.
 6. Therefore, an acceptable range is that which is neither inordinately high nor inordinately low, within the context of comparable cases.
 7. In *Ndungu Dennis Vs Ann Wangari Ndirangu & Another* [2018] eKLR, the High Court reduced the damages from Kshs 300,000/= to Kshs 100,000/=, in a case in which the Respondent had sustained the following injuries;
 1. Blunt head injuries, with brief loss
Of consciousness.
 2. Blunt injury to the chest.
 3. Blunt injury to both hands.
 4. Injury to lower right leg.
 5. Injury to the back.
 8. I would say that those injuries are comparable to those which the Respondent herein sustained.
 9. Meanwhile, in the case of *Cesar Karanja Justin Vs Joseph Ndungu Karimi* [2017] eKLR, the learned Judge set aside the decision of the trial court, which had dismissed the suit. He then awarded general damages in the sum of Kshs 350,000/=. Based upon that decision, the Respondent submitted that the trial court had arrived at a reasonable award.
 10. In that case the Respondent suffered the following injuries;
 - i. Loss of consciousness.
 - ii. Global dull ache.
 - iii. Deep cut around the neck.
 11. In my view, it would have been more helpful if we were given the particulars of the "global dull ache." However, in the absence of particulars, I presume that the Respondent had aches all over his body. The said aches were described as dull, most probably because they were due to blunt trauma.



12. Considering that the aches were of a global nature, I find that they must have been more extensive than those which the Respondent herein sustained.
13. Secondly, whilst the Respondent herein suffered a cut wound on his forehead, the Respondent in the case of Ndungu Dennis Justin (above-cited), suffered a deep cut around his neck. That therefore implies that that Respondent had a more serious cut.
14. Thirdly, the Respondent in the Ndungu Dennis Justin case lost consciousness, whilst the Respondent herein did not.
15. There is no doubt that this case is distinguishable from that of Ndungu Dennis Justin.
16. In the final analysis, I find that although the learned trial magistrate was definitely aware of the relevant principles applicable when assessing compensation, he awarded a sum which was inordinately high. I therefore allow the appeal, set aside the award of Kshs 200,000/=, and substitute it with an award of Kshs 100,000/=.
17. The costs of the appeal are awarded to the Appellant.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 28TH DAY OF JULY 2022

FRED A. OCHIENG

JUDGE

