



**Manase & another v Ochieng (Civil Appeal E038 of 2020)  
[2022] KEHC 10487 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 10487 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E038 OF 2020  
FA OCHIENG, J  
JULY 28, 2022**

**BETWEEN**

**KOLA MANASE ..... 1<sup>ST</sup> APPELLANT**

**CHARLES JUMA ONYANGO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SIMEON ORINDA OCHIENG ..... 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 respondent was awarded Kshs 220,000 as general damages to compensate him for the following injuries;
  - (a) Tenderness, bruises and swelling on the neck.
  - (b) Tenderness on the back with a cut wound.
  - (c) Tenderness, bruises and swelling on the head.
  - (d) Bruises on the left elbow joint.
  - (e) Bruises and tenderness on the right shoulder.
  - (f) Bruises on the right hand.
  - (g) Cut wound on the right and lower limbs; and
  - (h) Bruises on both knees.



2. Those injuries were set out in the Amended Plaintiff, and also in the Judgment.
3. In the Medical Report by Dr LW Okombo, dated August 24, 2016, there was no reference to a “cut wound on the right and lower limbs.”
4. Indeed, I find that description to be somewhat confusing, because it mentions lower limbs, (which I understand to be the legs), but it also talks about the right. If it was the right leg which sustained a cut, the report should have talked about one limb.
5. But if both legs sustained cuts, it does not make sense to make reference to the “right” limb.
6. Be that as it may, the doctor actually specified that the cut wound was on the claimant’s hip.
7. The second cut wound was o the Claimant’s back.
8. That explains why the doctor made reference to a scar on the back, and another scar on the claimant’s right hip,
9. Apart from those 2 cut wounds, all the other 5 injuries were either bruises or blunt trauma, which resulted in the tenderness of the body parts that were directly affected.
10. The question that falls for determination is whether or not the trial court had given an award that was inordinately high, as the appellant has asserted.
11. If the trial court had applied irrelevant factors or if it had ignored relevant factors, this Court would set aside the resultant award.
12. When the court applies wrong principles of law or if it fails to apply the correct principles of law, it is most unlikely that the damages calculated by the said Court would not be reasonable.
13. But there are sometimes instances wherein the trial court demonstrates a clear understanding of the relevant principles of law which govern the assessment of damages, yet the said Court may still give an award which was either inordinately high or inordinately low. In such situations, the appellate Court would interfere with the award.
14. In *Chanan Agricultural Contractors Ltd. v Fred Barasa Mutayo* [2013] eKLR, the High Court set aside the award of Kshs 250,000/=, and substituted it with an award of Kshs 150,000.
15. In that case, the claimant had sustained a blunt injury to the chest and to the head. He also had a cut wound on his left leg.
16. In the case of *Dickson Ndungu Kiremba v Theresia Atieno & 4 others* [2014] eKLR, the respondent suffered;
  - (a) Swelling to the neck.
  - (b) Tenderness all over the abdomen.
  - (c) Tenderness to the back.
  - (d) Cut wound on the left leg.
17. The trial court awarded Kshs 450,000 as general damages.
18. However, on appeal, the same was reduced to Kshs 150,000,



19. In the case of *Ceaser Karanja Justin v Joseph Ndungu Karimi*[2017] eKLR, the respondent suffered the following injuries;
- (i) Loss of consciousness.
  - (ii) Global dull ache.
  - (iii) Deep cut around the neck.
20. As the “global dull ache” does not specify the particular parts of the body which were injured, I hold the view that the claimant in that case had sustained blunt trauma to almost all parts of his body. If that be the position, it would mean that the injuries sustained by the respondent herein were much less than those of the claimant in the case of *Ceaser Karanja Justin v Joseph Ndungu Karimi* (above-cited). That case is therefore distinguishable from the case now before me.
21. Having given due consideration to all the authorities cited, I find that the sum awarded by the trial court was inordinately high.
22. In the event, the appeal is allowed; and the sum awarded by the trial court is set aside. I substitute the award of Kshs 220,000 with an award of 150,000.
23. The costs of the appeal are awarded to the Appellant.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 2<sup>TH</sup> DAY OF JULY 2022**

**FRED A. OCHIENG**

**JUDGE**

