



REPUBLIC OF KENYA



**KENYA LAW**  
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**Manase & another v Odeny (Civil Appeal E039 of 2020)  
[2022] KEHC 12333 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12333 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E039 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**

**IBRAHIM OTIENO ODENY ..... RESPONDENT**

*(An appeal from the judgment/decree of the Honourable C L YALWALA  
(PM) delivered on December 2, 2020 in Maseno CMCC no 173 of 2016)*

**JUDGMENT**

The appeal before me is in relation to the quantum of general damages which the learned trial magistrate had awarded to the respondent. He was awarded kshs 250,000/=.

1. The appellant views that as an inordinately high award, hence the appeal.
2. It is well settled that a trial court has discretion to award appropriate damages to compensate a plaintiff who has sustained injuries due to the negligence of the defendant.
3. Therefore, when the trial court had exercised its discretion, an appellate court will not disturb the award of damages unless;
  - a. the award was so inordinately high or low as to represent an entirely erroneous decision.
  - b. it can be demonstrated that the trial court had proceeded on wrong principles.
  - c. it can be demonstrated that the trial court considered irrelevant factors or it failed to give due consideration to some relevant factors.



4. In the judgment the learned trial magistrate applied his mind to the need to give an award that was comparable to those in other cases in which the complainant had suffered injuries that can be compared to those of the respondent herein.
5. The trial court also took into account the factor of inflation, when giving consideration to awards made several years before the current case.
6. I find that the trial court did not either give consideration to irrelevant factors or fail to give consideration to some relevant factors.
7. The respondent sustained the following injuries;
  - i. Deep cut on the forehead.
  - ii. Bruises on the left hand.
  - iii. Pain in the chest.
  - iv. Pain in the upper and lower jaws.
  - v. Deep cut on the lower lip.
  - vi. Tenderness and bruises on the right Knee.
8. The appellant had urged the trial court to be guided by the case of *John Oduori Ponde vs Mathew Kipngetich Soi & 2 others* (2014) eKLR. In that case the claimant had suffered the following injuries;
  - i. Headache and swelling on the head.
  - ii. Chest pains.
  - iii. Swelling on the right knee.
9. Those injuries were fewer and less serious than what the respondent sustained.
10. Therefore, the award of kshs 50,000/= which was awarded in that case, would be low for this case.
11. In the case of *Cosmas M, Mutisya vs Jap Quality Motors & Another* [2018] Eklr, the High Court awarded damages of kshs 100,000/= for a claimant who has suffered the following injuries;
  - a. Blunt injury to the chest.
  - b. Bruises on right lower limb.
  - c. Bruises on the left upper arm.
  - d. Soft tissue injuries to the chin.
12. In comparison to those injuries, the respondent herein sustained more serious injuries. It would thus follow that he ought to get a higher award.
13. In the case of *Justine Nyamweya Ochoki & Another vs Jumaa Karisa Kippingwa* (2020) eKLR, the High Court reviewed the award of Kshs 300,000/=, down to Kshs 150,000/=. In that case the Respondent sustained the following injuries;
  1. Blunt injury to the lower lip.
  2. Blunt injury to the chest.



3. Blunt injury to the left wrist.
14. In my assessment, the injuries of the respondent herein were more in number, and also more serious.
15. Indeed, I note from the medical report of Dr Okombo that the respondent lost consciousness. As a result, it was even deemed necessary for the respondent to have an x-ray done. Although the results from RITRI Medical Imaging Clinic showed that the skull vault and the sella turcica were normal, I hold the view that the respondent's loss of consciousness must have been so serious as to give rise to a lot of concern about his well-being.
16. Nonetheless, the tests carried out revealed that there was no radiologic lesion. In effect, although initially there was reason to worry, it turned out that the actual injury to the respondent's head was not very severe.
17. In the result, having given due consideration to the comparable cases, I find that the trial court's award was inordinately high. I therefore set aside the award of kshs 250,000/=, and substitute it with an award of kshs 150,000/=.
18. The costs of the appeal are awarded to the appellant.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF JULY 2022**

**FRED A OCHIENG**

**JUDGE**

