



**Manase & another v Otieno (Civil Appeal E037 of 2020)
[2022] KEHC 11242 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E037 OF 2020
FA OCHIENG, J
JULY 28, 2022**

BETWEEN

KOLA MANASE 1ST APPELLANT

CHARLES JUMA ONYANGO 2ND APPELLANT

AND

NORAH ADHIAMBO OTIENO RESPONDENT

*(Being an appeal from the judgment/decree of the Honourable C. L. YALWALA
(PM) delivered on 2nd December 2020 in Maseno CMCC No. 168 of 2016)*

JUDGMENT

1 The appeal before me is only on the quantum of Damages which the trial court awarded to the Respondent. The sum awarded in respect to General Damages is Kshs 250,000/=, as compensation for the following injuries;

- a. Swelling on the forehead.
- b. Cut wound on the tongue.
- c. Chest injuries.
- d. Back injuries.
- e. Tenderness on the shoulders.
- f. Tenderness and swelling on both knees.
- g. Cut wound on the lip.



2. It is the Appellant's case that the sum of Kshs 250,000/= was inordinately high, considering that all the injuries sustained by the Respondent were soft tissue injuries.
3. However, the Respondent believes that the trial court awarded a very fair amount. She reiterated the submissions which had been made before the learned trial magistrate.
4. In the case of *Ceaser Karanja Justin Vs Joseph Ndungu Kimani* [2017] eKLR, the High Court awarded Kshs 350,000/= as general damages, in a case in which the Claimant sustained the following injuries;
 - (i) Global dull ache.
 - (ii) Deep cut around the neck.
 - (iii) Abrasion wounds on the right knee, right hand, left elbow and right shoulder.
5. In that case, the Claimant lost consciousness.
6. In his considered opinion, the learned trial magistrate found the injuries sustained by the Respondent herein to be comparable to those in the case above.
7. However, the trial court also noted that the injuries sustained by the Respondent herein were less than those in the authority he had cited.
8. On the other hand, the Appellant urged the Court to set aside the award of the trial court, and to substitute it with an award of between Kshs 50,000/= and Kshs 100,000/=.
9. It is well settled that an appellate Court should not interfere with the sums awarded as General Damages unless the same was found to be either inordinately low or inordinately high.
10. When an award was out of sync with awards which courts had given in other cases, in which the Claimants had suffered comparable injuries, the appellate Court ought to interfere.
11. In the case of *Ndungu Dennis Vs Ann Wangari Ndirangu & Another* [2018] eKLR, the Respondent suffered the following injuries;
 - a. Blunt injury to chest and both hands.
 - b. Head concussion (brief loss of Consciousness).
 - c. He still suffers back pains and chest Pains on exertion.
12. In that case, the High Court reduced the award from Kshs 300,000/= to Kshs 100,000/=.
13. In the case before me, the Claimant did not suffer loss of consciousness. To my mind, that implies that the blunt trauma to her head was less severe than in the two cases cited above.
14. I also note that whilst the Plaintiff made reference to a cut wound on the tongue, and a cut wound on the lower lip; the Medical Report of Dr. L.W. Okombo did not cite any cut wounds on either the tongue or the lips.
15. I hold the view that the Court should derive guidance from the Medical Report, rather than on the particulars set out in the Plaintiff.



16. Having given due consideration to the authorities cited by both parties, I find that although the trial court appears to have had a grasp of the applicable principles, it ended up giving an inordinately high award.
17. Accordingly, I allow the appeal, set aside the award of Kshs 250,000/=, and I substitute it with an award of Kshs 150,000/=.
18. The costs of the appeal are awarded to the Appellant: I so order because there is reason to warrant a deviation from the provisions of Section 27 of the Civil Procedure Act. It is for that reason that costs follow the event.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 28TH DAY OF JULY 2022

FRED A. OCHIENG

JUDGE

