



**Kaberia & another v Muthoni (Civil Appeal E102 of 2021)  
[2022] KEHC 12796 (KLR) (31 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12796 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E102 OF 2021  
EM MURIITHI, J  
AUGUST 31, 2022**

**BETWEEN**

**ROBERT THURANIRA KABERIA ..... 1<sup>ST</sup> APPELLANT**

**CYPRIAN MUJUMBE KANYIRE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PENINAH MUTHONI ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal against the award of general damages awarded at Kshs 1,211,427/= assessed by the trial court. On April 13, 2019, the respondent was a pillion passenger in a motor cycle which was travelling along Maua-Antubochiu road while it collided with motor vehicle registration number KCN 964S Isuzu lorry. The respondent was injured as a result and sued for damages. The issue of liability was settled in the ratio 90:10 against the appellants.
2. As this is an appeal against an award of damages, the general principle applicable is that the appellate court should be slow to interfere with the discretion of the trial court to award damages except where the trial court acted on wrong principles of the law, that is to say, it took into account an irrelevant factor or failed to take into account a relevant factor, or due to the above reasons or other reason, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages (see *Butt v Khan* [1982-88] 1KAR 1 and *Mariga v Musila* [1982-88] 1 KAR 507).
3. Both parties filed written submissions. Counsel for the appellant argued that the award was inordinately high bearing in mind the nature of injuries and the authorities cited and as such it represented an entirely erroneous estimate of damages. Counsel for the respondent urged the court to uphold the award of the trial court as the appellant has failed to demonstrate that the trial court in assessing general damages either took into account an irrelevant factor or left out of account a relevant one or that the award was inordinately high that it must be a wholly erroneous estimate of the damage.



He urged that the award of general damages was reasonable given the serious injuries sustained and to find that the appeal lacked merit.

4. According to the plaint, the respondent sustained perineral lacerations, inferior pubic ramus fracture and diastasis of the pubic symphysis injuries. The plaintiff testified and adduced several documents in support of her case. One of the documents was a medical report dated July 26, 2019 by doctor Kanake B K ( exhibit 7) where at the time he examined the plaintiff, she was using clutches to walk. She had multiple scars on both legs with suture marks and chronic ulcer on the left leg. He examined the x-ray films and confirmed a double right pubic ramus fracture and an abnormal gap on the pubic symphysis.
5. In his conclusion, based on the history, physical examination and examination of the x-ray film and treatment records was that the plaintiff suffered serious bone and soft tissue injuries of the pelvis and lower limbs which will take a long time to heal with potential to impede normal delivery. He recommended for orthopedic, gynecological and physiotherapy specialist treatment for maximum recovery.
6. In order to guide the trial magistrate parties relied on written submissions. The respondent proposed Kshs 2,500,00/= and relied on the case of *Millicent Atieno Ochuonyo v Katola Richard* HCCC No 38 of 2012 [2015] eKLR in which the plaintiff sustained pelvic injuries with fracture of the right pubic ramus and diastasis of the pubis symphysis. She also sustained a small abdominal wall haematoma and minimal haemoperitoneum. The High court awarded Kshs 2,000,000/= as general damages.
7. The respondent proposed Kshs 150,000/= and relied on the following cases; *Paul Karimi Kithinji v Joseph Mutai Kieria* ( 2018) eKLR and *Patrisia Adhiambo Omolo v Emily Mandala* (2020) eKLR
8. After considering the evidence and parties submission, the trial magistrate came to the following conclusion:

“Considering the doctor’s remarks that the plaintiff might develop complications on the pelvis which might impede normal delivery and considering the prevailing hard economic situation, I hereby award Kshs 1,300,000/=”.

9. The court has re-evaluated testimony of PW 1, and noted the injuries sustained as recorded in the P3 form and medical records. As I understand the parties are not in disagreement about the nature and extent of the injuries sustained by the respondent. The issue is what the court assessed as general damages.
10. General damages are damages at large and the court does the best it can in reaching an award that reflects the nature and gravity of the injuries In assessing damages the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that two cases are not exactly alike exactly alike as the Court of Appeal observed by the Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No 147 of 2002 [2004]eKLR 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”.



11. As the Court of Appeal stated in *Mbaka Nguru and another v James George Rakwar* NRB CA Civil Appeal No 133 of 1998 [1998] eKLR:

“The award must however reflect the trend of previous, recent, and comparable awards. Considering the authorities cited and also considering all other relevant factors this court has to take into account, and keeping in mind that the award should fairly compensate the injured within Kenyan conditions.”

12. The High Court has decided several cases where the plaintiff has sustained fracture of the pelvis and they were well highlighted by the appellant advocate in his submissions. However, noting that the appellant suffered multiple pelvic fracture, the timeline she spent in the hospital, her potential complications on the pelvis that would impede normal delivery and taking into account the rate of inflation and other imponderables, the court awards the respondent Kshs 1,000,000/= on the principle of comparable awards for comparable injuries.

### **Order**

13. Accordingly, for the reasons set out above, the court allows the appeal, set aside the award of general damages by the subordinate court and substitutes therefor an award of Kshs 1,000,000/= as general damages and Kshs 46,030/= as special damages.
14. There shall be no order as to costs in the appeal.

Order accordingly.

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF AUGUST 2022.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

M/S. Mithega & Kariuki Advocates for the Appellant.

M/S Nkuja & CO. Advocates for the Respondent.

