



REPUBLIC OF KENYA



KENYA LAW
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Manyeki v Orina (Civil Appeal 73 of 2021)
[2022] KEHC 14881 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEHC 14881 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 73 OF 2021
REA OUGO, J
OCTOBER 31, 2022

BETWEEN

EARNEST CHEGE MANYEKI APPELLANT

AND

VICTOR SANI ORINA RESPONDENT

(Appeal from the judgment and Decree of Hon. P.K Mutai (SRM) dated the 2nd day of June 2021, in the original Kisii CMCC NO 359 OF 2020)

JUDGMENT

1. The appeal before the court is against the finding of the trial magistrate on damages. The parties agreed on the issue of liability before the subordinate court in the ratio of 70:30 in favour of the respondent. The appeal filed before this court on September 24, 2021 raises the following grounds of appeal:
 1. The award of general damages awarded to the Respondent was manifestly and inordinately excessive in the circumstance.
 2. The learned trial magistrate acted in error when the same failed to properly evaluate the evidence on record thus reaching an erroneous decision.
 3. That the learned trial magistrate erred when the same misapprehended the principle applicable in assessment of damages in personal injuries claims thus occasioning miscarriage of justice.
 4. The learned trial magistrate erred in law and fact when the same relied on extraneous issues as a basis for his determination on liability.
2. The appellant seeks to have the decree of the trial magistrate quashed and this court re-assesses the quantum of damages payable.



3. The appeal was dispensed by way of written submissions and both parties have complied by filing their respective submissions. The appellant submitted that an award of Kshs 600,000/- was manifestly excessive. They cited the case of *Gogni Rajope Construction Company Limited v Francis Ojuok Olewe* [2015] eKLR, where the respondent suffered fracture of the left distal ulna and radius; fracture and dislocation of the left elbow joint; left arm; back, neck and head injuries. In the case of *Gabriel Kariuki Kigathi & Another v Monica Wangui Wangeci* (2016) eKLR the court awarded Kshs 400,000/- to a plaintiff who sustained the following injuries: fracture of the neck, bilateral rib fracture, bilateral lung contusion, injuries on both hands, and legs. The appellant argued that the injuries sustained by the respondent herein are less severe.
4. The respondent supported the trial court's finding on damages arguing that Kshs 600,000/- was sufficient. He cited the case of *Clement Gitau v GKK* [2016] eKLR where the court held that Kshs 600,000/- shall suffice as general damages to a plaintiff who sustained a fracture of the tibia only. In *Dennis Matagaro v NKO (Minor suing through next friend and father WOO)* [2021] eKLR the court awarded Kshs 700,000/- for fracture of tibia fibula only. In *Poa Link Services Co Ltd & Another Sindani Boaz Bonzemo* [2021] eKLR the court awarded Kshs 350,000/- for soft tissue injuries. In *Veronica Mkanjala Mnyapara v Patrick Nyasinga Amenity* [2021] eKLR the court awarded Kshs 300,000/- where the plaintiff sustained fewer injuries, that is, a dislocation. He also cited the case of *Third Engineering Bureau China Construction Group Limited v Edwin Kinanga Atuya* [2021] eKLR where an award of Kshs 500,000/- was awarded for a fracture of the tibia fibula. In *Blue Horizon Travel Co Ltd v Kenneth Njoroge* [2020] eKLR the plaintiff sustained a fracture of 2 ribs and soft tissue injuries and was awarded Kshs 400,000/-. The respondent urged the court to dismiss the appeal.
5. The injuries sustained by the appellant are not in issue. According to paragraph 5 of the respondent's plaint he sustained the following injuries: dislocation of the hip joint and right shoulder joint; fracture of the right ribs 5th, 6th and 7th. The respondent also had bruises and tenderness on his chest and knees and had suffered a fracture of the right tibia/fibula. According to the treatment notes from Kisii Teaching & Referral Hospital, the respondent was diagnosed with soft tissue injuries, dislocation of the shoulder, fracture of the tibia/fibula and fracture of the 5th to 7th ribs. The injuries were also confirmed by Dr Daniel Nyameino in his medical report.

Analysis and Determination

6. Having considered the parties' submissions, the pleadings filed by parties and the evidence on record, the only issue before this court for determination is damages. The well laid down principles to be observed by an appellate court in deciding whether or not to disturb quantum of damages were set out in the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, where the Court of Appeal held that:

“...it is firmly established that this court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v Khan* [1981] KLR 349 when it held as per Law, JA that:



‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.’

7. The cases cited by the appellant do not have plaintiffs with injuries that are comparable to those sustained by the respondent herein and are therefore offer little guidance to the court. The respondent however supports the finding by the trial magistrate on the argument that the awards for fracture of tibia and fibula range between Kshs 500,000/- to Kshs 700,000/- (see *Dennis Matagaro v NKO* (supra) and *Third Engineering Bureau China Construction Group Limited v Edwin Kinanga Atuya*).
8. In *Damaris Ombati v Moses Mogoko Levis & another* [2019] eKLR the court found that an award of Kshs 300,000/- was sufficient compensation for a plaintiff who had sustained a fracture of the left tibia, dislocation of the left shoulder joint and multiple serious soft tissue injuries. In *Wakim Sodas Limited vs Sammy Aritos* [2017] eKLR, Kshs 400,000/- was upheld on appeal for a respondent that sustained a fracture of the fourth rib and a compound fracture of the left tibia/fibula. *Catherine Gatwiri v Peter Mwenda Karaai* [2018] eKLR where the court awarded Kshs 500,000/- for cut wound on the forehead, fracture of the left scapular, fracture of the left clavicle, fracture of 3 ribs and compound fracture of the tibia and fibula.
9. This court guided by the authorities relied on and those that I have considered herein, and also considering the element of inflation, I find no fault with the trial magistrate’s award on damages.
10. In the end, I find the appeal to be lacking in merit. It is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT BUNGOMA THIS 31ST DAY OF OCTOBER, 2022.

R.E. OUGO

JUDGE

In the presence of:

Miss Opondo for the Appellant

Respondent - Absent

Aphline - C/A

