



**Kiiru v Muiruri (Civil Appeal 159 of 2019)
[2022] KEHC 14340 (KLR) (Civ) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 159 OF 2019

DAS MAJANJA, J

OCTOBER 27, 2022

BETWEEN

DAVID MWANGI KIIRU APPELLANT

AND

WILSON GATHONDU MUIRURI RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. E. Olwande, SPM dated 17th October 2019 at the Magistrates Court at Limuru in Civil Case No. 217 of 2017)

JUDGMENT

1. The appellant was injured in a road traffic accident on July 24, 2016 when the respondent's motor vehicle registration number KBW 038E veered off the Nairobi-Naivasha Highway and hit him and other pedestrians. As a result of the injuries sustained, he filed suit against the respondent claiming damages for pain suffering and loss of amenities and future medical costs of Kshs 140,000.00 and special damages of *Kshs* 74,150.00.
2. The matter proceeded for formal proof as the respondent did not enter appearance or file defence. The trial magistrate awarded the appellant Kshs 600,000.00 and Kshs 74,150.00 as general damages and special damages respectively. This is the judgment that precipitated this appeal.
3. In the memorandum of appeal dated October 24, 2019, the appellant complains that the trial magistrate erred by awarding general damages which were too low for the injuries sustained by the appellant and that the trial magistrate erred in failing to make an award for future medical costs.
4. According to the plaint dated June 12, 2017, the plaintiff sustained the following injuries; blunt injuries to the chest and back, compound fracture right tibia and right fibula, extensive scarring right shin and permanent incapacity assessed at 10%. The appellant further pleaded that the fractures of the



tibia was operated and fixed with an interlocking K-nail which will be removed at a costs of Kshs 140,000.00 which the appellant prayed to be awarded as future medical costs. Apart from his testimony, the appellant produced the P3 medical form, a medical report by Dr Wokabi dated January 31, 2017 and a report from Submean Medical Centre dated November 23, 2016.

5. In his submissions before the trial court, the appellant urged the court to award him Kshs 1,200,000.00. He cited two cases. The first was [*Jackline Kamunyi Kamau v Simon Kiiru Njoki NRB HCCA No 540 of 2015 \[2018\] eKLR*](#) in which the claimant sustained suffered a fracture of the right femur with a K-nail and disability assessed at 8%. The court sustained an award of Kshs 1,200,000.00 as general damages. In [*Mt Longonot and Another v Andason Kitonyo Kinyenze NVS HCCA No 7 of 2014 \[2017\] eKLR*](#) the claimant sustained double fractures of the right tibia and fibula and facial lacerations and abrasions. Metal plates were inserted at the fracture site and permanent disability was assessed at 12%. The court held that the award of Kshs 1,000,000.00 awarded by the trial court was reasonable in the circumstances.
6. This appeal concerns the award of general damages which are damages at large. In assessing general damages, 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 no two cases are exactly alike as the Court of Appeal observed in [*Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No 26 of 2013 \[2014\] eKLR*](#) thus, “The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
7. The Court of Appeal in [*Jabane v Olenja \[1986\] KLR 661*](#) distilled the principles as follows:

The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a trial judge.

 1. Each case depends on its own facts;
 2. awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);
 3. comparable injuries should attract comparable awards.
 4. inflation should be taken into account; and
 5. unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone.
8. I have re-evaluated the injuries sustained and the cases cited by the appellant in light of the above principles. The appellate court proceeds from the basis that the trial court has discretion to assess damages based on the material before it and this court will exercise circumspection and will only intervene in the circumstances prescribed by the Court of Appeal in [*Bashir Ahmed Butt v Uwais Ahmed Khan \[1982-88\] KAR 5*](#) as follows;

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



9. I accept the appellant's submission that the purpose of authorities or previous decisions is to enable the court reach a reasonable award where comparable injuries should yield similar awards. In *Agnes Kamene Mulyali v Harvest Limited NRB CA Civil Appeal No 130 of 2014 [2017] eKLR* the Court of Appeal accepted the principle and observed that:

The process of comparison is key to the proper assessment of general damages because, as was stated by Lord Morris of Borthy-Guest in the English case of *West (H) & Son Ltd v Sheph [1964] AC 326 at 345*;

"... money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be an endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation.

Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards"

Those sentiments were adopted by Potter JA in *Tayab v Kinanu [1982-88] 1KLR 90* cited by the appellant. We could not agree more.

10. Bearing the aforesaid principle in mind, it is clear that the trial magistrate made an award that was way below the decisions cited by the appellant. It is apparent from the judgment that the trial magistrate neither considered those decisions yet they were relevant nor did she identify any reasons why the decisions were not relevant or useful in the assessment. Both decisions cited were sufficient and useful as they dealt with similar fractures and level of disability. In line with the decisions cited by the appellant and the nature of injuries sustained, I find and hold that the award of Kshs 600,000.00 is, for the reasons I have given, inordinately low. Bearing in mind the decisions cited, I would enhance the award of general damages to Kshs 1,000,000.00.
11. As regards the claim for future medical costs, the trial magistrate did not make any finding on the same. Apart from pleading the claim in the plaint, the appellant testified to his condition supported by the medical report of Dr Wokabi who put the cost at Kshs 140,000.00. Since this claim was proved on the balance of probabilities, the trial court should have allowed it.
12. For the reason I have set out above, I allow the appeal on the following terms:
- a. The judgment of the subordinate court is set aside and substituted with a judgment for the appellant against the respondent for Kshs 1,000,000.00 as general damages and Kshs 140,000.00 as future medical costs. The respective awards shall accrue interest at court rates from the date of judgment of the trial court.**
 - b. The appellant is awarded costs of the appeal assessed at Kshs 40,000.00.

SIGNED AT NAIROBI

DS MAJANJA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER 2022.

M KASANGO

JUDGE



Mr Kaburu instructed by Nelson Kaburu and Company Advocates for the appellant.

