



**Nairobi City County v Mugenya (Civil Appeal E342 of 2020)  
[2022] KEHC 16258 (KLR) (Civ) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 16258 (KLR)

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

**CIVIL**

**CIVIL APPEAL E342 OF 2020**

**DO CHEPKWONY, J**

**NOVEMBER 24, 2022**

**BETWEEN**

**NAIROBI CITY COUNTY ..... APPELLANT**

**AND**

**JOB OKOTH MUGENYA ..... RESPONDENT**

*(Being an Appeal from the judgment of the Chief Magistrate's Court Hon. D. O Mbeja (SRM) delivered on 4th November, 2020 in Milimani MCCC No. 8435 of 2019)*

**JUDGMENT**

**Background**

1. By way of a Plaint dated October 31, 2019 and filed in court on November 15, 2019, the Plaintiff/ Respondent (hereinafter referred to as the "Respondent") instituted a suit for negligence against the Defendant/Appellant (hereinafter referred to as the "Appellant") before the Trial Court seeking for the following reliefs;
  - a. General damages for pain, suffering and loss of amenities.
  - b. Special damages of Kshs 3,550/=.
  - c. Costs and interest.
2. At Paragraph 4 of the Plaint, the Respondent pleaded that on December 7, 2017, he was lawfully walking along Ronald Ngala street near Tusky's when the Appellant's authorized driver, employer and/ or servant managed, controlled and or drove Motor Vehicle Registration Number 47 CG 117A so carelessly, recklessly and or negligently at a very high speed that he lost control of the said motor vehicle, veered off its lawful lane and collided onto the Respondent thereby causing serious bodily injuries.



3. By reason of the aforesaid, the Respondent sustained severe injuries, hence claims for both general and special damages from the Appellant. The particulars of injuries were blunt injury (tender)-occipital region and blunt injury (tender)-lower back.
4. In opposition to the Respondent's claim before the Trial Court, the Appellant entered a Memorandum of Appearance dated December 6, 2019 and filed on December 9, 2019. It filed a defence on even date, denying liability as claimed in the Plaint while averring that if any accident in which the Respondent was injured occurred, the same should be attributed to him. Particulars are as set out at paragraph 6 of the defence.
5. When the matter came up for hearing on September 10, 2020, parties entered into a consent on liability wherein they agreed that Judgment be entered in the ratio of 80:20 in favour of the Plaintiff as against the Defendant and the same was adopted as an order of the court.
6. The parties were directed to file written submissions in regard to the issue of quantum. Upon considering the written submissions filed by counsel for both parties, the Trial court delivered its judgment on November 4, 2020 in favour of the Respondent against the appellant for a sum of Kshs 400,000/= as general damages for pain and suffering which is now the subject of the appeal herein.

### **The Appeal**

7. Being dissatisfied with the decision of Hon D O Mbeja (SRM) delivered on November 4, 2020 in Milimani MCCC No 8435 of 2019, the Appellant preferred this appeal vide a Memorandum of Appeal dated November 19, 2020 raising a single ground of Appeal: -
  1. That the Learned Trial Magistrate erred in fact and in law by awarding inordinately high general damages of Kshs 400,000/= where the respondent sustained minor soft tissue injuries.  
The Appellant prays for the following Orders: -
    - a. This appeal be allowed.
    - b. This Honourable Court do proceed and set aside the award on general damages and the same be reduced.
    - c. The costs of the subordinate Court and this appeal be awarded to the Appellant herein.
8. This appeal was admitted for hearing on February 17, 2022, and the Court proceeded to issue directions regarding the hearing of the appeal whereby parties were directed to canvass the appeal by way of written submissions. Both parties filed their respective submissions in support and in opposition to the appeal. The appellant's submissions are dated May 6, 2022 while the Respondents' submissions are dated April 28, 2022.

### **Analysis and Determination**

9. I have carefully considered the memorandum of appeal the grounds relied upon, the written submissions and the cited authorities. This being a first appeal, this Court has a duty to analyze and re-evaluate the evidence adduced before the trial court and reach its own conclusions. In the case of *Abok James Odera T/A AJ Odera & Associates Vs John Patrick Machira T/A Machira & Co Advocates* (2013) eKLR, the court held as follows;

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine



whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

10. The same position was confirmed by the Court of Appeal in the case of *Bashir Ahmed Butt vs Uwais Ahmed Khan* (1982-88) KAR, where it held that:

“An appellate court will not disturb an award for general 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..”

11. Upon considering the pleadings before court, I find that this appeal revolves around a single issue for determination, which is, whether the award of general damages for pain and suffering awarded to the respondent was inordinately so high.

12. In determining this issue, it is important to analyze and re-evaluate the evidence that was adduced before the trial court afresh. From the court record, the Respondent pleaded that he suffered blunt injury (tender)-occipital region and blunt injury (tender)-lower back. The said injuries were confirmed by the Medical Report dated December 7, 2017 by Dr GK Mwaura from Kinoo Medical Clinic. The medical Report also dated December 7, 2017 from Aga Khan University Hospital by Dr Dave K Kihara revealed that the Respondent suffered mild occipital tenderness and mild bilateral tenderness over the iliosacral area also without bruising.

13. I have considered the submissions by both parties in regard to the amount that was awarded and the cited authorities. I have also had the opportunity to peruse the medical reports filed by the Respondent in the trial court. From the medical reports, it is confirmed that the Respondent suffered blunt injury (tender)-occipital region and blunt injury (tender)-lower back.

14. As stated in the case of *Bashir Ahmed Butt vs Uwais Ahmed Khan* (supra), an appellate court will only interfere with an award of damages if it is shown that the judge proceeded on wrong principles or that he/she misapprehended the evidence in some material.

15. The same principles were stated in the case of *Catholic Diocese of Kisumu vs Sophia Achieng Tete* Civil Appeal No 284 of 2001 (2004) 2 KLR 55, where the Court held that;

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles or misapprehended the evidence and so arrived at a figure so inordinately so high or low as to represent an entirely erroneous estimate.”

16. I have considered the authorities that were relied upon by the Respondent and I find that the one which is reasonable is the case of *Paul Kipsang Koech vs Titus Osule Osore* (2013) eKLR, where the court set aside an award of Kshs 300,000/= and stated that the injuries suffered ordinarily attract an award between Kshs 50,000/= - Kshs 200,000/=.

17. I have also had the opportunity to consider several decisions on this subject for instance the decision in the case of



*Dickson Ndungu Kirembe vs Theresia Atieno & 4 Others* (2014) eKLR, where the High Court reviewed an award of Kshs 255,000/= downwards to Kshs 127,500/= for soft tissue injuries which produced no complications.

18. Again on the same breath, the Court of Appeal in the case of *Purity Wambui Muriithi vs Highlands Mineral Water Company Ltd* [2015] eKLR revised an award by the High Court of Kshs 700,000/= downwards to Kshs 150,000/= for injuries to the left elbow, pelvic region, lower back and left knee.
19. It is now well settled that comparable injuries should attract comparable award of damages. This was the position stated by the Court of Appeal in *Odinga Jacktone Ouma vs Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards.
20. In the circumstances, having considered the authorities relied upon vis a vis the injuries sustained by the Respondent, herein, it is my considered view that the award by the trial court was inordinately so high in comparison to the injuries the Respondent suffered where there were no complications and hence the award deserves interference by this Court. From the cases cited, such injuries attracted an award between Kshs 50,000/= and Kshs 200,000/= as general damages.
21. Based on the foregoing reasons, the instant appeal succeeds on the award of damages and the lower court’s award of general damages of Kshs 400,000/= is hereby set aside and substituted with an award of Kshs 300,000/= as general damages.
22. As for the award on special damages, the same was never challenged by the Appellant and so there is no reason for this court to interfere with it.
23. In the resultant, the Appeal succeeds as follows:-
  - a. The Trial Court’s finding on 80% against the Appellant and 10% against the Respondent is upheld.
  - b. The award of general damages of Kshs 400,000/= is set aside and substituted with Kshs 300,000/= less 20% thus Kshs.60,000/=
  - c. Each party to bear their own costs of the appeal but the Respondent to have costs of the appeal.Orders accordingly.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**D. O. CHEPKWONY**

**JUDGE**

Mr. Koome counsel for Appellant

Mr. Kiptanui holding brief for Mr. Wachira counsel for Respondent

Court Assistant - Simon

