



REPUBLIC OF KENYA



**Modern Coast Coaches Limited v Odhiambo (Civil Appeal E068 of 2021)
[2022] KEHC 15681 (KLR) (22 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E068 OF 2021
GMA DULU, J
NOVEMBER 22, 2022**

BETWEEN

MODERN COAST COACHES LIMITED APPELLANT

AND

GEORGE OTIENO ODHIAMBO RESPONDENT

(Being an Appeal from the judgment of Hon. C.A Mayamba (P.M) in Kilungu Principal Magistrate's Court Civil Case No.162 of 2020, delivered on 3rd September, 2021)

JUDGMENT

1. In a judgment delivered September 3, 2021, the magistrate found in favour of the respondent who was plaintiff and made the following orders –
 - a. Liability 80%20%
 - b. General damages Kshs 430,000/=
 - c. Special damages Kshs 8,550/=
 - d. Less 20% (87,710) Kshs 350,000
 - e. Costs and interest.
2. Dissatisfied with the award of damages, the appellant who was the defendant in the trial court, has come to this court on appeal through counsel on the following grounds –
 1. The learned trial magistrate erred in law and in fact in assessing general damages at an inordinate high sum of Kshs 430,000/= which was not commensurate with the injuries sustained.



2. The learned trial magistrate erred in law and in fact in failing to take into account that the plaintiff only sustained soft tissue injury.
 3. The learned trial magistrate erred in law and in fact in failing to take into account authorities cited by the defendant in relation to similar soft tissue injuries.
 4. The learned trial magistrate erred in law and fact in failing to take into account the assessment of the injuries by Dr Udayana R Sheth and P3 form which clearly indicated that the plaintiff had suffered soft tissue injury and that he had fully recovered, there is no deformity and permanent incapacity.
 5. The learned trial magistrate erred in law and fact in failing to consider or have any sufficient regard to the submissions filed on behalf of the defendant.
 6. In all circumstances of the case, the learned trial magistrate failed to do justice.
3. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by Wambua Kilonzo & Company for the appellant and the submissions filed by Achieng Owuor & Company for the respondent.
 4. This is an appeal on the quantum of damages awarded; as liability was recorded in court by consent of the parties at 80% against the appellant and 20% against the respondent.
 5. It is trite that the assessment of damages is exercise of discretionary power by a trial court and the principles on which an appellate court will interfere have been consistently stated by courts including the English case of *Nance v British Columbia Electric Railway Co Ltd (1951) AC 601*, applied in the case of *Mbogo v Shab (1968) EA 93* in which it was stated that –

“A court of appeal should not interfere with the exercise of the discretion of a judge unless satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice”.
 6. In our present case, no oral evidence was tendered in court. After recording a consent on liability, counsel for the parties agreed to go by the documents filed by the plaintiff (now respondent) as exhibits. Counsel on both sides then filed written submissions.
 7. I note that, in the appellant’s counsel submissions before the trial court, they sought general damages of Kshs 100,000/= relying especially on the case of *Hassan Falid & Another v Sataiya Mepukori & 7 Others Makeni HC Civil Appeal No 12B of 2017*.
 8. On the other hand, counsel for the respondent asked for general damages of Kshs 700,000/= relying mainly on the case of *Easy Coach Ltd v Emily Nyangasi Kisumu Civil Appeal No 20 of 2015*.
 9. The injuries sustained by the respondent herein are not disputed. They were described by the trial magistrate in the judgment as deep cut wound on the forehead leading to soft tissue injuries, blunt injury to the nose leading to epistaxis, ovulsion two upper incisor teeth, blunt injury to exterior chest wall, blunt injury to the lumbar sacral region, and blunt injury to the right leg leading to soft tissue injuries, scars were visible but no permanent incapacity.



10. In the judgment, the trial magistrate considered the cases cited and amounts of awards of damages sought by both sides. It cannot thus be said that the magistrate did not consider the submissions of the counsel for the parties.
11. With regard to the injuries suffered herein, in my view the cases relied upon by the appellant's counsel related to much milder injuries suffered, while the cases relied upon by the respondent's counsel were for much more serious injuries suffered than those suffered by the respondent in this case.
12. In my view therefore, taking into account that no two cases will be exactly the same with regard to injuries suffered, I find that the magistrate exercised his discretion properly in assessing the quantum of damages, both under the general damages head, and the special damages head.
13. I thus find no merits in the appeal. I dismiss the appeal and uphold the award of damages made by the trial court. The appellant will pay the respondent's costs of appeal. Interest will accrue until payment in full.

DELIVERED, SIGNED & DATED THIS 22ND DAY OF NOVEMBER, 2022, VIRTUALLY AT MAKUENI.

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GEORGE DULU

Judge

