



REPUBLIC OF KENYA



KENYA LAW
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**Kiptoo v Wafula (Civil Appeal E002 of 2020)
[2022] KEHC 16356 (KLR) (16 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E002 OF 2020
RN NYAKUNDI, J
DECEMBER 16, 2022**

BETWEEN

EVANS KIPTOO APPELLANT

AND

GEOFFREY KISINDAI WAFULA RESPONDENT

*(Being an appeal from the Judgment/Decree of the Honourable E. Kigen
(SRM) delivered on 18th September, 2020 in Eldoret CMCC No. 403 of 2019)*

JUDGMENT

Coram: Hon. Justice R. Nyakundi

Kimondo Gachoka & CO. Adv

M/S Mwinamo Lugonzo & CO. Adv

1. The appeal challenges the judgment and decree of Hon E Kigen delivered on September 18, 2020 in Eldoret CMCC No 403 of 2019 wherein the appellant herein was the defendant whereas the respondent herein was the plaintiff.
2. The plaintiff's claim against the defendant was for general damages and special damages allegedly suffered by the plaintiff following a road traffic accident which occurred on April 30, 2019, involving motor vehicle registration number KAK 599Z in which the plaintiff was lawfully travelling in as a passenger and motor vehicle Registration No KCJ 656R belonging to the appellant was said to have been carelessly and negligently driven along Eldoret- Ziwa road.
3. In its judgement dated September 18, 2020 the trial court found the appellant 90% liable for the accident and awarded the respondent general damages of Kshs 300,000/= and special damages of Kshs 8,000/- plus interest and costs.



4. Aggrieved by the trial court's award on quantum, the appellant filed his memorandum of appeal dated October 2, 2020 setting out the following grounds:
 1. The learned trial magistrate erred in fact and in law by awarding the plaintiff an excessive quantum of damages in relation to the injuries sustained.
 2. The learned trial magistrate erred in fact and in law by making an award which was excessive and unjustifiable.
 3. The learned trial magistrate erred in fact and in law by awarding Kshs 308,000/= which was excessive and an erroneous estimate of the awardable damages in view of the lack of evidence tendered.
 4. The learned trial magistrate erred in fact and in law in failing to consider the appellant's/defendant's submissions on general damages.
 5. The learned trial magistrate erred in fact and in law in awarding damages of Kshs 308,000/= which was not supported by evidence.

The Appellant's submissions

5. The appellant filed written submissions on April 21, 2022.
6. On the issue of quantum, counsel for the appellant submitted that as per the plaint dated May 18, 2019 the Respondent sustained the following injuries;
 - a. Blunt injury to the neck;
 - b. Blunt injury to the chest;
 - c. Blunt injury to both upper limbs;
 - d. Bruises and blunt injury to both legs.
7. Counsel for the appellant submitted that according to the medical report by Dr Joseph Sokobe the respondent sustained soft tissue injuries. The appellant's counsel further faults the trial court for awarding Kshs 300,000/= for soft tissue injuries in the circumstances. Counsel for the appellant, contends that Kshs 300,000/= was inordinately high in the circumstances. Counsel, further submitted that the said amount should substituted with Kshs 30,000/= to Kshs 60,000/=. The appellant's counsel relied on the following cases to buttress his submissions; *[JK \(A minor suing through father & next of friend NKM v Jasper Nchonga Magari & another](#)* [2021] eKLR and the case of *[HB \(Minor suing through mother & next of friend DKM\) v Jasper Nchonga Magari & another](#)* [2021] eKLR.

The Respondent's Submissions

8. The respondent filed written submissions on March 25, 2022.
9. On the issue of quantum, counsel for the respondent submitted that from the medical reports the respondent sustained the following injuries;
 - a. Blunt injury to the neck;
 - b. Blunt injury to the chest;
 - c. Blunt injury to both upper limbs;
 - d. Bruises and blunt injury to both legs.



10. Counsel maintains that the award by the trial court was not inordinately too low or high so as to amount to a wholly erroneous estimate to warrant this court to interfere with the same.

Determination

11. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions, see Court of Appeal for *East Africa in Peters v Sunday Post Limited* [1958] EA 424. The appropriate standard of review established in cases of appeal can be stated in three complementary principles:
- i. First, on first appeal, the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.
12. It is not disputed that on April 30, 2019 a road accident occurred involving motor vehicle registration number KAK 599Z and motor vehicle registration No KCJ 656R and as a result of which the respondent herein sustained injuries.
13. The issue for determination here is whether the award of general damages of Kshs 300,000/= in light of the injuries stated above is inordinately high to persuade this court to interfere with it. The Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that
- “comparable injuries should attract comparable awards”.
14. To begin, the injuries suffered by the appellant were listed in the treatment notes, the P3 form and the medical report by Dr Joseph Sokobe as:
1. Blunt injury to the neck;
 2. Blunt injury to the chest;
 3. Blunt injury to both upper limbs;
 4. Bruises and blunt injury to both legs.
15. I have considered both the appellant’s and the respondent’s submissions on the quantum of damages, the authorities cited by counsels in their submissions for this appeal. It must be noted that injuries will never be fully comparable to other person’s injuries. What a court is to consider is that as far as possible comparable” to the other person’s injuries, and the after effects.
16. As assessment of damages is at the discretion of the trial court, this court cannot interfere with the exercise of discretion thereof except where the trial court committed an error in principle or made an award that was inordinately high or low as to be wholly erroneous estimate of damages. See *Kemfro Africa Ltd Vs Gathogo Kaniniv AMM Lubia & another* as follows: -

I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has



failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

17. In the case of *Savanna Saw Mills Ltd v Gorge Mwale Mudomo* [2005] eKLR the court stated as follows: -

It is the law that the assessment of 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 simply because it would have awarded a different figure if it had tried the case at the first instance ...”

18. At the trial court the appellant submitted that an award of Kshs 40,000/= would be sufficient in the circumstances whereas the Respondent submitted that the award of Kshs 600,000/= would be reasonable in light of the injuries sustained. Upon perusal of the judgment it is noted that the learned trial magistrate considered the authorities cited by the parties and found that in view of the nature of the injuries sustained and cost of inflation, the award of Kshs 300,000/= would be sufficient in the circumstances.
19. From the evidence adduced by the respondent it is clear that the respondent had suffered soft tissue injuries with no resulting disability and was recovering well.
20. In *Francis Ndungu Wambui & 2 others v Benson Maina Gatia* [2019] eKLR the High Court reviewed downwards an award of general damages of Kshs 400,000 to Kshs 300,000 for injuries of head injury with loss of consciousness and soft tissue injuries.
21. After taking into consideration the injuries sustained by the respondent, the awards by courts on similar injuries and the issue of inflation, I find the award of 300,000/= would reasonable in the circumstances.
22. In consideration of the submissions filed in this appeal and the medical report produced before the trial court, this court is satisfied that trial court did not apply wrong principles of law and arrived at a correct assessment of damages which was not inordinately high or excessive in the circumstances.
23. In the end the appeal herein is without merit and it is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF DECEMBER, 2022.

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R NYAKUNDI

JUDGE

In the presence of:

Matekwa for Mwinamo for the respondents.

