



REPUBLIC OF KENYA



**SBI International Holdings v Oliech (Civil Appeal E086 of 2022)
[2025] KEHC 6914 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 6914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E086 OF 2022
AB MWAMUYE, J
JANUARY 23, 2025**

BETWEEN

SBI INTERNATIONAL HOLDINGS APPELLANT

AND

JOHN ODHIAMBO OLIECH RESPONDENT

*(Being an appeal from the judgment of the Honourable Reuben K. Sang,
Principal Magistrate, Nyando Law Courts, delivered on the 19th July, 2022)*

JUDGMENT

Background

1. The Appellant, being dissatisfied with the judgment of the Trial Court handed down on the 19th July, 2022, in Nyando PMCC No.47 of 2019, lodged the instant appeal and premised it on the following three broad grounds:
 - i. That the quantum of damages for pain and suffering and loss of amenities is inordinately high, erroneous, oppressive, and amounts to a miscarriage of justice.
 - ii. That the trial court ignored the Appellant's submissions, especially the Appellant's authorities undergirding the award of damages.
 - iii. That the trial court erred in fact and law in awarding Kshs. 1, 600, 000/- in general damages without furnishing reasons thereof and thus rendered a decision that was capricious, arbitrary, inordinately high, erroneous, and that amounts to a miscarriage of justice.
2. There was no contest on the trial court's apportionment of liability at 50% in favor of the Respondent, and in consideration of the Respondent's contributory negligence. As such the gravamen of the appeal is solely on quantum.



3. The Appellant filed its written submissions dated 29th January 2024, and the Respondent in turn filed theirs dated 29th February, 2024.
4. The Appellant in his submissions avers that the trial court erred in law and fact by adopting the wrong principles to award general damages considering the injuries sustained by the Respondent. He proceeded to rely on Dr. James Obondi Otieno's report dated 12/10/2020 to enumerate the injuries sustained by the Respondent as:
 - a. Fracture left femoral shaft
 - b. Dislocation right acromioclavicular joint
 - c. Fracture left patella.
5. To bolster his point, the Appellant relied on five cases, three of which supposedly deal with injuries analogous to the injuries sustained by the Respondent, and therefore are intended to provide perspective on how other courts have dealt with similar matters. According to the Appellant, the appropriate quantum of general damages, considering all factors, was Kshs. 450, 000/-.
6. The Respondent on his part outlined the injuries as detailed in the medical report by Dr. Manasseh O. Onyimbi M.D. M.P.H (Physician) who testified that upon examination of the Respondent he noted the injuries sustained as:
 - a. Fracture of the left intertrochanteric aspect of the femur at pelvic joint.
 - b. Fracture of the left femur at the mid-shaft position with intertrochanteric aspect
 - c. Crush fracture of the left patella
 - d. Multiple friction lacerations involving both upper limbs
 - e. Multiple friction lacerations on the scalp of the head
7. The Respondent relied on the decision in *Mbaka Nguru & Another v James George Rakwar NRB CA Civil Appeal No. 133 of 1998[1988]* eklr to enunciate the overarching principle in the award of damages that they should reflect the trend of previous, recent, and comparable awards. He also chose to offer a rejoinder to the Appellant's protestations that the trial court ignored the Appellant's submissions as well as the precedents cited therein. In rebuttal, the Respondent, while placing reliance on *Joshua Shitawa v Kishan Builders Limited Eldoret Civil Appeal No. 32 of 2012 [2015]* eklr, proffered that final submissions are unlike pleadings and are intended only for the guidance of the court.
8. The Respondent concluded their submissions with a plea to this court not to disturb the finding by the trial court.

Issues for Determination

9. I have carefully considered the Judgment of the Trial Court, the Record of Appeal, the pleadings, and submissions filed at this Appellate state, and distilled the following issues as vying for determination:
 - i. Whether the general damages awarded by the Trial Court were inordinately high.
 - ii. Whether the Trial Court ignored the Appellant's submissions.
10. Before proceeding to analyze the issues listed hereinabove, it is important to set out the outlines of this court's review.



11. Considering that this is a first appeal, this court is obliged to reexamine both the law and factual basis of the suit, noting that this court did not have the benefit of observing the witnesses' demeanor as they testified. As such, this court has the latitude to arrive at its own findings of fact if it appears that the trial court failed to take into account a particular circumstance or set of circumstances or probabilities material to the estimation of the evidence or if the impression created by the demeanor of the witness is inconsistent with the evidence in the case, as was held in *Selle & Another v Associated Motor Boat Co. LTD & Others* [1968] EA123 and *Abdul Hammad Saif v Ali Mohammed Sholan* [1955] 22 EACA, 270.
12. It is the Appellant's contention that the general damages awarded were inordinately high, and he proposes that the same should be reviewed downwards to Kshs. 450, 000/- in consideration of analogous cases as cited. The Respondent urges this court to refrain from disturbing the trial court's award as according to him the same is meet and just in the circumstances.
13. *Kemfro Afro LTD t/a Meru Express & Anor v A.M. Lubia and Another* [1982-88] 1 KAR 727 most succinctly circumscribed the limits of the appellate court's brief in respect of general damages awarded by a trial court. The Court therein provided as follows:

“The general principle is that the assessment of damages within the discretion of the trial court and the appellate court will only interfere where trial court, in assessing damages, either took into account irrelevant factors or left out a relevant factor or that the award was too high or too low as to amount to an erroneous estimate or that the assessment is based on no evidence.”
14. Just as briefly, the Learned Court in *Climax Coaches v Jackson Echesa Ndiri* (Civil Appeal E025 OF 2022) provided the rubric upon which courts should assess damages as follows:
 - i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered.
 - ii. The award should be commensurate to the injuries suffered.
 - iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit.
 - iv. Where awards in decided cases are to be taken into consideration, then the issue of own element of inflation has to be taken into consideration.
 - v. Awards should not be inordinately high or too low.
15. Based on the foregoing, there are certain elementary questions that this court has to first grapple within order to ascertain the appropriateness of the general damages awarded. Those questions are as follows:
 - a. What is the nature of the injuries sustained?
 - b. How much have courts awarded in damages for analogous injuries?
16. On the first question, I noted a marked contradiction between the averments of the parties. There were two medical reports, done a year and five months apart. The medical report by Dr. Manasseh O. Onyimbi M.D. M.P.H (Physician), prepared on the 14th May 2019, and relied on by the Respondent, listed the injuries as follows:
 - a. Fracture of the left intertrochanteric aspect of the femur at pelvic joint.



- b. Fracture of the left femur at the mid-shaft position with intertrochanteric aspect
 - c. Crush fracture of the left patella
 - d. Multiple friction lacerations involving both upper limbs.
 - e. Multiple friction lacerations on the scalp of the head.
17. The medical report prepared by Dr. James Obondi Otieno, prepared on the 12th October 2020, and relied on by the Appellants, listed only three injuries as follows:
- a. Fracture left femoral shaft.
 - b. Dislocation right acromioclavicular joint
 - c. Fracture left patella.
18. No explanation whatsoever has been proffered by any of the parties for this discrepancy. However, I have taken note from the proceedings that while Dr. Manasseh testified as PW2 and produced his report in court, and the Appellant elected not to cross-examine him on that report, Dr. James Obondi was not called upon to produce his report as provided for in Section 35(1) of the *Evidence Act*, Cap 80. As such, this court has no other recourse but to fall back on the observations of the trial magistrate who found in passing that “the kind of injuries the defendant is dealing with... quite different and largely soft tissue compared to the injuries pleaded.”
19. Therefore, as a basis for the next part of this analysis, I will be relying on the medical report by Dr. Manasseh O. Onyimbi M.D. M.P.H (Physician).
20. How then have courts dealt with comparable injuries in the past? Admittedly, it is not easy to find comparable precedents with the exact combination of injuries for our guidance. In *Jason Muuo Mutuku v Joram Mwangi & 2 Others (Civil Appeal 100 of 2022) [2023] KEHC 24468* klr), Justice SM MOHOCHI, J, made a similar note that.
- “No separate accidents can result in similar injuries or set of injuries. There will definitely be a difference in pain and suffering, nature of injuries, degree of harm or level of incapacity. What a trial court is expected to consider is whether there is a particular case that bears any relevancy to the one at hand and if so, consider it and use it as a base for assessment of damages.”
21. The medical report by Dr. Manasseh mentions two fractures of the left femur. The femur is the bone of the leg from the knee joint to the hip joint also referred to as the thigh bone. It is the heaviest and strongest bone in the human body. As such, fractures to the femur are demonstrative of the gravity of the impact on the Respondent. Besides the femur fractures, the Respondent equally suffered a crush fracture of the left patella, multiple friction lacerations involving both upper limbs, as well as multiple friction lacerations on the scalp of the head.
22. According to Dr. Manasseh’s report, the degree of harm caused on the Respondent was grievous and assessed the same at 75% state of permanent incapacitation.
23. I will now turn to comparable injuries to see how courts have handled the same.
- a. In *Kenyatta University v Isaac Karumba Nyuthe [2014] Eklr*, the Plaintiff sustained a fracture of the right femur, soft tissue injury on the head, and bruises on the right knee. The High Court awarded him Kshs. 350, 000/-



- b. Francis Maina Kahura v Nahashon Wanjau Muriithi [2015] eKLR, where the Plaintiff who sustained a segmented fracture of the mid-shaft right femur and a cut wound on the left knee was awarded by the High Court ksh.500,000/- general damages.
 - c. Prima Management Ltd v Wilson Suba Kindaranga [2017] eKLR where the plaintiff suffered a fracture of the left femur with 12% permanent disability and the trial Courts award of KShs 900,000 was upheld.
 - d. Pestony Limited & another v Samuel Itonye Kagoko [2022] eKLR Respondent sustained a fracture of the left femur (mid-shaft) and swollen left tender thigh with 4% incapacity. The Court on appeal set aside an award of Kshs 1,200,000 and substituted it with one of Kshs. 800,000.
 - e. In Patrick Kinyanjui Njama v Evans Juma Mukweyi [2017] eklr, the Respondent suffered segmental fracture of the right femur mid-shaft; segmental fracture of the right tibia shaft (open); fracture of the right fibula; and fracture of the left 3rd metatarsal bone with recovery expected in one and half years. The disability was assessed at 30%. The court upheld the award of Kshs. 1, 500, 000/- for general damages.
 - f. In John Mburu Kimani v Samuel Mwangi & 2 Others (Civil Appeal E071 of 2023) the appellant had sustained a fracture of the femur on the right leg and a cut wound on the left leg. The appellate court set aside the trial court's award of Kshs. 450, 000/- and awarded Kshs. 550, 000/- as general damages.
24. What is evident from the above-noted precedents is that each case is more or less peculiar, and accordingly warrants a treatment tailor-made just for it. There are, however, general principles that can be gleaned to guide. The trial court was seemingly cognizant of the same as it referred to the case of Jabane v Olenya (1989) KLR 1 to distill the principles that should guide the decision-making in terms of damages.
 25. Despite noting the principles, it is not clear from the judgment how the learned court arrived at general damages of Kshs. 1, 600, 000/-. It is also not clear which precedents the trial magistrate compared the injuries with to arrive at the aforesaid award.
 26. I have considered all the above, as well as the authorities cited by both parties. I have noted that the Respondent carefully curated precedents with aggravated injuries. Similarly, I have noted that the appellant curated precedents with milder injuries. This is to be expected.
 27. Although the trial court did not show the precedents it compared the instant injuries with, I am of the view that the award was still within the ballpark of similar injuries to the same degree of incapacitation.
 28. The upshot is that I uphold the finding of the trial court.
 29. The Respondent shall have the costs of the appeal.

DATED, SIGNED, AND DELIVERED ON THIS 23rd DAY OF JANUARY 2025.

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BAHATI MWAMUYE.

JUDGE.

