



**Godfrey & another v Lusweti (Civil Appeal E001 of 2023)
[2025] KEHC 1628 (KLR) (19 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E001 OF 2023
JR KARANJA, J
FEBRUARY 19, 2025**

BETWEEN

OCHOMO GODFREY 1ST APPELLANT

OBED TSUMA 2ND APPELLANT

AND

MICHAEL BARASA LUSWETI RESPONDENT

(Being a partial appeal from the judgment of the Honourable Samuel Mokuu, Chief Magistrate delivered on 23rd December 2022 in Kapsabet PMCC No. 106 of 2017 - Michael baraza Lusweti Vs. Ochomo Godfren & Obed Tsuma)

JUDGMENT

1. The appeal is against the ruling and order of the Chief Magistrate delivered on 23rd December 2022 in Kapsabet PMCC No. 106 of 2017 in which the two Appellant were the Defendant and the Respondent, the Plaintiff.

In the ruling which was actually a judgment, the Plaintiff was awarded a total sum of Kshs. 1,736,869 being general and special damages after deductions of ten percent [10%] of the Plaintiffs' contributory negligence in a road traffic accident which occurred on 14th August 2015 involving the Appellants/Defendants Motor Vehicle Registration No. KBZ 288B Mini Bus along the Kapsabet Lessos Road.

2. The Respondent/Plaintiff was travelling on board the said motor vehicle when it veered off the road and overturned thereby occasioning him serious bodily injuries. The Respondent blamed the Appellants for the accident and instituted the present suit against them praying for both general and special damages together with future medical expenses.
3. In the course of the hearing, the parties entered into a consent on liability such that whereas the Plaintiff/Respondent was to shoulder 10% of the blame, the Defendant/ Appellant took 90% of the



blame. The issue of liability was thus settled. The quantum of damages became the only issue for determination by the trial court. Therefore, grounds 6, 7, 8 of the supporting ground, set out in the memorandum of appeal dated 6th January 2023, were completely irrelevant for the purposes of this appeal which is essentially on quantum of damages.

4. The question of liability having been settled, the Appellants could not in this appeal be heard to suggest or claim that the Plaintiff/ Respondent was not involved in the accident. Grounds 1 to 5 are most relevant for the purposes of this appeal in as much as they all revolve around the issue of quantum of damages.
5. The appeal was canvassed by way of written submissions filed herein by both parties. These have been given due consideration by the court alongside the supporting grounds and the evidence availed before the trial court which had the advantage of seeing and hearing witnesses.
6. In an appeal on quantum of damages such as the present one the applicable principles were set out in the case of *Kemfro Africa Limited t/a Meru Express Services Vs. Lubia & Another* [1983-88]1 KAR 777, where the Court of Appeal stated as follows: -

“The principle to be observed by an Appellant Court is deciding whether it is justified in dismissing the quantum of damages awarded by a trial judge were held by the former Court of Appeal for Eastern Africa to be that: -

It must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

7. In this case, the Plaintiff/Respondent prayed for general damages for pain and suffering, special damages in the sum of Kshs. 229,868/- and costs of future medical expenses in the sum of Kshs. 100,000/-. At the trial, the Plaintiff proposed a sum of Kshs 3.5million for pain and suffering, Kshs. 100,000/- future medical expenses and special damages in the total sum of approximately Kshs. 229,000/- and above. The Defendants proposed general damages in the sum of Kshs. 350,000/- and contended that there was no evidence to justify the award of Kshs. 100,000/- being costs for future medical expenses.
8. The trial court considered the evidence availed by the parties on the quantum of damages and opined that the Respondent/ Plaintiff was entitled as against the Defendants/ Appellants to general damages, for pain/ suffering in the sum of Kshs. 1,700,000/-, special damages in the sum of Kshs. 228, 869/- less 10% contributory negligence thereby arriving at a global figure of Kshs. 1,736,869/-. The Respondents was to have costs of the suit.
9. A reconsideration of the evidence by this court reveals that the assessment of the general damages by the trial court was grounded on the evidence of Dennis Mulanga[PW2] and Dr. Washington Wokabi [PW3] whose report indicated that the Plaintiff/ Respondent suffered a fracture of the left hip joint [acetabulum] such that he was in pain and could not walk, stand for long hours or squat. This led to a 12% permanent disability of the left hip.
10. The Defendant/ Appellant led no evidence in support of their defence and/or rebuttal of the Plaintiff/ Respondent’s evidence on the claimed damages. The trial court considered comparable cases and relying mostly on the case of *Cold Car Line & Tours Limited & Others Vs. Elixzabeth Wambui Matheri* [2015] eKLR, awarded the Plaintiff general damages in the sum of Kshs. 1,700,000/-.



The claim for future medical expenses was disallowed for want of proof and the claim for special damages in the sum of Kshs. 229,869/- was duly established and proved by necessary documentary evidence.

11. In sum, this court finds no merit in the appeal. The appellants failed to demonstrate that the trial court awarded the impugned damages in total disregard of the principles set out by the Court of Appeal in the Kemfro Africa Case [supra]

The appeal therefore stands dismissed with costs to the Respondent.

Ordered accordingly.

DELIVERED AND DATED THIS 19TH DAY OF FEBRUARY, 2025

HON. J. R. KARANJAH,

JUDGE

