



**Okoth v Sunday & another (Civil Appeal E023 of 2024)
[2025] KEHC 2136 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E023 OF 2024
DK KEMEL, J
FEBRUARY 13, 2025**

BETWEEN

ERICK OMONDI OKOTH APPELLANT

AND

VALARY IRENE SUNDAY 1ST RESPONDENT

EUNICE ODERA 2ND RESPONDENT

*(Being an appeal from the Judgment of Hon. B. Limo, Principal
Magistrate delivered on 7th May 2024 in Siaya CMCC No. E11of 2023)*

JUDGMENT

1. Vide a plaint dated 13/2/2023, the Appellant sued the Respondents for general and special damages, costs and interest arising from injuries sustained in a road traffic accident which occurred on 26/12/2022 involving the 2nd Respondent's motor vehicle registration number KCT 196Z Toyota Axio along Siaya- Nyandorera road. The learned trial magistrate, Hon Limo (PM) rendered a judgement dated 7/5/2024 wherein he entered judgement for the Appellant as follows:
 - a. Liability 80: 20 between the Respondents and Appellant respectively (agreed by consent)
 - b. General damages- Kshs 400,000/=
 - c. Special damages- Kshs 6000/=
 - d. Future medical expenses- Kshs 150.000/=
 - e. Costs of the suit.
2. Dissatisfied with the decision of the trial magistrate, the Appellant has appealed to this court on the issue of quantum on the following grounds:



- i. The trial magistrate erred in law and in fact on the assessment of damages as to amount to an abuse and wrong application of principles of award/assessment of damages.
- ii. That the trial magistrate erred in law and in fact in awarding damages that were inordinately low as to amount to gross underestimation of the injuries sustained by the Appellant.
- iii. The trial magistrate erred in law and in fact in failing to appreciate the medical evidence.

Thus the Appellant prays that the appeal be allowed with costs, the award by the trial court be set aside and this honorable court do reassess the damages awarded.

3. Being a first appeal, the court relies on a number of principles as set out in *Selle & Another vs Associated Motor Boat Company Ltd & others* [1968] 1EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

4. It therefore behooves upon this court to relook, re-evaluate, reanalyze the evidence at the trial court and arrive at its independent conclusion bearing in mind that it did not see the witnesses first hand.
5. Parties herein entered into a consent on liability in the ratio of 80% to 20% between the Respondents and Appellant respectively and then proceeded to tender evidence on the remaining issue of assessment of quantum of damages.
6. PW1 Eric Omondi Okoth testified that he was 17 years old at the time of accident. That on 26/12/2022 at about 4.30 Am he was a pillion passenger aboard motor cycle registration number KMEZ 844 W Boxer along Nyandorera –Siaya road, when the Respondents’ motor vehicle KCT 196Z Toyota Axio hit them from behind. That he sustained the following injuries:Lacerations on the occipital scalp,cut wound on the forehead,Blunt injury to the chest,Blunt injury to the back,Lacerations on the right wrist & right hand,Fracture to the left femur

The Appellant’s list of document dated 13/2/2023 was produced as exhibits 1-6. The Appellant then closed his case.

On cross-examination, he stated that he he fractured his leg. That he walks without any help.

7. The Respondents requested for a second examination of the plaintiff by the Defendant/Respondents doctor and a report filed and produced as an exhibit. The second medical report was produced by the Respondents doctor Tobias Otieno as D-exhibit 1. The said report confirmed the following injuries:Lacerations on the occipital scalp,cut wound on the forehead,Blunt injury to the chest,Blunt injury to the back,Lacerations on the right wrist & right hand,Fracture to the left femur
8. The appeal was canvassed by way of written submissions. Both parties duly filed and exchanged submissions.
9. The Appellant in his submissions relied on the cases of *Makueni HCCA No. 18 of 2017 A.O. BAYUSUF & Sons vs. Patricia Muthoka Mutunga* and *Nairobi HCCA No. 167 of 2020 Pestony Limited & Another vs. Samuel Itonye Kagoko* in which the plaintiff sustained injuries substantially similar to the Appellant herein, and that they were awarded Kshs 800,000/=.



10. On the other hand, the Respondents submitted that the appeal be dismissed stating that the assessment of damages is discretionary upon the trial court. They relied on *Simon Taveta vs. Mercy Mutitu Njeru* (2014) eKLR, CACA NO. 26 OF 2013.... that an appellate court must be satisfied that the trial court in assessment of damages took into account an irrelevant factor or left out a relevant factor or that the award was inordinately low or high to be an erroneous estimate.
11. I have considered the proceedings of the trial court together with the rival submissions and find the issue for determination is whether the award of general damages given by the trial magistrate was inordinately low in the circumstances.
12. In the case of *Simon Taveta vs. Mercy Mutitu Njeru* (2014) eKLR, CACA NO. 26 OF 2013(supra) it was held that the issue of assessment is discretionary to the trial court. However, the same may be altered on appeal upon ascertaining certain factors. Again in *Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenya) v Kiarie Shore Stores Limited* [2015] eKLR the court held thus: - “As a general principle, assessment of damages lies in the discretion of the trial court and an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an 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. The Court 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 high that it must be a wholly erroneous estimate of the damages.”
13. Again in *Simon Taveta vs. Mercy Mutitu Njeru*, Civil Appeal 26 of 2013 [2014] eKLR the Court of Appeal held thus: -“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
14. I have considered the Appellants injuries and compared the same with past authorities in which the claimants suffered almost similar injuries as follows: -

In *Joseph Mwangi Thuita vs. Joyce Mwole* [2018] eKLR, the plaintiff was awarded Kshs. 700,000 as general damages for fractured right femur, compound fracture (r) tibia and fibula, shortening right leg and episodic pain (r) thigh with inability to walk without support.

In *Jackson Mbaluka Mwangangi vs. Onesmus Nzioka & another* [2021] eKLR Odunga J. (as he then was) awarded Kshs 600,000/- for general damages where the Appellant sustained blunt injury to the right shoulder and fracture of the left femur.
15. It is noted that the Appellant herein suffered more serious injuries as listed in paragraph 8 above, leading to a 3% permanent disability.
16. It is trite that comparable injuries should be compensated by comparable award of damages. It is also noted that the age of the Appellant at the time of accident was 17 years which means that he would be forced to live with the 3% disability for the rest of his life.
17. Based on the foregoing, this court is satisfied that the trial court left out this relevant factor, that more recent cases have awarded higher amounts as damages for comparable injuries, that there was 3% disability and that the claimant was very young and had his whole life affected by the said injuries. I thus find the award of Kshs 400,000/= for general damages as inordinately low in the circumstances. I therefore set it aside and replace it with an award of Kshs 700,000/=. The award of future medication and special damages are upheld at Kshs 150,000/- and Kshs 6000/= respectively as earlier on ordered as no appeal was raised on them.



18. The upshot of the foregoing observations is that the Appellant's appeal has merit. The same is allowed. The trial court's award on general damages for pain and suffering is hereby set aside and substituted with the sum of Kshs 700, 000/-. The other awards shall remain undisturbed. The costs of the appeal are awarded to the appellant.

Orders accordingly.

DATED SIGNED AND DELIVERED AT SIAYA THIS 13TH DAY OF FEBRUARY 2025.

D. KEMEI

JUDGE

In the presence of :

Kaparefor Appellant

M/s Barasa.....for Respondents

OgendoCourt Assistant

