



REPUBLIC OF KENYA



KENYA LAW
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**Ochuodho v Ochola (Civil Appeal E056 of 2022)
[2025] KEHC 2875 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E056 OF 2022
AB MWAMUYE, J
FEBRUARY 6, 2025**

BETWEEN

KENNEDY OMONDI OCHUODHO APPELLANT

AND

WILIS ONYANGO OCHOLA RESPONDENT

*(Being an appeal from the Judgment and decree of Honourable S. Temu
(SPM) delivered on 12th May, 2022 in Nyando Civil Case No. 156 of 2019)*

JUDGMENT

1. The Appellant herein has approached this court aggrieved by the Judgment of the Trial Court delivered on 12th May, 2022 in Nyando CMCC No. 156 of 2019. The Memorandum of Appeal dated 7th June, 2022 has three Grounds of Appeal which revolve around one issue, quantum. The Trial Court found that the injuries suffered by the Appellant fall within the category of multiple soft tissue in nature thus proceeded to award him Kes. 300,000.00.
2. In the Appellant's written submissions dated 28th November 2023, the Appellant argues that the Trial Court's award was very minimal as it relied on the case of HCCA 15 of 2018 as Consolidated with HCCA 16 of 2016, Cosmas M. Mutisya vs JAP Quality Motors and Another where general damages was assessed at Kes.100,000.00. The Appellant claims that the injuries sustained in the case were less severe than the ones he sustained and therefore the court erred by relying on the same.
3. The Respondent's written submissions dated 22nd January, 2024 submitted that the award granted by the Trial Court as general damages was reasonable and took into account the inflation of the economy as at the year 2022. He further submitted that the Appellant has not demonstrated that the trial magistrate applied a wrong principle in law in making the decision he has appealed from therefore this appellate court should not disturb a decision well founded in law. The Respondent relied on the case of Bashir Ahmed Butt vs Uwais Ahmed Khan (1982-99) KAR, Loice Wanjiku Kagunda vs Julius Gachau



Mwangi [CA 142/2003](#), Simon Taveta vs Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 (2014) eKLR , Boniface Waiti & another vs Michael Kariuki Kamau(2007) eKLR , Jubilee Hauliers Ltd & another v Mary Waithera Wanja [2019] eKLR among others.

4. I have considered the Parties' submissions on record alongside the relevant authorities cited. As is the legal requirement for a court sitting on a first appeal, I have re-evaluated the material and evidence which was placed before the Trial Court. It is clear that the appeal revolves around one issue for determination namely;
 - i. Whether the learned trial magistrate erred in using the wrong principles on assessment of damages thereby arriving at an erroneous decision.
5. On this issue, the Respondent in the Trial Court outlined the nature of his injuries as degloving injury on the right hand, soft tissue injuries on the right side of the face, blunt injury to the neck leading to soft tissue injuries, blunt injury to the anterior chest wall leading to soft tissue injuries, soft tissue injuries of both knee joints and blunt injury to the lower back leading to soft tissue injuries. The Respondent was admitted at Ahero County Hospital on 1st January 2019 where an operation for debridement of his right hand was done.
6. On the issue of assessment of damages, the Court of Appeal expressed that these are matters that are within the discretion of the Trial Court and the appellate court ought to respect that discretion if properly exercised. This was outlined in the case of Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenya) v Kiarie Shore Stores Limited [2015] eKLR where the court stated,

“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 erroneous estimate. It must be shown that the Judge proceeded on wrong principles 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”
7. I am in total agreement with the sentiments of Majanja J in the case of Harun Muyoma Boge v Daniel Otieno Agulo MGR HCCA No. 7 of 2015 [2015] eKLR where he expressed himself thus:-

“The assessment of general damages is not an exact science and the court in doing the best it can, takes into account the nature and extent of injuries in relation to awards made by the court in similar cases. It ensures that the body politic is not injured by making excessively high awards and that the claimant is fairly compensated for his or her injuries.”
8. I concur with and apply the principle of award of damages that comparable injuries should be compensated by comparable awards as held in the case *Kemfro Africa Ltd t/a Meru Express & Another v A.M. Lubia and Another* [1982-88] 1KAR 727.
9. In the present case, I find that the Trial Court did not err in finding that the injuries suffered by the Respondent fall within the category of multiple soft tissue in nature thus I am guided by the following cases to determine the appropriate award;

In the case of *National Industrial Credit Ltd & 2 others v MNO (Minor suing Thro' Next of Friend and Mother FNM)* (Civil Appeal E035 of 2023) [2024] KEHC 3824 (KLR) (18 April 2024)



(Judgment) the Appellate court upheld Kes. 300,000.00 general damages where the Respondent sustained chest contusion, cut wounds on the left knee, blunt trauma to the scalp and blunt trauma to the neck injuries. In *Matunda (Fruits) Bus Services Ltd v Agnes Chemngeno Tuiya* [2021] the High Court at Nakuru reduced an award of Kes 390,000.00 in General damages to a sum of Kes. 250,000.00 where the Claimant had sustained the following injuries: deep cut wound on the scalp, deep cut wound on the right shin, blunt injuries to the neck, loose two upper incisor teeth, loose two lower incisor teeth and cut wound on the lower lip.

In the case of *Omondi v Anzofu (Civil Appeal 04 of 2020)* [2024] KEHC 2675 (KLR) (13 March 2024) (Judgment) the Appellate court held that the sum of Kes. 300,000.00 is adequate compensation for soft tissue injuries sustained by the Respondent. Similarly in the case *Patrick v Ajak (Civil Appeal E07 of 2020)* [2022] KEHC 612 (KLR) (31 March 2022) (Judgment) where the Respondent sustained the following injuries: Blunt injury to the upper 1st incisor tooth with mild breakage of the tip, cut wound on the inner aspect of the upper lip, blunt injury to the neck, blunt injury to the left shoulder, blunt injury to the left chest, blunt injury to the left hip, bruises on both knees and occasional chest and left hip joint pain. The Appellate court set aside an award of Kes. 500,000.00 and substituted it with an award of Kes.300,000.00.

10. I therefore find no justification for interfering with the Trial Court's assessment of general damages. I find that the Trial Court's award falls within the range of awards made by other courts for the same type of injuries.
11. The award of Special damages was not contested by any party and I also note that the Appellant specifically pleaded and proved the same at the hearing. I therefore uphold the same.
12. Consequently, I find that this Appeal is devoid of merit and I hereby dismiss it with costs to the Respondent.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2025.

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BAHATI MWAMUYE

JUDGE

