



AM v ZKN (Suing as the Father and Next Friend of TK (Minor)) (Civil Appeal E020 of 2022) [2025] KEHC 6143 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 6143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E020 OF 2022
JM OMIDO, J
MARCH 20, 2025**

BETWEEN

AM APPELLANT

AND

ZKN RESPONDENT

SUING AS THE FATHER AND NEXT FRIEND OF TK (MINOR)

((Being an Appeal from the Judgement and Decree of Hon. Joan Irura, Principal Magistrate delivered on 20th January, 2022 in Nkubu CMCC No. 97 of 2019).))

JUDGMENT

1. This appeal emanates from the judgement and decree of Hon. Joan Irura, Principal Magistrate, delivered on 20th January, 2022 in Nkubu CMCC No. 97 of 2019.
2. The grounds of appeal presented by the Appellant vide the Memorandum of Appeal dated 14th January, 2022, upon which he seeks to upset the judgement and decree of the lower court, are as follows:
 1. The learned Magistrate erred in fact and in law in awarding the Respondent 100% liability as against the Appellants; Ksh.400,000/- as general damages; and Ksh.20,000/- for special damages which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent.
 2. The learned Magistrate erred in fact and in law in holding that the Respondent had proved his case on a balance of probabilities which finding was against the height of the evidence on record.
 3. The learned Magistrate erred in fact and in law when she failed to consider the Appellant's evidence on points of law and facts with regard to quantum based on the injuries sustained by the Respondent.



4. The learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
5. The learned Magistrate erred in fact and in law in failing to pay regard to submissions that were guiding in the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.
6. The learned Magistrate erred in fact and in law in finding that the Respondent was entitled to general damages that were too high in view of the injuries suffered by the Respondent.
7. The Appellant proposes that the Appeal be allowed with costs to the Appellant and that the award for damages made in favour of the Respondent be set aside and that this court proceeds to make its own assessment on the same.
8. The suit before the lower court was one based on tortious liability arising out of a road traffic accident that is said to have occurred on 3rd August, 2019 in which the minor sustained injuries. The matter was defended and went to full trial.
9. In her judgement delivered on 20th January, 2022, the learned trial Magistrate entered judgement in favour of the Respondent (the Plaintiff before the lower court) and against the Appellant (the Defendant) as follows: Liability – at 100% against the Appellant. Special damages – Ksh.20,000/-. General damages for pain, suffering and loss of amenities – Ksh.400,000/-.
10. The Respondents were also awarded costs of the suit and interest thereon at court rates and on the awards of damages.
11. The Court directed that the appeal proceeds by way of written submissions and gave the parties herein timelines for filing their submissions. Both parties filed their respective submissions.
12. Although the grounds of appeal are in respect of both liability and quantum, it is noteworthy from the Appellant's submissions that what he is challenging is the trial court's findings on quantum only, with regards to the head of general damages for pain, suffering and loss of amenities. The trial court's finding on liability is not challenged.
13. This being the first appellate court, I am required under Section 78 of the *Civil Procedure Act* and as was espoused in the case of *Sielle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate's Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.
14. In *Sielle*, Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”



15. Turning to the evidence before the trial court, in so far as the matter relates to quantum (in respect of the head of general damages for pain, suffering and loss of amenities), the relevant evidence is that of the Respondent who testified before the trial court as PW1 and Dr. Dickson Gituma, who testified as PW3..
16. The Respondent adopted the contents of his witness statement that he filed before the trial court. He stated that the accident in question occurred on 3rd August, 2019 and that the minor sustained bodily injuries.
17. Dr. Gituma testified and stated that his colleague Dr. Kimanthi Kioga examined the minor on 30th September, 2019 and prepared a report, which the witness produced as an exhibit, in which he documented the injuries that the minor sustained, as follows: Painful swelling and tenderness on the right leg associated with inability to bear weight.
18. Dr. Kioga stated in his report that the minor recovered with some complications involving the right lower limb whereby the minor would experience pain and periodic numbness, due to nerve damage that occurred to the connective tissue where the sensory nerve endings live. The complications rendered the minor unable to perform her normal duties that he was able to perform prior to the accident.
19. The doctor stated in his report that long time complications included pain, stiffness, abscess, decreased range of motion and possible scar formation.
20. I have considered the grounds of appeal as set out in the Memorandum of Appeal dated 14th January, 2022, the submissions by the parties herein and the record of the lower court. Although the Appellant listed 6 grounds of appeal in his Memorandum of Appeal, only one ground was pursued in the submissions that he filed.
21. The single issue for determination, as discernible from the submissions is whether the award of general damages for pain, suffering and loss of amenities was so inordinately high or excessive so as to reflect a wrong estimate of the Respondent's entitlement in recompense.
22. Compensatory damages are awarded to a wronged party in exercise of the court's discretion. The principles upon which an appellate court can interfere with judicial discretion were laid down in the case of *Price & another v Hidler* [1996] KLR 95 as follows:

“ The court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision.”
23. Further, in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR the Court of Appeal while discussing the principles upon which an appellate court may disturb an award of damages by an inferior court held that:

“ ...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was



so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297.

It was echoed with approval by this Court in *Butt v Khan* [1981] KLR 349 when it held as per Law, J.A that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely 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.”

24. There is also the authority of *Mbogo & Another v Shah* [1969] EA 93, where it was held, *inter alia*, that:

“An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which it should be taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court should not interfere with the exercise of the discretion of a judge unless satisfied that the judge in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice.”

25. In the present appeal, the Appellant merely stated that the award in compensation that was made in favour of the Respondent was too high. The Appellant did not proffer and/or demonstrate to this court the ground that the exercise of the discretion by the learned trial Magistrate was clearly wrong or that the trial court misdirected itself or acted on matters which it should not have acted upon or failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.
26. If anything, the learned trial Magistrate was clear that she was guided by comparable trends in decided cases. The trial court considered the nature and extent of the injuries and the resulting complications that the minor had to endure. There is therefore no basis upon which I can interfere with the discretion of the trial court in assessing damages.
27. Being of the foregoing persuasion, I reach the result that the appeal herein is without merit and I proceed to dismiss it wholly.
28. Section 27 of the *Civil Procedure Act* dictates that costs ought to follow the event. To that end then, the costs of this appeal shall be borne by the Appellant.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 20TH DAY OF MARCH, 2025.

JOE M. OMIDO

JUDGE

