



**Isinya Feeds Company Limited v Wanjala (Civil Appeal E1141 of 2024)
[2025] KEHC 2355 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1141 OF 2024

AC MRIMA, J

MARCH 6, 2025

BETWEEN

ISINYA FEEDS COMPANY LIMITED APPELLANT

AND

ROBERT WAFULA WANJALA RESPONDENT

*(Being an appeal from the judgment and decree on quantum of the
Nairobi [Milimani] Chief Magistrate's Commercial Court Civil Case
No. E4543 of 2022 (Hon. Becky Mulema) delivered on 06/09/2024)*

JUDGMENT

1. The appeal subject of this judgment is on the quantum of damages as awarded in Nairobi [Milimani] Chief Magistrates Commercial Courts Case No. E4543 of 2022 [hereinafter referred to as 'the civil suit']. In the civil suit, the Appellant herein was the registered owner of the subject Motor Vehicle registration number KBZ 126J [hereinafter referred to as 'the vehicle'] which allegedly hit the Respondent a result of which the Respondent sustained injuries.
2. Liability was mutually apportioned at 20% and 80% between the Respondent and the Appellant respectively whereas the aspect of damages was assessed by the Court on reliance of the various documents adopted as exhibits. Judgment was rendered on 9th September 2024 in which the Respondent was awarded Kshs. 4,000,000/= on General damages, Kshs. 213,000/= on future medical expenses, costs and interest. It was that decision which aggrieved the Appellant thereby filing the instant appeal.
3. Directions were taken and the appeal was to be heard by way of written submissions. Both parties complied. Relying on various decisions, the parties argued in favour of their rival positions and each



urged this Court to find in its favour. Whereas the Appellant prayed for the appeal to be allowed and the awards be revised downwards, the Respondent prayed for the dismissal of the appeal with costs.

4. Having carefully considered this matter, this Court is alive to the duty imposed on a first appellate Court where it is called upon to interfere with the award on general damages made in exercise of discretion by a trial Court. Such a task is generally difficult. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion. (See *Butler vs. Butler* (1982) KLR 277.)
5. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of 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.

[Also see *Arrow Car Limited -vs- Bimomo & 2 others* (2004) 2 KLR 101 and *Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd* (2013) eKLR].

6. Returning to the matter at hand, this Court has carefully considered the exhibits on the injuries sustained by the Respondent. The appeal revolves around the awards of general damages and future medical expenses.
7. On the cost of future medical expenses, the trial Court awarded Kshs. 213,000/= against Dr. Titus Ndeti Nzina's opinion that the cost of an operation would cost Kshs. 83,000/=. However, both Dr. Titus Ndeti Nzina and Dr. P. M. Wambugu agreed that the Respondent suffered total blindness on the right eye and that the operation would not result in any improvement on the eye. In such a case, there was no basis in allowing the award. It is hereby set aside.
8. In respect to the award of Kshs. 4,000,000/= on general damages, suffice to say that the Respondent had pleaded and submitted for separate awards under three heads of damages being pain, suffering and loss of amenities, loss of future earning capacity and loss of earnings. The Appellant also tendered its submissions against each of the heads. However, in its judgment, the trial Court, respectfully so, made the impugned global award without stating whether the sum included all the three heads as submitted for and against by the Respondent.
9. Whereas a trial Court while assessing damages has the option of granting a global sum instead of making awards on separate heads, in instances where the parties have specifically submitted for separate awards and the trial Court opts for a global award, the Court is under a legal obligation to ascertain the head or heads included in the global award and to give reasons thereto. For instance, in the case at hand, the Court ought to have ascertained which of the three heads of damages sought were/was part of the global award. That clarity is important since each head of damages calls for a different degree of proof.
10. As it now is, it is unclear whether the global sum related only to damages for pain, suffering and loss of amenities or damages for loss of future earning capacity and/or damages for loss of earnings. Be that as



it may, the Court awarded the sum of Kshs. 4,000,000/=. It is now for this Court to ascertain whether the award is commensurate to the injuries sustained.

11. There is no doubt the Respondent sustained some injuries. He suffered a moderate head injury and lost his right eye. The degree of permanent incapacity in the right eye was assessed by both Doctors at 30%. At the age of 40 years, the Respondent was married with two children. He was unemployed and was a general casual worker. The loss of eye would, no doubt, drastically affect his ability to undertake most of the menial jobs and as such his earning capacity was diminished. The Respondent was, hence, entitled to damages for pain, suffering and loss of amenities and damages for loss of future earning capacity. He was not entitled to damages under the limb of loss of future earnings which are in essence special damages which were not proved. Therefore, the awarded sum of Kshs. 4,000,000/= was in respect of damages for pain, suffering and loss of amenities and damages for loss of future earning capacity.
12. This Court has considered the decisions referred to by the parties before this Court and also before the trial Court alongside other relevant decisions. The Court is convinced that the award of Kshs. 4,000,000/= was excessive in the circumstances of this matter. A global award of Kshs. 2,500,000/= would adequately and reasonably compensate the Respondent.
13. Having dealt with the two main issues at hand, this Court now makes the following final orders: -
 - a. The appeal is allowed.
 - b. The award of Kshs. 213,000/= on future medical expenses is hereby set-aside and is dismissed.
 - c. The award of Kshs. 4,000,000/= on general damages is hereby substituted with the sum of Kshs. 2,500,000/=.
 - d. Special damages at Kshs. 5,500/=.
 - e. Costs of the appeal to the Appellant.
 - f. For clarity, the Appellant shall bear the costs of the primary suit.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Omagwa, Learned Counsel for the Appellant.

Mr. Ngige, Learned Counsel for the Respondent.

Michael – Court Assistant.

