



Jelle v Kitsao (Civil Appeal E152 of 2023) [2025] KEHC 3577 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E152 OF 2023**

M THANDE, J

MARCH 14, 2025

BETWEEN

SAMEY JELLE APPELLANT

AND

JEFFA CHARO KITSAO RESPONDENT

*(An Appeal from the judgment of Hon. Ritab Amwayi P. M.
delivered on 11.10.23 in Kaloleni PMCC No. E166 of 2021)*

JUDGMENT

1. The Respondent herein filed suit against the Appellant, claiming both general and special damages arising from a road traffic accident that occurred on 15.7.21 along Nairobi-Mombasa Highway. He alleged that on reaching Bonje area motor vehicle registration number KBM 785G in which he was travelling, got a tyre burst and veered off its lane and collided with a trailer. As a result, the Respondent sustained serious injuries.
2. Following hearing the trial magistrate entered judgment in favour of the Respondent as follows:
Liability against the Appellant 100%
General damages Kshs. 250,000/=
Future medical expenses Kshs. 40,000/=
Special damages Kshs. 2,000/=
Total Kshs. 292,000/=
Costs and interest at court rates.
3. The Appellant filed the Appeal herein, challenging the decision of the trial court on the grounds reproduced hereunder:



1. The Learned Trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the respondent.
 2. The Learned Trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages especially soft tissue injuries:
 3. The learned trial magistrate erred and misdirected herself by awarding an excessive sum in respect of damages which was inordinately high for soft tissue injuries in the circumstances occasioning a miscarriage of justice.
 4. The learned trial magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 5. The Learned trial magistrate erred and misdirected herself by ignoring the defendant's submissions on record hence arriving a wrong decision in awarding damages.
 6. The Learned trial magistrate erred and misdirected herself by ignoring the evidence of witnesses on record especially the police officer hence arriving a wrong decision in awarding damages.
4. The Appellant prayed that the appeal be allowed with costs and that the judgment delivered on 11.10.23 be set aside and costs be reassessed.
5. I have re-examined the entire record and given due consideration to the submissions by the parties' respective counsel. This being a first appeal, the Court is under a duty to reconsider and re-evaluate the evidence and draw its own conclusion. However, the Court must make due allowance with respect to the fact that it has neither seen nor heard the witnesses. These principles were set out in *Selle and another –vs- Associated Motor Boat Company Ltd.& Others* (1968) EA 123 by Sir Clement De Lestang, V. P. as follows:

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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 made due allowance in this respect.

6. The Appeal challenges the trial court's award only on general damages.
7. The Appellant contended that the Respondent sustained soft tissue injuries which had healed with no permanent disability, as indicated in Dr. Darius Wambua Kiema's medical report. As such the amount awarded of Kshs. 250,000/= as general damages was excessive and the Appellant proposed the sum of Kshs. 100,000/= as adequate compensation. Reliance was placed on several cases including *HB (Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another* [2021] eKLR where the High Court upheld an award of Kshs. 60,000/= for soft tissue injuries to the head, thorax, abdomen and limbs. Also relied upon was the case of *Eddah Wangui Murimi v Nairobi Sports House Ltd NYR HCCA No. 11 of 2003* where the sum of Kshs. 100,000/- was awarded for the plaintiff who sustained multiple soft tissue injuries and also lost 3 upper incisor teeth, and *Asad Motors Limited & 2 others v Yaa (Civil Appeal 92 of 2022)* [2023] KEHC 24279 (KLR) (24 October 2023) (Judgment) in which Kshs. 100,000/= was awarded for deep cuts on the forehead and upper lip, blunt object injury and bruises to right lower limb and loosening of upper front tooth. The Appellant further cited the case of *Rege v LA (Minor suing through her father and next friend GAA) (Civil Appeal E111 of 2021)* [2022] KEHC 16634 (KLR) (20 December 2022) (Judgment) in which an award of Kshs. 300,000/= for blunt trauma to the neck, chest and abdomen was set aside and replaced with Kshs. 80,000/=.



8. For the Respondent, it was submitted that the award by the trial court was sufficient and guided by the evidence presented before it and existing principles of law. Further that the authorities cited by the Appellant are of lesser soft tissue injuries with no loss of teeth which has occasioned cosmetic embarrassment to the Respondent.
9. The record shows that the Appellant sustained bruises and abrasions to the nose, scalp, left knee and right leg. He also lost 2 upper teeth.
10. A medical report dated 2.8.21 by Dr. Kiema indicated that the Respondent's injuries were soft tissue and had healed with no permanent disability. The report however noted that the Respondent would incur future costs for dental care estimated at Kshs. 40,000/= for replacement of the lost teeth.
11. In the impugned judgment, the trial court relied on the cases of *Kiwanjani Hardware Ltd & another v Laban Kiilu Muthoka* [2008] eKLR where it said that an award of Kshs. 250,000/= was given. In that case, the injuries suffered by the plaintiff were injury to the right eye with subconjunctival haemorrhage, cut wound on the left jaw, blunt injury to the mouth with loss of the upper incisor tooth, blunt injury to the neck, blunt injury to the right side of the chest, colles fracture of the right arm and cut wound on the right wrist over the fractured bones. A careful reading of the judgment however shows that contrary to what the trial court said, the award of Kshs. 250,000/= was found to be excessive and set aside. The Court was of the view that an award of Kshs.175,000/= was reasonable. After considering the said authority, I am of the view that the same was not relevant as the injuries sustained in that case were much more serious than the injuries herein. For the reasons given, the trial court misdirected itself by relying on this authority.
12. Both parties also relied on the case of *Power Lighting Comp. Ltd & another v Zakayo Saitoti Naingola & another* [2008] eKLR, where Nambuye, J. (as she then was) listed the following principles on assessment of damages:
 - (1) Damages should not be inordinately too high or too low.
 - (2) They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered.
 - (3) Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
 - (4) Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of the Kenyan shillings, then at the time of the judgment.
13. I have considered the authorities cited by the Appellant and note that in most of them, the injuries did not include lost teeth. Guided by the principles set out in *Power Lighting Comp. Ltd* (supra) I do find that the 2003 case of *Eddah Wangui Murimi* (supra) to be most relevant as the injuries therein are comparable to those herein. Taking into account the element of inflation over the period of about 8 years from 2003 when that case was decided, to 2021 when the case herein was decided, I do find the award of Kshs. 250,000/= as general damages to be reasonable compensation.
14. The upshot is that the Appeal fails and is dismissed with costs to the Respondent.

DATED SIGNED AND DELIVERED IN MALINDI THIS 14TH DAY OF MARCH 2025.

M. THANDE

JUDGE

