



REPUBLIC OF KENYA



Gatheru v Chege (Civil Appeal 7 of 2020) [2025] KEHC 6106 (KLR) (7 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 7 OF 2020
CW GITHUA, J
MAY 7, 2025**

BETWEEN

JOSEPH GITHANGA GATHERU APPLICANT

AND

MICHAEL NGARIYU CHEGE RESPONDENT

*(Being an appeal from the judgement and decree of Hon. Mr E. Muriuki
(PM) in Murang'a CMCC No.192 of 2017 dated 30th June 2020)*

JUDGMENT

1. This appeal is against the quantum of damages awarded to the respondent by the trial court in Murang'a CMCC No.192 of 2017. The respondent had sued the appellant in the lower court seeking general and special damages following personal injuries he sustained in a road traffic accident on 9th September 2016 which accident was blamed on the appellant's negligent driving of Motor vehicle Registration No.KBY 675 Q (the suit vehicle).
2. In the suit, the appellant denied liability but after a full hearing, the trial court found him 100% liable for the accident and proceeded to award the respondent Ksh.800,000 as general damages and Kshs.3,550 as special damages.
3. The appellant was aggrieved by the trial court's judgement on quantum of general damages hence this appeal. In his memorandum of appeal dated 14th July 2024, he advanced three grounds of appeal in which he complained as follows:
 - (i) That the learned trial magistrate erred in law in awarding Ksh.803,000 as general damages which was excessive considering the injuries sustained by the respondent.
 - (ii) That the learned trial magistrate erred in law and fact by failing to consider the appellants written submissions and authorities cited in support thereof.



- (iii) That the judgement of the trial court was against the law and weight of the evidence on record.
4. The appeal was prosecuted by way of written submissions. In submissions filed on his behalf by J.K. Kibicho & Company Advocates, the appellant restated the injuries suffered by the respondent and argued that the award of Kshs.800,00 was inordinately high given that the fracture the respondent had sustained reunited without deformities. The appellant urged the court to set aside the award and substitute it with an award of Ksh.400,000 relying on four authorities namely;
- i. Ndunga & Another v Mukimba Civil Appeal No.E006 of 2022 [2022] KEHC 11793 Kira;
 - ii. Daniel Otieno Owino & Another v Elizabeth Atero Awuor [2020] eKLR;
 - iii. Atunga v Mogambi (Civil Appeal No.E009 of 2021) [2022] KEHC 9854 KLR and;
 - iv. Herbert Otara Mambo v Dankan Ochora [2022] eKLR

In the above authorities, the High Court reduced awards made by the trial court to sums ranging from Ksh.500,000 to Kshs.400,000 for injuries which, according to the appellant, were comparable to those sustained by the respondent in this case.

5. The respondent in submissions filed on his behalf by J.N. Mbuthia & Company Advocates supported the trial court's award and disputed the appellant's claim that it was excessive. The respondent submitted that given the nature and extent of the respondent's injuries, the award was not inordinately high as to warrant this courts intervention. In support of his submissions, the respondent relied on the authority of Francis Ndungu Wambui & 2 others v v. K. (a minor suing through the next friend and mother MCWK [2019] eKLR in which the High Court sustained an award of Ksh.1,000,000 for a claimant who had sustained soft tissue injuries to the hands, compound fracture of distal tibia fibula shaft and loss of consciousness for 30 minutes.
6. As the first appellate court, I am conscious of my duty to revisit and re-evaluate the evidence on record and to arrive at my own independent conclusion regarding the soundness or otherwise of the trial court's decision bearing in mind that I did not have the advantage of hearing and seeing the witnesses. See: *Selle & Another v Associated Motor Boat Co. Ltd* [1968] EA 123.
7. This being an appeal on quantum, it is important to state at the outset that it is now settled law that this court's mandate to interfere with an award made by a trial court is not unlimited. The High Court's mandate on appeal is limited to specific circumstances since as a general rule, damages for personal injuries are at large and they depend on the discretion of the trial court. The Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 expressed itself on the subject when it stated as follows;

“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”

8. Further, an appellate court should not substitute a figure of its own with that awarded by the trial court simply because it would have awarded a different figure if it had tried the case in the first place. In a nutshell, to justify interference with a trial court's award, the appellate court must be satisfied that in making the award, the trial court erred by either misapprehending the evidence on record or by applying wrong legal principles or considering irrelevant factors and thereby arrived at a figure which



was so inordinately high or low as to represent an erroneous estimate of the damage suffered- See: Catholic Diocese of Kisumu v Sophia Achieng Tete [2004] eKLR.

9. In this case, it is not disputed that the respondent sustained the following injuries;
 - a) Fracture of the right tibia bone
 - b) Multiple bruises on right leg
 - b) Multiple lacerations on the left leg at the ankle (foot)
 - d) Bruises on both hands and fingers
10. According to the medical report dated 25th May 2017 produced as P.Exhibit 4 by Dr. P.K. Mwangi who testified in the trial court as PW2, the respondent's fracture healed but with delayed bone union. PW2 opined that the respondent had a deformity on the upper third of the right leg and that the affected bone will suffer from early osteoarthritis while the lacerations and bruises would leave residue scars.
11. From the grounds of appeal, the parties written submissions and the evidence on record, it is clear that the injuries suffered by the respondent were not disputed. What is disputed is the level of compensation the respondent was entitled to given the nature and extent of his injuries.
12. In the exercise of its discretion when assessing general damages for personal injuries, the trial court is enjoined to do its best to arrive at a fair award taking into account the nature and gravity of injuries sustained by the claimant and comparable awards made in the past for comparable injuries. It must however be remembered that no two cases can be exactly alike and each case must therefore be decided on its own merit.
13. In this case, although the learned trial magistrate in his brief judgement did not specifically state the specific authorities he relied on to arrive at his impugned decision, he made general reference to the authorities cited by both parties and the medical evidence on record as a basis for his award. The learned trial magistrate did not however give reasons to justify his conclusion that an award of Ksh.800,00 was fair and reasonable compensation for the respondent's pain and suffering owing to the injuries sustained in the accident.
14. I must state that failure by the learned trial magistrate to give reasons to support his decision was in my view an error of omission which denied this court an opportunity to analyse the decision to determine whether or not it resulted from proper or improper exercise of his discretion. Trial courts are encouraged to always endeavor to give reasons for their decisions which would assist appellate courts to make fair and just determinations in appeals of this nature.
15. That said, I have considered the submissions made on behalf of the parties, the authorities cited by both parties and the evidence on record. Having done so, I find that the injuries sustained by the claimants in the authorities cited by the appellant though comparable to those sustained by the respondent were less severe since they completely healed without residue disabilities or deformity. The respondent's injuries were more serious given that they resulted in some deformity on the right leg which was apparently insignificant considering that PW2 did not find it necessary to disclose its nature and extent. According to the medical report, the respondent was also going to develop early osteoarthritis on the affected bone.

I find the authority cited by the respondent more relevant though the claimant's fracture in that case appears to have been more severe considering that there was a risk of secondary stress fracture on the same site.
16. It is noteworthy that the authorities relied on by the appellant were decided between 2020 and 2022 while the authority relied on by the respondent was decided in the year 2019. The trial court's



judgement was delivered on 30th June 2020. Taking all relevant factors into account including previous awards made for comparable injuries, it is my finding that a sum of Kshs. 600,000 would have sufficiently compensated the respondent for his pain and suffering. The award of Kshs. 800,000 by the trial court at the time it was made was excessive in the circumstances of this case and the same is hereby set aside. It is substituted with an award of Kshs. 600,000.

17. Since the award of special damages was not contested on appeal, the same shall remain undisturbed. The total sum payable to the respondent by the appellant is therefore Ksh.603,550 together with interest at court rates from the date of judgement of the trial court.
18. As the appeal has partially succeeded, each party shall bear its own costs of the appeal but the appellant shall bear the respondent's costs in the lower court.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 7TH DAY OF MAY 2025.

HON. C. W. GITHUA

JUDGE

In the presence of :

Mr. Ndonga Holding brief for Mr. Mbuthia for the respondent

No appearance for the Appellant

Ms. Susan Waiganjo, Court Assistant

