Karanja & another v Oloo (Civil Appeal E003 of 2024) [2025] KEHC 5715 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5715 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

CIVIL APPEAL E003 OF 2024

JK SERGON, J

MAY 8, 2025

BETWEEN

GEOFFREY GITHAIGA KARANJA ..... 1ST APPELLANT

JOHN NGURU MAINA ..... 2ND APPELLANT

AND

CHARLES OUNDO OLOO ..... RESPONDENT

(Being an appeal on quantum against the judgment delivered by the Honourable C. Obulutsa (Chief Magistrate) delivered on 16/1/2024 vide Kericho CMCC No. 76 of 2019)

JUDGMENT

1. The Respondent herein was the Plaintiff in the original suit while the Appellants were the Defendants; and the cause of action was one arising from a road traffic accident as per the Plaint. The suit in the lower court was heard and determined and liability apportioned in a judgment entered on 16/1/2024 vide Kericho CMCC No. 76 of 2019, where the appellants were held 100% liable and the plaintiff awarded an aggregate sum of Kshs. 1,006, 650/- to wit general damages of Kshs. 800,000/= and Kshs. 200,000/- as future medical expenses.

2. The Appellants, dissatisfied with the judgment and decree of the trial court, preferred an appeal and filed a memorandum of appeal dated 8th February, 2024. The Appellants being aggrieved and dissatisfied by the said judgment appealed from the whole judgment in respect of quantum and liability on various grounds namely: -

    i. That the Learned Magistrate erred in law and in fact in awarding the sum of Kshs. 800,000/= as general damages, an award which was so excessive as to amount to an erroneous estimate of loss or damages suffered by the plaintiff.

ii. That the learned trial magistrate erred in law and fact by awarding future medical expenses of Kshs. 200,000/= an award which was so excessive as to amount to an erroneous estimate of loss or damages suffered by the plaintiff.

iii. That the Learned Magistrate erred in law and in fact in relying on extraneous circumstances not supported by the evidence on record.

iv. That the Learned Magistrate erred in law and in fact in over relying on the respondent's evidence and submissions.

v. That the Learned Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.

3. The matter came up for hearing and this court directed that the appeal be disposed of by written submissions.

4. The Appellants submitted on the duty of the first Appellate Court which was defined in the case of Abok James Odera T/a A.j.odera & Associates v John Patrick Machira t/a Machira & Co. Advocates[2013] eKLR as follows:- "On a first appeal from the High Court, the Court of Appeal should 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 make due allowance in that respect. Secondly, the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence." The Appellants therefore urged the court to reconsider the evidence on record.

5. The Appellants contended that the injuries sustained by the respondent were not severe to warrant the award of Kshs. 800,000/= as general damages and further that the decision was contrary to the parameter of 'comparable injuries to attract comparable awards.

6. The Appellants contended that the Learned Magistrate gave a manifestly excessive and inordinately high award and that being the case, it ought to be re-assessed. The appellants reiterated that the trial court proceeded on wrong principles and misapprehended the evidence thereby arriving at an amount that was inordinately high and therefore urged this Honourable Court to be inclined in setting aside entirely the said award. They cited the case of Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A M Lubia and Olive Lubia [1982-88] 1 KAR 727. Kneller JA, at page 730, stated as follows:- "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."

7. The Appellant contested the award of Kshs. 200,000/= for future medical expenses as inordinately high and that whereas Dr. Morebu in his medical report recommended Kshs. 200,000/= for future medical expenses, Dr. Jenipher Kahuthu recommended Kshs. 120,000/= for future medical expenses. Dr. Jenipher Kahuthu's recommendation was supported by a letter from Kenyatta National Hospital which is on page 17 of the record of appeal whereas Dr. Morebu did not furnish any supportive document to support his recommendation and in awarding Kshs. 200,000/= as recommended by Dr. Morebu, the trial court clearly preceded on wrong principles and misapprehended the evidence thereby arriving at an amount that was inordinately high.

8. The appellants reiterated that the award of general damages and future medical expenses was not founded on any legal principle and was inordinately high. In the premises, they submitted that the

same ought to be set aside forthwith and that should this Court decide not to entirely set aside the award made by the Learned Magistrate they urged the court to reassess the same and proceed to vary the award of general damages of Kshs. 800,000/= with a lower sum of Kshs. 350,000/= and the award of future medical expenses of Kshs. 200,000/= to Kshs. 120,000/=.

9. The Respondent filed submissions and reiterated that this being a first appeal, this Court is at liberty to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded as it indeed was. They cited the holding in Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123, thus: "...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court... is by way of retrial and the principles upon 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 make due allowance in this respect..."

10. The respondent contended that from the Memorandum of appeal, it would appear that the appellant is dissatisfied and contests the trial court's findings both liability as well as quantum of damages. The respondent contended that by the time the trial court retreated to do its judgement, it was no longer in dispute that an accident did indeed occur as was pleaded and that as a direct consequence, the respondent sustained severe bodily injuries causing him much pain, suffering and loss. And that the suit motor vehicle was the property of the appellants jointly and severally and further that it was the case of the respondent that on the fateful day and time, he was lawfully aboard the appellants' motor vehicle in question which was so negligently driven, controlled and /or managed that it caused a road traffic accident involving the on - coming motor vehicle Reg.No. KCA 722H; causing the respondent severe bodily injuries, pain, suffering and loss. It was against the above backdrop, the trial magistrate reached his decision which was not only balanced but also reasoned and tenable and the respondent listed the documents it relied on in its case against the appellants to wit; a police abstract, treatment notes, discharge summary, medical reports and bundle of receipts.

11. The respondent contended that the degree of injury sustained by the respondent was discernible from Dr. Morebu's report [Produced as Exhibit] which confirmed that the respondent sustained injuries for which he was admitted in hospital for treatment. The medical examination report (P3 Form) also produced as [Exhibit 3] also confirmed the same as well as treatment notes together with x-ray request form produced as exhibits. Consequently, the issue of whether or not the respondent suffered injuries is not in dispute and the respondent sustained the following injuries:

    a. Fracture of the left ulna;.

    b. Fracture of the left radius and

    c. Fracture of the right malleolar. The respondent cited the case of George William Awuor v Beryl Awuor Ochieng [2020] eKLR, Justice R.E Aburili awarded the sum of Kshs.1.2 Million in general damages for pain, suffering and loss of amenities for comparable injuries, having considered a string of earlier decisions.

12. The respondent contended that in the present appeal, it is not demonstrated that the trial magistrate applied or acted on the wrong principles, or awarded so excessively as no reasonable court would, or took into consideration matters which he ought not to have considered or never took in consideration matters he ought to have considered or never took in consideration matters which he ought to have taken into consideration, and in the result, arrived at a wrong decision. The respondent cited the case of *Mariga v Musila Nairobi Civil Appeal No.66 of 1982* & 88 of 1983 [consolidated] [1984] KLR, where the court held that an assessment of damages is more like an exercise of discretion by the trial Judge and an appellate court should be slow to reverse the trial Judge unless he has either acted on

wrong principles or awarded so excessive or so little damages that no reasonable court would or; he has taken into consideration matters he ought not to have considered; or not taken into consideration matters he ought to have considered, and in the result, arrival at a wrong decision. The respondent finally urged this Court to dismiss the Appeal with costs.

13. Having considered the grounds in the memorandum of appeal, record of appeal and the submissions by the parties the issue (s) for determination is whether the award of Kshs. 800,000/= is inordinately high and the award of Kshs. 200,000/= is inordinately high and therefore not founded on any legal principles. I have considered the submissions by parties to arrive at a fair and just determination.

14. On the issue as to whether the general damages awarded were excessively high thereby warranting interference of this court, this court has considered comparative awards in the following cases; *Sese v TN [Minor suing thro' her next friend WMO] [Civil Appeal 25 of 2022*] [2023] KEHC 24692 [KLR], the Respondent sustained soft tissue injury of the head, neck, back and right forearm, fracture of the right forearm and fracture of the right leg [medial malleolus] and the High Court upheld the Trial Court's award of Kes. 800,000/-

    Titus v Ikonze [Civil Appe*al 53 of 2019*] [2021] KEHC 345 [KLR], where the respondent suffered fracture of the right distal radius, dislocation of the right ankle, and other soft tissue injuries. The Appellate Court awarded 800,000/= as general damages. It is, therefore, my considered view and decision, that a general award of Kshs. 800,000/= as made by the trial court in the case before me, is reasonable in the circumstances of the case.

15. On the issue as to whether the trial court erred in awarding Kshs. 200,000/= as future medical expenses, this court considered the case of Kenya Bus Services Ltd v Gituma [2004] 1 EA 91, where the Court of Appeal, stated as follows: - 'And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereon is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from the infringement of a person's legal right should be pleaded.' The plaintiff stated in the plaint that, he was claiming for costs of future medical expenses and therefore put the defendants on knowledge thereof and the said claim was supported by Dr. Morebu who had prepared the medical report, which report was admitted in evidence and not challenged. I therefore find no reason to interfere with the trial court's award on the same.

16. In an upshot, I find that the appeal lacks merit and it is hereby dismissed with costs to the respondent.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF MAY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Ongwacho for the Appellant

Nyatundo for the Respondent