



REPUBLIC OF KENYA



KENYA LAW
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Kheri v Kubai (Civil Appeal E051 of 2023) [2025] KEHC 6385 (KLR) (2 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E051 OF 2023**

JM OMIDO, J

MAY 2, 2025

BETWEEN

KIRIMI MAINGI KHERI APPELLANT

AND

SEBARA KAWIRA KUBAI RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. E.K. Chesoni, Resident Magistrate delivered on 16th March, 2023 in Maua CMCC No. E219 of 2021)

JUDGMENT

1. This appeal emanates from the judgement and decree of Hon. E.K. Chesoni, Resident Magistrate, delivered on 16th March, 2023 in Maua CMCC No. E219 of 2021.
2. The grounds of appeal presented by the Appellant vide the Memorandum of Appeal dated 5th April, 2023, upon which he seeks to upset the judgement and decree of the lower court, are as follows:
 1. The learned trial Magistrate erred in law and in fact in awarding the Respondent Ksh.400,000/- in general damages for pain and suffering which are inordinately high and wholly unsupported by the facts of the case, the evidence tendered by the parties, the principles of law and the applicable judicial precedents, therefore the same are erroneous and have occasioned a miscarriage of justice.
 2. The learned trial Magistrate erred in law and in fact in awarding Ksh.72,990/- special damages by failing to consider that the receipts that were produced were illegible and did not bear the mandatory stamp duty revenue stamps.
 3. The learned trial Magistrate erred in law and in fact by failing to consider the Appellant's authorities in their submissions on quantum hence arriving at an erroneous decision.



4. The learned trial Magistrate erred in law and in fact in failing to consider the Appellant's documents that were filed and produced in court.
5. The learned trial Magistrate misdirected himself as to the facts of the case, thus arriving at an erroneous decision.
6. The Honourable trial Magistrate's judgement as a whole is not supported by the evidence that was tendered in court by the parties.
3. The Appellant proposes that the Appeal be allowed with costs to the Appellant and that the award on quantum made in favour of the Respondent be set aside and that this court proceeds to make its own assessment on the same.
4. 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 7th November, 2020 in which the Respondent sustained bodily injuries. The matter was defended and went to full trial.
5. In the judgement delivered on 16th March, 2023, 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 – apportioned by consent at 85%:15% in favour of the Respondent and against the Appellant. Special damages – Ksh.72,990/-. General damages for pain, suffering and loss of amenities – Ksh.400,000/-.
6. The Respondent was also awarded costs of the suit and interest thereon at court rates and on the awards of damages.
7. 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.
8. One will notice that the grounds of appeal are in respect of quantum only, challenging the trial court's findings with regards to the head of general damages for pain, suffering and loss of amenities and special damages. The trial court's finding on liability is not challenged, for good measure, as the same was premised on the parties' consent recorded on 19th January, 2023 and adopted by the court in its terms.
9. Other than an agreement on the issue of liability, the parties further agreed in the consent that the Respondent's statement would be deemed as her evidence and the documents in her filed list of documents would be deemed as produced as exhibits and both the Respondent's and the Appellant's case would stand closed.
10. 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.
11. 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.”

12. 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 and special damages), the relevant evidence is that contained in the statement of the Respondent and the contents of her documents that were produced pursuant to the consent. I take it, in the premises, that the evidence of the Respondent as contained in her statement and the contents of her documents were not challenged through cross examination. Noteworthy is the fact that the Appellant did not present any evidence or produce any document.
13. The Respondent stated that the accident in question occurred on 7th November, 2020. She stated that she was injured.
14. Among the documents that the Respondent produced were a P3 form dated 11th January, 2021, a medical report dated 17th July, 2021 and a receipt thereof for Ksh.50,000/-, treatment related receipts for a total amount of Ksh.3,130/-, an invoice for Ksh.8,000/-, a receipt for Ksh.10,000/- charged for a demand letter and a receipt for Ksh.760/- for postage of the same and a receipt for Ksh.1,100/- for obtaining copies of records.
15. As per the medical report, the Respondent sustained the following injuries: Facial deep laceration at the frontal region. Soft tissue injury to the anterior chest wall.
16. I have considered the grounds of appeal as set out in the Memorandum of Appeal, the submissions by the parties herein and the record of the lower court. The single issue for determination, as discernible from the submissions is whether the award of general damages for pain, suffering and loss of amenities and the award of special damages were so inordinately high or excessive so as to reflect a wrong estimate of the Respondent’s entitlement in recompense.
17. 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.”

18. 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.”

19. 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.”

20. 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.

21. If anything, the learned trial Magistrate was clear that he was guided by comparable trends in decided cases. The trial court considered the nature and extent of the injuries. There is therefore in my view no basis upon which I can interfere with the discretion of the trial court in assessing general damages for pain, suffering and loss of amenities.

22. Being of the foregoing persuasion, I reach the result that the appeal against the award of the trial court under the head of general damages for pain, suffering and loss of amenities is without merit.

23. In respect of special damages, the applicable rule of evidence is that the same must be specifically pleaded and strictly proved (see *Equity Bank Limited v Gerald Wang’ombe Thuni* [2015] eKLR.)

24. The Respondent pleaded the following items under the head of special damages:

- a. Medical report Ksh.50,000/-.
- b. Demand notice Ksh.10,000/-.
- c. Postage charges Ksh.760/-.
- d. Motor vehicle search Ksh.1,100/-.
- e. Medical/hospital expenses Ksh.11,130/-.

Total Ksh.72,990/-.

25. The Respondent produced receipts in support of items (a) to (d) above and the same were not challenged.



26. But then, the Appellant challenged the admissibility of the receipts as the same had no revenue stamps. Under Section 88 of the *Stamp Duty Act*, the obligation to affix a revenue stamp on a receipt is in law placed upon the person issuing the receipt and not the person to whom it is issued. To decline admission of such receipts would be therefore to punish an innocent party.

27. The issue was aptly addressed by Sila J, in the case of Jackson Kariuki Kahungura & another v John Karanja Kihagi & 5 others [2018] eKLR in which the court observed as follows:

“71. From the above, the duty to stamp the receipt is not that of the recipient but that of the issuer of the receipt. One could object to production of the receipt if not stamped, so that it may be stamped, but once introduced as evidence, the court cannot close its eyes and assume that no such expense was ever incurred. This indeed appears to be the approach taken by several judges. In the case of Beatrice Ndungwa Makau vs Nairobi City Council & Another, High Court at Nairobi, Civil Appeal No. 1 of 2007, (2012) eKLR, the trial magistrate court refused to make an award of special damages on the reason that the receipts produced were not stamped. On appeal, Onyancha J, stated as follows:

“In rejecting the evidence contained in the receipts produced by the appellant, the trial magistrate used the ground that the receipts were not revenue-stamped. However, that reason was one for rejecting the receipts from being produced. However, neither the Respondents nor the court objected to production. Once the evidence was properly produced in my view, it would be difficult for the court to close its eyes and brain to the evidence they contained or represented. In my opinion, the court should not have ignored properly admitted evidence of the appellant, which were in any case, not rejected by the Respondents.”

72. The learned Judge proceeded to make the award on special damages based on these unstamped receipts.

Emukule J, in the case of Benedeta Wanjiku Kimani (Suing as the administrator of the Estate of Samwel Njenga Ngunjiri (deceased) vs Changwon Cheboi & Another, High Court at Nakuru, Civil Suit No. 373 of 2008 (2013) eKLR also faced a situation where a claim for special damages was made and the receipts produced did not have revenue stamps.

The judge was of the following view:

“I have indeed looked at the invoices, and receipts, and they indeed do not appear to bear any copy of a revenue stamp affixed to them. That does not however conclusively determine that the Plaintiff did not pay for the various services rendered in the course of the deceased's hospitalization, or for his funeral expenses.

In my view it is the duty of the receiver of the revenue and not the payer to affix the revenue to receipt of all the prescribed amounts. It is the receiver of such payments who should be interrogated and not the poor widow who would be mourning her husband and cannot be penalized for failing to ascertain whether the receipt she was



receiving in acknowledgment of the payments she was making had a revenue stamp affixed on them. Lastly having admitted the receipts by consent, the Defendant's counsel is estopped from challenging their admission by way of submission.

In the result therefore, I allow plaintiff's claim in the sum of Ksh 75,650/= as special damages.

73. What transpired above is what we have in this case. There was no objection to the production of the receipts, and I am in agreement, as averred by Emukule J above, that the defence is now estopped from challenging them at this stage.
74. In my humble view, courts need to be slow before denying someone an award for money that he must have spent, just because a receipt, for which the duty to stamp is not his, has not been stamped. Why should the court prejudice you for the omission of somebody else and on something that you have no duty to do? If say, you broke your leg following an accident, and there is ample and undisputed evidence that you spent so many nights in a hospital, and you underwent surgery, and you spent Kshs. 500,000/= for which the hospital has issued you with a receipt but has not stamped it, surely should you be denied this money, of which there is no doubt that you have spent, just because the hospital has not stamped the receipt? We have to look at the justice of the case and not technicalities. Maybe the most I can do, if there is an objection at the time of production, is to ask you to ensure that the receipt will be stamped.
75.
76. Thus, the objection that this court cannot make an award based on the contention that some receipts were not stamped, must fail. My conclusion on this point is that the plaintiff has proved damages in the sum of Kshs. 8,037,309.88/=".

28. My persuasion therefore is that the learned trial Magistrate correctly awarded the amounts in the receipts that did not have revenue stamps. I need not say more.
29. In respect of item (e), the Respondent produced receipts for a total of Ksh.3,130/- and an invoice for Ksh.8,000/-. There was no corresponding receipt to prove that the invoiced amount of Ksh.8,000/- was paid. Thus then, the total amount pleaded and proved for medical expenses was Ksh.3,130/-. The learned trial Magistrate therefore fell into error in awarding the amount in the invoice, which was not strictly proved.
30. Having said the foregoing, I will allow the appeal only to the extent that I set aside the amount of Ksh.72,990/ awarded under the head of special damages and substitute the same with the amount of Ksh.64,990/-. The said amount is to be subjected to the agreed apportionment, hence less the agreed 15% contribution, to make a figure of Ksh.55,241.50/-. The other findings of the trial court remain undisturbed.
31. On costs, Section 27 of the *Civil Procedure Act* dictates that costs ought to follow the event. To that end then, as the appeal is only partly successful, each party shall bear their own costs.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 2ND DAY OF MAY, 2025.

JOE M. OMIDO



JUDGE

For Appellant: No appearance.

For Respondent: No appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

