



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Okwako v West Kenya Sugar Company Limited & another (Civil Appeal
E111 of 2024) [2025] KEHC 8027 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E111 OF 2024**

S MBUNGI, J

MAY 13, 2025

BETWEEN

JOSEPH OMBAGO OKWAKO APPELLANT

AND

WEST KENYA SUGAR COMPANY LIMITED 1ST RESPONDENT

ROBINSON SECURITY GROUP 2ND RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon REUBEN S. KIPNGENO,
Principal Magistrate in Butali SPMCC No. 122 of 2017 delivered on 21.5.2024)*

RULING

1. This appeal emanates from the Judgment of Hon. Reuben S. Kipngeno, Principal Magistrate delivered on 21.5.2024 in Butali SPMCC No. 122 of 2017.
2. The brief background is that the Appellant herein filed the suit in Butali SPMCC No. 122 of 2017 against the Respondent vide a plaint dated 5.6.2017 seeking general damages for pain, suffering and loss of amenities, special damages and costs of the suit following a workplace related accident that allegedly occurred on 11.5. 2017 within the 1st Defendants premises.
3. The appellant alleged that on 11.5. 2017, while he was lawfully in the course of employment by the 2nd Respondent, he was allocated to guard the 1st respondents premises and while patrolling in the said premises, a stationary trailer that was loaded with sugarcane and supported by a stand suddenly slipped and crushed his left leg. The appellant held the Respondents vicariously or otherwise liable for the tortuous omissions committed on him.
4. The 1st Respondent entered appearance through the firm of Ogejo, Olendo & Company Advocates and filed a notice of change of advocates on 1.9.2017 dated 14.8.2017 and on the same date filed its



statement of defence dated 30.6.2021 traversing the allegations and averments made by the Appellant in his plaint .

5. The matter proceeded to full hearing. The parties recorded a consent on liability in the ration of 80%:20% in favour of the appellant as against the 1st Respondent and trial court was only called upon to assess the quantum. Parties were directed by the trial court to file their respective submissions on quantum. Submissions were filed and on 21.5.2024 , the trial magistrate delivered his judgment in the following terms.
 - a. Liability was apportioned in the ration of 80% : 20% in favour of the appellant against the 1st respondent as had been consented.
 - b. General damages -----Ksh . 100,000/=
Special damages-----Ksh. 6,000/=
Sub total-----Ksh 106,000/=
Less 20% contribution-----Ksh. 21,200/=
Total-----Ksh 84,800/=
 - c. The appellant was also awarded costs of the suit and interest thereon.
6. The Appellant herein was aggrieved and dissatisfied with the decision and judgment of the trial magistrate. The Appellant filed an appeal vide a memorandum of Appeal dated 13th June, 2024 challenging the decision of the trial magistrate on the quantum awarded on the following grounds:-
 - a. That the learned trial magistrate erred in law and in fact by awarding the Appellant Kshs. 100,000/= as general damages which award was inordinately low and not commensurate with the injuries that the appellant sustained.
 - b. That the learned trial magistrate erred in law and in fact by not awarding the appellant Ksh 150,000/= for future medical expenses.
 - c. That learned trial magistrate erred in not taking account the evidence presented by the appellant.
 - d. The learned trial magistrate failed to apply judicially and to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.
 - e. That the learned trial magistrate erred in law and in fact by not considering the submissions by both parties and the cited authorities.
 - f. The learned trial magistrate erred in law by applying wrong principles of law in his judgment.
7. The appellant seeks that the judgment and award of damages of the trial court delivered on 21.5.2024 be set aside and the same be substituted with a judgment and award of damages commensurate with the appellants injuries. He also prays that he be awarded special damages, future medical expenses as well as the costs of this appeal.
8. I have looked at the judgment of the lower court , the record of appeal, the Memorandum of appeal and the submissions filed by the parties.
9. This being a first appeal, the jurisdiction of this court involves the reassessment of facts and evidence in order for the court to arrive at its own independent decision. In doing so, the court is required to consider that it neither saw nor heard the witnesses testifying. In the case of Abok James Odera t/a A.J



Odera & Associates Vs John Patrick Machira & Co. Advocates (2013)Eklr. The duty of a first appellate court was summarized as follows:-

(this being a first appeal , we reminded of our primary role as a first appellate court namely, to re-evaluate, re-asses and re-analyse the extracts on the record and then determined whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way”

As such, this court is expected to reassess and re-evaluate the evidence on record and come up with a finding as to whether or not the judgment and decree of the trial court should be interfered with.

Analysis and Determination:-

10. The only issue for determination is whether the damages awarded by the trial court were commensurate to the injuries suffered by the appellant.
11. This court is alive to the rule that an appellate court does not ordinarily interfere with an award of damages made by a lower court unless the law court did not consider the appropriate principles governing award of damages.
12. I am guided by the decision of court of appeal in Bashir Butt Vs Uwais Ahmed Khan (1982 -88) KAR 5 where the court held 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 figure which was either inordinately high or low”.

13. On whether general damages awarded were inordinately low warrant interference:-

The Respondent submitted that the appellant did not prove the pleaded injuries for the doctor who treated him was not called to testify , the clinical officer PW3 who testified and produced the treatment notes did not see the appellant. Pw1 Doctor Charles Andaye only prepared a medical report , he relied on the documents prepared by the Kakamega County General Hospital , he never treated the appellant. Further the appellant did not call a specialist for bones (orthopedic), no X-rays were done or radiology to show that the amputation took place and it was as a result of the injuries.

14. As submitted by the respondent, it is true that this court did not see the appellant testify or see the amputated leg. I have gone through the discharge case summary notes produced as exhibits by PW3 the clinical officer. The notes were prepared by Dr. Nyakwara a consultant on 11.5.2017 at Kakamega County general hospital. This being a document made by a public servant is admissible as evidence. The probative value of the contents contained herein is not questionable unless proved the contents were not made by a public officer or the integrity of the contents and the officer making them is brought to question. Section 38 of the *evidence act* Cap 80 provides.” An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself admissible.”
15. The respondent did not discredit the contents of the discharge case summary , so it was right for the trial court to go by its contents in finding that actually the appellant left leg was amputated below the knee as a result of the injuries. The discharge summary clearly shows all the investigations done and the treatment given to the appellant at Kakamega County Referral Hospital.



16. Therefore the respondent having failed to discredit that piece of evidence, they cannot purport to challenge it at this level.
17. The question to answer now is whether the award of Kshs. 100,000/= awarded by the trial court was commensurate to the injuries suffered by the appellant.
18. I have looked at the judgment of the trial magistrate he states that he considered the pleadings and submissions on the record, both counsels cited authorities and submitted for an award way above Ksh 100,000/= . The respondent counsel submitted for an award of Kshs 400,000/= while the appellant submitted for an award of kshs.5,000,000/= so obviously an award of kshs. 100,000/= as general damages is way below the proposed awards by the parties. The trial magistrate did not give reasons as to how he arrived at the award of Kshs. 100,000/=.
19. I am alive to the fact that an award of damages by a trial court is an exercise of the discretionary powers conferred on the trial court and the court's business is not to enrich a victim but to do the best it can to compensate such a victim considering that no amount of money can renew or restore a physical frame that has been battered and shattered.
20. Lord Morris of Borth-y-Gest in the case of *West (H) & Son Ltd Vs Shepherd (1964) Ac 326,345* observed that:-

“but money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to awards sums, which must be regarded as giving reasonable compensation. In the process there must be endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerate extent conventional”
21. Secondly I am also alive to the fact that an appellate court should not disturb an award of damages simply because it would have awarded a different award had it been the one sitting at the trial level. see the case of *Savanna Saw Mills Ltd Vs George Mwale Mudomo (2005) Eklr*, the court stated:-

“it is trite law that the assessment of damage sis at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court simply because it would have awarded a different figure it is had tried the case at the first instance....”
22. Thirdly comparable injuries should as far as possible be compensated by comparable awards keeping in mind the level of awards in similar cases and the awards should not be against the policy and should be within what the Kenyan economy can afford.
23. Justice Nyaragi (as he then was) in the case of *Kigaragari Vs Aya (1985) Eklr* in the following terms:-

“I would express firmly the opinion that awards made int his type of cases or in any other similar ones must be seen only to be within the limits set by decided cases but also to be within what Kenya can afford. That must hear heavily upon the court. The largest application should be given to that approach. As large amounts are awarded they are passed on to members of the public, the vast majority of whom cannot just afford the burden , in the form of increased costs for insurance cover (in the case if accident cases) or increased fee”



24. Taking above into account and the recent court awards on similar injuries I find an award of Kshs.2,000,000/= reasonable award. I therefore set aside the award of Kshs. 100,000/= which was awarded by the trial court as it is inordinately low and replace it with an award of Kshs. 2,000,000/= See Mbasu & Another V Swaka (Civil Appeal E061 OF 2022) (2024)KEHC 2210 (KLR)
25. On loss of income the trial court did not talk about it in its judgment, the respondents submit that the appellant did not appeal against the failure of the trial court to award the same.
26. The role of an appellate court is to assess and re-evaluate the evidence tendered before the lower court and come to its own conclusion.
27. The appellant had pleaded the loss of income as a result of the injuries and had asked the court to be compensated for the same.
28. The appellant before the accident used to work as a security guard in the 2nd respondents company ,guarding the premises of the first respondent.
29. Following the accident he ceased working for the 2nd Respondent. The nature of injuries he sustained obviously he could not continue working as security guard.
30. In his testimony the appellant said he used to earn Kshs 9,500/= per month. The respondent has not disputed that he used to work as a security guard. A job of a security guard is so demanding it requires one to be 100% fit. Having lost part of one leg, the appellant cannot perform the job of a security guard again.
31. In the case of SJ Vs Francesco Di Nello & Another (2015) eKLR the court held that:-

“.....loss of income which may be defined as real actual loss is loss of future earnings.....
Loss of income or future earnings is compensated for real assessable loss which is proved by evidence.....”
32. I therefore hold that the appellant is entitled to a claim for loss of income/earnings.
33. The appellant is said to have been aged 25 years at the time of the accident was expected to work up to the age of 60 years or more so he had 35 years to go before he reached 60 the retirement age in Kenya.
34. The appellant counsel asked the court to adopt a multiplier of 35 years and a multiplicand of 12,926.55 the prevailing wage of a watchman at the time under the regulations of wages (general) amendment order 2017.
35. Taking into account the uncertainties in the security industry and other fragrances of life I find a multiplier of 25 years suitable and a multiplicand of Kshs.9,500/= reasonable. I therefore award the appellant loss of income at Kshs. 2,850,000/=.
36. On the claim of future medical expenses, I note the trial magistrate did not consider the claim though pleaded.
37. It is clear that appellant suffered an amputation , the medical report by Dr. Charles Andai which was produced as an exhibit said that the appellant was to require an artificial leg at estimate cost of Kshs.150,000/=. The respondent submitted that this being a special claim the appellant did not specifically plead and prove. To me one cannot give an exact figure of the future expected expenses for it depends on many dynamics i.e the status of the economy, the place where the medication is sought, etc. normally courts go by the estimates given by the doctors or award a global sum as an estimate.



38. In Forwarding Company Limited & Another V Kisilu; Gladwell (third party)(Civil Appeal 344 of 2018)(2022) KECA 96 (KLR) the court stated as follows:-
- “In the instant case, we do not agree with the finding of the learned judge that failure to plead future medical expenses would fatally affect this specific claim. To demand a specific sum to be proved specifically like special damages would be unreasonable. This is a claim for money yet spent, for money estimated to be spent depending on how the claimant’s body is responding to treatment, among other things, it is not always clear at the time of filing a case what these future costs may be. The prognosis could change for better or for worse depending on various circumstances”
39. In this case Dr. Charles Andaye in his medical report produced as Appellants Exhibit No. 1 advised that the appellant will require an artificial leg soon as the amputation stump healed at a cost of Kshs. 150,000/=
40. Having found that cost of future medical expenses awardable I do award Kshs. 150,000/= the expected cost of the artificial leg.
41. On the claim for future nursing and domestic expenses where the appellant seeks for an award of 1 million, though awardable where it is clear that an injured party needs it/ cannot survive without such care. In this case I find there is no evidence adduced in lower court to show that the Appellant actually needs such care. It is expected that when the amputated leg heals and he procures an artificial leg as advised by the doctor the appellant will almost lead a normal life, he will be able to do most of the life chores on his own. The court should always remind itself awarding of compensatory damages are not meant to enrich the party to be compensated but to enable the party to almost be able to live the kind of life the party was living before the infringement of the right complained of bearing in mind that no amount of financial compensation can replace a lost/injured part of the body.
42. On special damages the awarded 6,00,000. I have looked at the evidence adduced on the same I find only special damages of Kshs, 6,000 were proved. Therefore I will not disturb the finding of the magistrate on this. The appeal on this fails.
43. I do set aside the judgment of the lower court and enter judgment in favour of the appellant in the following terms:-
- i. General DamagesKshs. 2,000,000/=
 - ii. Special Damages.....Kshs. 6,000/=
 - iii. Loss of income.....Kshs. 2,850,000/=
 - iv. Cost of future medical expenses.....Ksh. 150,000/=
 - Total.....Kshs.5,006,000/=
 - v. Less 20% contributionKshs. 1,001,200/=
 - Total.....Kshs.4,004,800/=
44. On the cost the appellant shall have 2/3 of this appeal for his appeal on special damages failed..
45. Right of appeal 30 days explained.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 13TH DAY OF MAY, 2025

S.N. MBUNGI

JUDGE



In the presence of:

Court Assistant: Elizabeth Agong'a

Ms Alukwa holding brief for Ms Mukisu for the Appellant present online.

Ms. Mbongea for the 1st respondent present.

