Moyale Raha Bus Company & another v Waticha (Civil Appeal E110 of 2022) [2025] KEHC 8840 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8840 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL APPEAL E110 OF 2022

HM NYAGA, J

JUNE 19, 2025

BETWEEN

MOYALE RAHA BUS COMPANY ..... 1ST APPELLANT

ABAS ADAN KALA ..... 2ND APPELLANT

AND

FATUMA GUYO WATICHA ..... RESPONDENT

JUDGMENT

Background

1. The respondent commenced suit in the lower court vide a plaint dated 27th July 2020, in which she sought general and special damages as a result of injuries he sustained in a road traffic accident that occurred on 19th November, 2019 at Maili Nane, along Nanyuki-Isiolo Road.
2. After a full trial, the lower court entered Judgment against the appellants as follows:-
    a. Liability at 100% against the appellant.
    b. General damages ksh. 400,000/=
    c. Costs of future medical expenses – ksh. 30,000/=
    d. Special damages ksh. 4750
    Total ksh. 434,750/=
    e. Interest on the total award at court rates from the date of judgment.
    f. Costs of the suit to the plaintiff.
3. Aggrieved by the said judgment, the appellants filed a memorandum of appeal dated 1st August, 2022.

The Appeal

4. The memorandum of appeal set out the following grounds:-

   i. The Learned Magistrate erred in fact and in Law in awarding the respondent 100% liability as against the Appellants; ksh. 400,000/= as general damages, and ksh. 30,000 for future medical expenses which amount was exorbitantly high in the circumstances and injuries by the respondent.

   ii. The learned magistrate erred in fact and in law inholding that the respondent had proved his case on a balance of probabilities which finding was against the height of the evidence on record.

   iii. The learned magistrate erred in law and in fact when he failed to consider the appellant's evidence on points of law and facts with regard to quantum based on the injuries sustained by the respondent.

   iv. The learned magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.

   v. The learned trial magistrate erred in law and in fact in failing to pay regard to submissions and decisions filed alongside the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.

   vi. The learned Magistrate erred in fact and in law in finding that the respondent was entitled to general damages that were too high in view of the injuries suffered by the plaintiff.

5. The appellants thus sought the following prayers:-

   a. That the appellate court do set aside the learned trial magistrates judgment on quantum and replace it with its own assessment.

   b. That the appeal be allowed with costs to be borne by the respondent.

6. When the appeal came up for directions, it was directed that the same be canvassed by way of written submissions. The same have been considered.

Analysis and Determination

7. Being a first appeal, the duty of this court is to re-evaluate the evidence and come up with its own independent decision. This was the position of the Court of Appeal in *Selle v Associated motors Boat Co. Limited and others* (1968)EA 123 where it held 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 make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has 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 demeanor of a witness is inconsistent with the evidence in the case generally."

8. Similar Principles were set out in *Abok James Odera T/A A. J. Odera and Co advocates v John Patrick Machira T/A Machira & Co. Advocates* (2013) eKLR, where the court held that:-

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

9. It is noted that although the appeal is couched as being against the trial court's finding on liability and quantum, the submissions filed and the orders sought by the appellant were limited to the award of damages by the lower court.

10. In my view, an appeal on liability would not succeed, since from the evidence, the respondent was a fare paying passenger in the 1st respondent's bus. The accident was self-involving and the appellants did not adduce any evidence to rebut that of the respondent and her witnesses.

11. It would thus be my finding, looking at the evidence that the trial court was correct when it found the appellants 100% liable for the accident.

12. I will now address the real issue raised in this appeal, that of quantum.

    1. It is well settled law that assessment of damages is at the discretion of the trial court. this court will only interfere with an award of the lower court if it finds that the lower court proceeded on the wrong principles of that the award was manifestly high or low in the circumstances. This position was reiterated in *Kemfro Africa Ltd T/A Meru Express Services & Gathogo Kanini v Aziri Kamau Musika Lubia & Another* (NBI CA No. 21 of 1984) where the Court of Appeal made the following observations: -

> " The principles to be applied by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that 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 have been a wholly erroneous estimate of the damages."

    2. Similarly in *Amos Wenyere & Another v Ashford Murithi Muregi & 2 Others* [2017] eKLR the Court stated as follows: -

> " It is now a settled position that an award of damages is a matter of discretion on the part of the court seized of the matter and as in all discretionary matters the same is exercised judiciously depending on circumstances of each case but the guiding factor in regard to quantum of damages is that it should not be either too low to amount to an injustice or too high to amount to unjust enrichment of the victim. Damages should as matter of law compensate the victim and restore him or her to as much as possible to the position, he/she was prior to the accident

13. The plaintiff/respondent sustained the following injuries.

    a. Head injuries- swollen (oedematous) scalp and face

    b. Loss of two incisor teeth

c. Blunt soft tissue injuries to the neck muscle or blunt soft injuries to the left lower jaw.

14. I have considered the nature of the injuries and the authorities cited both in the lower court and in this appeal.

15. In the lower court the respondent relied on the case of *Mombasa Millers Limited v Julius Karagant Kipyegon* (2017) eKLR where the appellant sustained injuries to the neck chest, back, left shoulder joint, left hip joint, right knee and right condylar fracture. The court assessed the general damages at ksh. 400,000/= on 15th June, 2017.

16. The appellants on their part had relied on the case of *Isaac Muriungi Mbataru v Silas Kalumani* (2017) eKLR and Bungoma HCCA No. 6 of 2012 *Global Trucks Limited v Titus Osute Osoro*- where, in the latter, the court awarded the appellant ksh. 200,000/= for a fracture of the upper incisor tooth, loosen rig of the other two teeth, post-accident pain on the left elbow and the abdomen.

17. In this appeal, in the decision in Joseph Mutua Nthia (*supra*) the claimant sustained an injury to the face, loose teeth, loss of two teeth blunt chest injury and blunt back injury. The court assessed the damages at ksh. 400,000/= on 26th September, 2019.

18. Considering the nature of the injuries, I am unable to term the award by the trial magistrate as inordinately high. The fact that this court could have made a different award is not sufficient to disturb the lower court's discretion.

19. In the upshot, I find that this appeal lacks merit and it is dismissed with costs.

DATED, SIGNED & DELIVERED AT MERU THIS 19TH DAY OF JUNE 2025.

H.M. NYAGA

JUDGE