Yegon v PMO aka FMA aka FMO (Minor Suing through Mother and Next Friend Betty Akech Otieno) (Civil Appeal E011 of 2023) [2025] KEHC 8394 (KLR) (16 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8394 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL E011 OF 2023

BM MUSYOKI, J

JUNE 16, 2025

BETWEEN

CHERUIYOT YEGON ..... APPELLANT

AND

PMO AKA FMA AKA FMO (MINOR SUING THROUGH MOTHER AND NEXT FRIEND BETTY AKECH OTIENO) ..... RESPONDENT

(Being an appeal from judgment and decree in the Senior Principal Magistrate's Court at Nyando (Samson Temu) civil case number 330 of 2018 dated 8th December 2022)

JUDGMENT

1. This is an appeal arising from judgment and decree of the subordinate court referred above. The respondent in the lower court was claiming general and special damages arising from an accident in which she was injured. The accident which occurred on 15-03-2016 involved the appellants motor vehicle registration number KAP 439B following which the respondent sustained injuries.

2. After the trial, the court awarded the respondent Kshs 2,500,000.00 in general damages for pain and suffering and loss of amenities and Kshs 2,000.00 as special damages. Being aggrieved by the said finding, the appellant has brought this appeal claiming that;

    1. The quantum of general damages for pain and suffering and loss of amenities is inordinately high, erroneous, oppressive and punitive and amounts to a miscarriage of justice.

    2. The learned trial Magistrate ignored the appellant's submissions, paid lip service and made no refence to all the precedents on general damages cited before him, thus coming to a wrong decision on quantum.

3. The learned trial Magistrate erred in fact and in law in failing to appreciate the principles governing award of damages, namely that like cases attracts similar awards, and ignoring completely the appellant's submissions thereon.

4. The learned trial Magistrate erred in law and in fact in making an award of Kshs 2,500,000.00 without giving any reason for such an award and thus made an award that was arbitrary, capricious and inordinately high, erroneous and which amounts to a miscarriage of justice.

5. Other grounds as may be argued with the leave of the court.

3. The respondent also filed a cross-appeal through a memorandum dated in which she claimed that the award for general damages was too low as compared to the nature of injuries and other comparable awards.

4. The gist of the appeal and cross-appeal is clearly that the parties are calling upon the court re-assess the general damages with each pulling to its side. It is trite law that an appellate court should be hesitant in interfering with an award of damages of the trial court unless it is demonstrated that the trial court took into consideration an irrelevant factor or failed to take into account a relevant factor or the sum awarded is too low or too high that it amounts to an erroneous estimate taking into account other recent comparable awards for similar injuries. In \Jitan Nagra v Abidnego Nyandusi Oigo (2018) KEHC 3078 (KLR),it was held that;

> 'I am now called upon to decide whether the appellant has established a basis to intervene in the award of damages bearing in mind the well-established principle that for an appellate court to interfere with an award of damages, it must be shown that the trial court, in awarding damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied.'

5. The same principle was encapsulated in Francis Ndungu Wambui & 2 others v VK (a minor suing through next friend and mother MCWK) (2019) KEHC 2307 (KLR),// where the court held that;

> 'As this is an appeal against an award of damages, the general principle applicable is that the appellate court should be slow to interfere with the discretion of the trial court to award damages except where the trial court acted on wrong principles of the law, that is to say, it took into account an irrelevant factor or failed to take into account a relevant factor, or due to the above reasons or other reason, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages (see Butt vs Khan [1982-88] 1 KAR 1 and Mariga vs Musila [1982-88] 1 KAR 57).'

6. This appeal is purely on quantum and the same being a first appeal the court will as required by the law re-evaluate the evidence produced in the trial court and come to its own independent conclusion but noting that the trial court had an advantage of observing the demeanour and the conduct of the witnesses which advantage I do not have. In the evaluation, I must limit myself to the evidence touching on quantum as that is what I have been asked to do by the parties. The above stated two principles are the main guide in dealing with this appeal.

7. The respondent pleaded that she suffered head injury, loss of consciousness, injury to the chest, blunt abdominal injury with rapture of the spleen and fracture of the left tibia plate. First, I do not think that loss of consciousness is an injury but an effect of an injury. The accident was said to have occurred

on 15th March 2016 and it was alleged that the respondent had to spend a year out of school due to the injuries.

8. The evidence produced in proof of injuries were a discharge summary dated 2-04-2016, a P3 form dated 12-07-2016 and a medical report dated 23-10-2017. The discharge summary dated 2-04-2016 shows that the respondent was admitted in Jaramogi Oginga Odinga Teaching and Referral Hospital on 15-03-2016 and discharged on 2-04-2016 which was a period of about three weeks. It shows that the respondent was treated for raptured viscera and fracture of the tibia plate through a surgery which led to removal of the spleen. She was discharged on antibiotic and painkiller syrup.

9. The medical report was prepared and produced by Doctor D.O. Olima. The same confirms the injuries aforesaid and states that the respondent was at the time of examination still complaining of pain in the knee and abdominal discomfort. His prognosis and opinion were that as a result of the procedures, the respondent will have some compromised immunity.

10. The respondent has claimed that the statement by the doctor that the respondent will have some compromised immunity exposed her to future medial threats and due to that the general damages did not take into consideration this factor. The issue of compromised immunity may be an opinion of an expert but the same was not substantiated and needed to have more supporting and corroborative evidence.

11. There was no evidence that the respondent had since the time of the discharge from hospital any life-threatening sickness which could be attributed to the absence of the spleen. The doctor did not explain to the court the functions of a spleen and whether or not those functions could not be performed by other body organs. The testimony was also silent on whether the respondent would have needed specialised treatment or special environment or lifestyle which was necessitated by the removal of the spleen.

12. PW6, one Doctor Owiti Silas who was working at the hospital the respondent was admitted and treated told the court that the respondent received a vaccination for protection of infection. Could this vaccination ameliorate the compromise of immunity Doctor Olima was making reference to? It was the onus of the respondent to unpack this to court and leaving it to speculation in circumstances where there is no evidence of follow treatments leads the court to conclude that the removal of the spleen was not as serious as the respondent wanted the court to believe.

13. The respondent has also argued that she had to stay home for a year due to the accident and the court should have considered that factor in awarding the general damages. The respondent did not produced evidence to show that she was prevented from going to school by the injuries neither is there any evidence to show that during the year she claims to have been out of school, she was undergoing medication or some procedures. Unless the respondent was out of school due to injuries, this is not a factor for consideration and even in such cases, the consideration would be the pain and suffering she would have been undergoing and not the mere fact that she was not in school. The fact that there were no more admissions or treatment after the respondent was discharged from the hospital would in my view mean that if she indeed stayed away from school, it was a matter of choice and not attributable to the accident.

14. The appellant has submitted that this court awards a sum of Kshs 600,000.00 while the respondent urged this court to enhance the general damages to Kshs 3,000,000.00. I have looked at some nearly comparable authorities since it is not expected to have cases with exactly the same injuries. In Muti v Wambua (2024) KEHC 3808 (KLR), the respondent had sustained rapture of the spleen which was later removed, fracture of the 8th rib, dislocated left hip joint, peritoneal hemorrhage and soft tissue injury. The Judge while declining to reduce the award as submitted by the appellant, made a comment

that the amount awarded by the trial court was low and could have been enhanced had the respondent filed a cross-appeal. I do agree with that observation but I find the Kshs 3,000,000.00 proposed by the respondent too high especially that I have found that the respondent did not ground her case well on the alleged further health complications.

15. In Moses Kirimi & another v GKJ (suing as next friend of JK minor) (2019) KEHC 7155 (KLR), Kshs 800,000.00 was awarded for a fracture of the right 1/3 tibia and fibula and bruises on the chin while in James Okongo v Elmat Sagwe Ogega (2021) KEHC 6567 (KLR), the court awarded Kshs 900,000.00 for a fracture of the right tibia and fibula, fracture of the right femur, bruises on the face and a blunt trauma to the chest.

16. Considering the above cited authorities and what I have stated above on injuries sustained by the respondent, I hold the view that the Kshs 2,500,000.00 awarded by the trial court was too high and amounted to an erroneous estimate. I would consider a sum of Kshs 1,500,000.00 as adequate and commensurate compensation for the injuries sustained by the respondent.

17. I therefore proceed to set aside the judgement of the subordinate court and substitute it for judgement for the respondent against the appellant as follows;

    a. General damages Kshs 1,500,000.00

    b. Special damages Kshs 2,000.00

    c. Costs of the suit in the lower court.

    d. Each party shall bear their own costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

Judgment delivered in absence of the parties