



**Mwangi v Muoho (Civil Appeal E026 of 2021)
[2024] KEHC 165 (KLR) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL E026 OF 2021
CM KARIUKI, J
JANUARY 18, 2024**

BETWEEN

PAULINE MUTHONI MWANGI APPELLANT

AND

SAMUEL WANYOIKE MUOHO RESPONDENT

JUDGMENT

1. The appeal herein arose from the judgement delivered the Hon. Rawlings Liluma on 18/11/2021 in Engineer CMCC No. 96 of 2020 whereby the plaintiff was awarded a total award of Kshs. 80,000 in general damages. The defendant, now Respondent was held 100% liable.
2. Being aggrieved by the said judgement, the Appellant herein filed a memorandum of appeal dated 16th December 2021 outlining 5 grounds of appeal as follows: -
 - i. That the learned trial magistrate erred in law and in fact in finding that the Appellant was entitled to the damages awarded.
 - ii. That the learned trial magistrate's award on damages for such serious injuries.
 - iii. The learned trial magistrate erred in failing to distinguish the case law and authorities cited by the Appellant against that of the Respondent in making an award of damages.
 - iv. The learned trial magistrate failed to consider the medical report and medical documents on the injuries suffered by the Appellant and treatment given.
 - v. The learned magistrate failed to consider the discharge summary, medical report and the evidence of Dr. Okere and the evidence of the Appellant on treatment given.
 - vi. Reasons wherefore the appellant prayed that this appeal be allowed and the court do order that: -



- vii. The judgement on assessment of damages made on the 18th November 2021 be reviewed.
 - viii. That the award for general damages be reviewed.
 - ix. The costs of this appeal be awarded to the appellant in any event.
3. The parties were directed to canvass appeal via submissions.
 4. Appellant's Submissions
 5. The Appellant submitted that the learned magistrate overlooked the principles on awarding damages and further overlooked the authorities cited by the Appellants as well as the medical evidence. The award made under pain and suffering are inordinately low and ought to be interfered with. Further, it was asserted that the Appellant testified in the trial court that she suffered a deep cut on the right hand treated with debriment, suturing, skin grafting and medications. She produced the following documents in support of her injuries and subsequent treatment: -
 6. Discharge summary from North Kinangop Catholic Hospital dated 6th march 2020
 7. P3 form duly filled
 8. It was stated that Dr. Okere testified on behalf of the Appellant and produced the medical report stating that the Appellant sustained a deep cut on the right hand. He classified the injury as severe harm. He explained that the Appellant took long in hospital before discharge because of the treatment given which included removal of torn tissues, suturing and skin grafting would take time to heal. He also confirmed that the Appellant was in pain as at the time he examined her.
 9. Further reliance was placed on *Easy Coach vs. Emily Nyangasi* [2017] eKLR, *Spin Knit Limited v Jobstone Otara* [2006] eKLR, *Damaris Mwongeli Muia vs. Kenya Wildlife Service* [2017] eKLR and *Catherine Wanjiru Kingori & 3 Others vs Gibson Theuri Gichuri* [2005] eKLR
 10. It was stated that the authorities provided by the defence counsel cleverly leave out the treatment given to the applicant and are not comparable to the injuries sustained including the treatment given and what amount of pain and suffering the Appellant suffered when the said treatment was given.
 11. Lastly, the Appellant asserted that the magistrate did not consider relevant factors in awarding damages as the law stipulates and the amount awarded was inordinately low. Reliance was placed on *Kemco Africa Limited t/a Meru Express Service, Gathogo Kanini versus A.M. Lubia and Olive Lubia* [1987] KLR 30. That the magistrate failed to consider the treatment given which included skin grafting, debriment and suturing which the Appellant also indicated in her statement.
 12. Respondent's Submissions
 13. On quantum, the Respondent stated that the instant appeal is a misguided attempt by the Appellant to obtain extortionate amounts of money for a mere cut wound which sums up to a soft tissue injury and the appeal must in line, fail. It was stated that a re-evaluation of the quantum herein would not be prudent seeing as the plaintiff suffered one soft tissue injury. Reliance was placed on *Denshire Muteti Wambua vs. Kenya Power & Lighting Co. Ltd* [2013] eKLR, *Kigaraari vs Aya* [1982-88] 1 KAR 768 as quoted in *Godfrey Wamalwa Wamba & Another v Kyalo Wambua* [2018] eKLR
 14. The Respondent urged this court to uphold the award of Kshs. 80000 on general damages as the same is entirely sufficient because the plaintiff sustained soft tissue injuries. Reliance was placed on *George Mugo & Another v AKM (Minor suing through Next Friend and Mother of A.N.K)* [2018] eKLR, *George Kinyanjui t/a Climax Coaches & Another vs Hussein Mahad Kuyala* [2016] eKLR, *Ndungu*



Dennis vs. Ann Wangari Ndirangu & Another [2018] eKLR, *PF (Suing as Next Friend and Father of SK (Minor) v Victor O. Kamadi & Another* [2018] eKLR etc which are authorities that present comparable awards for comparable injuries.

15. In conclusion, the Respondent proposed that the court should dismiss the appeal with costs going by their submissions.

Analysis and Determination

16. Having carefully considered the evidence adduced before the trial court in its entirety; the grounds of appeal; the judgment of the learned trial magistrate and the written submissions filed by the respective parties together with all the authorities cited, I find that only issue that emerges for determination is whether the learned trial magistrate erred in arriving at the decision of Kshs. 80,000 on quantum of damages.
17. This being a first appeal, it is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions. As was stated in the Court of Appeal case of East Africa in *Peters -vs- Sunday Post Limited* [1958] EA 424, The appropriate standard of review established in cases of appeal can be stated in three complementary principles:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.
18. (See also: *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123)
19. In an appeal against quantum of damages awarded by the subordinate court, the court should not ordinarily interfere with the findings of a trial court unless it can be shown that the court proceeded on wrong principles, or misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.
20. The principles that ought to guide a court in assessing damages are as set out in the Court of Appeal's finding in *Kemfro Africa Ltd t/a Meru Express & Another v A.M. Lubia & Another (No.2)* [1987] KLR 30 where the court stated that: -

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by the trial judge were held by the former court of Eastern Africa to be that it must be satisfied that either the judge in assessing damages took into account a relevant or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly.

21. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR held as follows: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should



be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

22. The Appellant submitted that the award for pain and suffering awarded by the trial magistrate was inordinately low as the learned magistrate overlooked the principles on awarding damages and further overlooked the authorities cited by the Appellants as well as the medical evidence. The Appellant was awarded a sum of Kshs. 80,000 as general damages and Kshs. 4000 as special damages. On the other hand, the Respondent asserted that the award was comparable to the injuries sustained by the Appellant.
23. From the record the Appellant suffered a deep cut wound on the right hand. The discharge summary from North Kinangop Catholic Hospital dated 6/3/2020 corroborated the same. It was indicated that the patient presented with hx pain and cut on the right-hand following RTA. Cut wound on the dorsal part of it hand exposing the tendon.
24. The Appellant was insistent that she suffered a deep cut on the right hand treated with debriment, suturing, skin grafting and medications. Further, she stated that Dr. Okere testified on behalf of the Appellant and produced the medical report stating that the Appellant sustained a deep cut on the right hand. He classified the injury as severe harm. He explained that the Appellant took long in hospital before discharge because of the treatment given which included removal of torn tissues, suturing and skin grafting would take time to heal. He also confirmed that the Appellant was in pain as at the time he examined her.
25. I have gone over PW3 Dr. Cyprian Okoth Okello’s testimony in the trial record and he stated that he examined the Appellant on 27/2/20. That he looked at the p3 and discharge summary from North Kinangop Hospital and prepared a report and signed it. It was stated that the treatment given to the Appellant was receiving old tissues from the accident.
26. In cross examination, the doctor asserted that the accident occurred in February 2020 and he saw the patient in July. That the documents he relied on was the discharge summary and that it is possible for a patient to be in hospital for 14 days for a wound. He confirmed that there was no resultant disability.
27. From the P3 form produced by PW3. The doctor assessed the injury sustained as harm and indicated that on the upper limbs: healed rear as the dorsum of the right hand. Done skin grafting.
28. From the aforementioned account, it is clear that PW3 did not primarily treat the Appellant and he was largely relying on the discharge summary from North Kinangop Hospital to fill his report. It is also evident that he assessed the degree of injuries sustained as harm and not sever harm as stated by the Appellant.
29. It is my considered opinion that the Appellant’s heavy reliance on the treatment she received which included removal of torn tissues, suturing and skin grafting that would take time to heal as submitted by her would have been pleaded in terms of special damages which have to be specifically pleaded and proved but the same was not done.
30. As it stands the injury pleaded was a deep cut wound on the right hand and having thoroughly examined the authorities relied on by the Appellant, they do not present situations with comparable injuries to justify the awards given therein. I agree with the trial magistrate that the decisions cited by the plaintiff in the trial record are not comparable to the instant case.
31. Notwithstanding, I have reviewed the authorities cited by the Respondent and it is my considered view that they highlight more comparable awards to the injuries sustained by the Appellant. Particularly, I would like to rely on the case of *PF (Suing as Next Friend and Father of SK (Minor) v Victor O. Kamadi*



§ Another [2018] eKLR, the plaintiff in the lower court had been awarded Kshs. 50,000. the appeal is on quantum of general damages awarded by the trial court. The Appellant had sustained the following injuries: Cut wound to the forehead Multiple small abrasions to the face Blunt injury to the head leading to loss of consciousness for some time Abrasions to the back Abrasion wounds to the dorsum of the right hand. Cut wound to the right leg.

32. The court in substituting that award stated that: -

The Appellant in the instant case sustained cut wounds, abrasions and blunt injury. He had lost consciousness for some time due to head injury. It is my considered view that the award of Kshs. 50,000/= was inordinately low for the kind of injuries sustained by the Appellants. I consider that an award of Kshs. 100,000/= is adequate compensation for the injuries sustained.

In the foregoing the award of Kshs. 50,000/= in general damages is set aside and substituted with an award of Kshs. 100,000/=.

33. Further, in the case of Losagi Insurance Brokers Limited § Another v Josephat Achesa Chumbali [2022] eKLR, the trial court had awarded the respondent an award of Kshs. 300,000/- as general damages. the Respondent suffered a deep cut wound on the left knee and as documented in the medical report. The Appellant appealed against this award and the court in substituting that award held that: -

“Reviewing all relevant evidence, and authorities before the Court, it is patent that the award on general damages by the trial court was so high as to be an erroneous estimate. The injuries of the Respondent in this case compare well to those of the plaintiff in Sokoro Plywood Limited (above). Considering inflationary factors since the decision, this Court is of the view that an award of Kshs. 95,000/- (Ninety-Five Thousand) is adequate as general damages. Consequently, the appeal is merited and is allowed. The award of general damages in the lower Court is hereby set aside and the Court substitutes therefor an award of Kshs. 95,000/- (Ninety-Five Thousand) subject to the agreed liability ratio. The costs of the appeal are awarded to the Appellant”.

34. Accordingly, having given due consideration to the authorities cited above, I find that the trial magistrates award of Kshs. 80,000 struck a reasonable balance between the authorities and was fair for the injuries sustained by the Appellant. It is my finding that the trial magistrate did not proceed on wrong principles nor misapprehend the evidence in some material respect. As was stated by the court of appeal in Bashir Ahmed Butt v Uwais Ahmed Khan [1982 – 1988] I KAR 5: -

“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”.

35. Therefore, I find no reason to warrant an interference with the award of Kshs. 80,000/- as general damages. Thus, the court makes the orders;

- i. The appeal is therefore dismissed.
- ii. Parties to bear their own costs in the appeal.

DATED AND DELIVERED IN NYANDARUA THIS 18th DAY OF JANUARY 2024

CHARLES KARIUKI



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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

