



REPUBLIC OF KENYA



**Pwani Oil Products Ltd v Ngumi (Civil Appeal E042 of 2021)  
[2024] KEHC 282 (KLR) (12 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 282 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E042 OF 2021  
GMA DULU, J  
JANUARY 12, 2024**

**BETWEEN**

**PWANI OIL PRODUCTS LTD ..... APPELLANT**

**AND**

**JACINTA KATUNGWA NGUMI ..... RESPONDENT**

*(From the judgment in Civil Case No. 55 of 2020 at Kilungu Law  
Courts delivered on 18th June 2021 by Hon. Charles Mayamba (SRM))*

**JUDGMENT**

1. In a judgment delivered on 18<sup>th</sup> June 2021, the Magistrate’s court at Kilungu assessed damages after liability was entered by consent in the following terms:-

“I do make the following orders:-

- a. Liability awarded at 75%:25%
- b. General damages awarded Kshs. 600,000/=
- c. Special damages Kshs. 8,100/=
- d. Less 25% (Kshs. 152,025/=) Kshs. 456,075/=
- e. Costs and interest as above.

2. Dissatisfied with the quantum of general damages awarded, the appellant who was the defendant in the trial court has come to this court on appeal through counsel Wambua Kilonzo & Company on the following grounds:-



1. That the learned trial Magistrate erred in law and in fact in awarding the plaintiff/respondent general damages yet the respondent did not produce evidence in proof and support the suffered injuries.
  2. The trial Magistrate failed to consider that even though there was a consent on liability, the plaintiff was duty bound to prove the injuries suffered on balance of probabilities.
  3. The learned trial Magistrate erred by failing to take into consideration the discrepancy in the respondent's name and the claimed injuries on the face of documentary evidence produced on her behalf and that the plaintiff had lied to court in the process of awarding damages.
  4. The learned Magistrate erred in law in failing to appreciate that the respondent had not proved her case on a balance of probabilities as required by law.
  5. The learned trial Magistrate grossly misdirected himself in treating the evidence and the submissions on quantum before him superficially and frequently coming to a wrong conclusion by awarding general damages that were manifestly high for the injuries incurred.
  6. The learned trial Magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented and filed by the appellants hence awarding damages that are superfluously high.
  7. The learned trial Magistrate proceeded on wrong principles when assessing damages to be awarded to the respondent if any and failed to apply the precedents and tenets of the law applicable.
  8. The learned trial Magistrate erred in awarding a sum in respect of damages which was inordinately high in the circumstances occasioning into an erroneous estimate and miscarriage of justice to the appellant and a decision unsustainable in law.
  9. The learned trial Magistrate erred in law and in fact by failing to take proper and exhaustively (evaluate) evidence on record hence arriving at a wrong conclusion.
  10. The learned trial Magistrate erred in law and in fact by evaluating evidence wrongly and did not take into account relevant factors.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Wambua Kilonzo & Company Advocates for the appellant as well as the submissions filed by Waiganjo Wachira & Company Advocates for the respondent. I have to acknowledge that both counsel for the parties cited decided court cases.
  4. This being a first appeal, it is in the form of a retrial and I am duty bound to evaluate all the evidence on record afresh, and draw my own independent conclusions. See *Selle =Versus= Associated Motor Boat Company Ltd* (1968) EA 132.
  5. Being an appeal challenging the quantum of damages awarded, I have to be guided by the principles restated by the Court of Appeal in the case of *Kemfro Africa Ltd =Versus= A M Lubia & Another* (1982-88) IKAR 777 wherein it was stated as follows-

“The principle to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal for Eastern Africa to be that it must be satisfied that either 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 be a wholly erroneous estimate of the damage.”

6. At the trial before the Magistrate, liability was recorded by consent of the parties. No party tendered oral evidence. Instead, by consent documents filed, including a later doctor’s report prepared by Dr. Wambugu was admitted as evidence. Then parties counsel thereafter filed submissions on quantum of damages.
7. I note that the appellant’s counsel proposed general damages of Kshs. 250,000/= relying mainly on the case of *James Nganga Kimani =Versus= Paulina Giachangi & Others* (2019) eKLR, while the respondents counsel, asked for general damages of Kshs. 900,000/= relying on the case of *Njoroge Thiongori =Versus= Joseph Ngarenwa* (2010) eKLR. The Magistrate awarded Kshs. 600,000/= as general damages.
8. I note that the injuries suffered by the respondent were not in dispute. They were described in the report of Dr. G. K. Mwanja as fracture – left clavicle, broken upper right incisor tooth, loose – right incisor tooth, cut wound – lower lip, bruise-left elbow, cut wound – left leg. The later report prepared by Dr. Wambugu for the appellant confirmed adequate recovery from the injuries and no permanent disability.
9. I have been informed on appeal that the Magistrate awarded inordinately high figure of general damages. Counsel for the appellant, in submissions, relied heavily on the report prepared by Dr. Wambugu P. M. on 30<sup>th</sup> October 2020, in which the said doctor noted that the respondent had suffered fracture left clavicle, loss of right upper premolar tooth, and multiple bruises and had fully recovered and did not suffer permanent incapacity.
10. In my view, the burden was on the appellant to demonstrate to this appellate court, that the award for general damages was inordinately excessive or high, as the assessment of damages is an exercise of trial courts discretionary and no two cases, or two sets of injuries suffered, can be exactly the same.
11. On my part, having re-evaluated the evidence admitted by consent of the parties before the trial court, as well as the submissions on both sides before the trial court, and also before this court, I find no basis for interfering with the exercise of discretion in assessment of damages by the trial court. In my view the discretion to award general damages herein was done within the range of damages for similar injuries suffered and was within the figures proposed by the parties in the trial court. I thus find no merits in the appeal and will dismiss the same, and uphold the damages awarded.
12. Consequently and for the above reasons I dismiss the appeal, uphold the damages awarded, and award costs of appeal, to the respondent.

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JANUARY 2024 VIRTUALLY AT VOI.**

**GEORGE DULU**

**JUDGE**

