



**Wagura & another v TWM (Suing as the father and next friend to SWW) (Civil Appeal E151 of 2021) [2024] KEHC 1527 (KLR) (Civ) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E151 OF 2021**

**JN MULWA, J**

**FEBRUARY 15, 2024**

**BETWEEN**

**MARY WANJIKU WAGURA ..... 1<sup>ST</sup> APPELLANT**

**MARTIN GIKUMBI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**TWM (SUING AS THE FATHER AND NEXT FRIEND TO  
SWW) ..... RESPONDENT**

*(An Appeal against the judgment and Decree of the Chief Magistrates Court at Nairobi in CMCC No. 4599 of 2021 delivered by Hon. D. N. Mburu (PM) on 26th February, 2021)*

**JUDGMENT**

1. This is an Appeal against quantum of damages awarded to the Respondent in Milimani CMCC No. 4599 of 2021 in respect of injuries the Respondent sustained following a Road Traffic Accident for which the Appellant was held liable in both liability and damages at the ratio 15: 85 in favour of the Respondent as follows: General Damages Kshs 1,000,000/= and Special damages Kshs 56,202/= plus costs and interest. The matter of liability was resolved by a consent of the parties at 85:15 in favour of the Respondent. The main ground of appeal is that the learned Magistrate erred in fact and in law in awarding the Respondent general damages that are so excessive as to amount to an erroneous estimate.
2. The appeal was canvassed by way of written submissions which this court has taken note of. The only issue for determination therefore is whether the trial Magistrate's award on general damages of Kshs. 1,000,000/- was excessive in the circumstances of the case.



3. It is well settled that an award of damages is an exercise of discretion by the trial court and thus an Appellate Court will not interfere with such discretion unless there are good grounds to do so. In *Bashir Ahmed Butt v Uwais Ahmed Khan* (1982-88) KAR, the Court of Appeal stated: -

“An appellate court will not disturb an award for general 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...”

4. Further, as a matter of principle, an award of damages for personal bodily injuries must be commensurate to the injuries suffered and comparable to those made in past similar cases. In *Harun Muyoma Boge v Daniel Otieno Agulo* [2015] eKLR, Majanja J. stated thus:

“The assessment of general damages is not an exact science and the court, in doing the best it can, takes into account the nature and extent of injuries in relation to awards made by the court in similar cases. It ensures that the body politic is not injured by making excessively high awards and that the claimant is fairly compensated for his or her injuries.”

5. On quantum, the Appellant is only challenging the award of general damages arguing that an award of Kshs. 500,000/= would have adequately compensated the Respondent for the pain, loss and suffering, taking into consideration inflation, and cited the following authorities: - *Akamba Public Road Services v Abdikadir Adan Galgalo* (2016) eKLR where the court reduced an award of Kshs. 800,000/= to Kshs. 500,000/= for fracture of tibia fibula and right fibula bone and a blunt injury to the right ankle, *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* 2020 eKLR where an award of Kshs. 600,000 was reduced to Kshs. 400,000/= for compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with cut wound on the nose and blunt chest; *Savannab International Ltd v Muka* (Civil Appeal 31 of 2018) [2022] KEHC 675 (KLR) (14 June 2022 where an award of Kshs. 500,000 by the trial court was substituted by an award of Kshs. 400,000/= on appeal for injuries particularized as fracture medial malleolus of the left ankle joint and soft tissues injuries.

6. On the other hand, the Respondent submits that the award was reasonable, taking into account the injuries sustained and comparable authorities adjusted to the current inflation trends.

The learned magistrate's determination of general damages was made in accordance with the law and principles of justice, and it has not been demonstrated that the trial court's assessment was excessive to justify the interference.

According to the medical report by Dr. Cyprianus Okoth Okere dated 12/2/2019 which was submitted by the Respondent, the Minor sustained the following injuries: Blunt chest injury, fracture of the left lateral malleolus and left distal fibula and right sided hemothorax and the injuries were classified as grievous harm. The Appellant submitted a medical report by Dr. Wambugu P.M dated 16/9/2020 showing that the minor sustained the following injuries: Fracture of the left Fibula of the left Fibula, Blunt trauma to the abdomen with liver laceration and Blunt chest trauma and that the minor has occasional pains left leg. It is clear from the reports that the injuries are more or less similar.

7. In the case of *Joseph Kitbeka v Stephen Mathuka Pius* Nairobi HCCC 1750 of 1999, plaintiff sustained a fracture of the left radius and ulna, fracture of the right tibia and fibula and blunt head injury, contusion and bruises on the scalp. He was awarded Kshs. 1,280,000/-. In *Geoffrey Mwaniki Mwinzi v Ibero (k) Limited & another* (2014) eKLR the court awarded general damages of Kshs. 2,000,000 where the plaintiff had a fracture of the collarbone and fractures to his left leg. In Nakuru HCCA



No. 21 of 2013, *Kyoga Hauliers (K) v Philip Mabiw Nyangi*, the Plaintiff was awarded Kshs.1, 000, 000/- general damages for depressed fracture of the occipital bone of the skull deep cut wound on the occipital region and multiple soft tissue injuries. The case was decided in 2013.

8. Bearing the above authorities in mind, the court finds that the trial court's award of Kshs. 1,000,000/- for general damage was not too excessive as to invite the court to interfere with the trial court's discretion. The award will not be disturbed.
9. Consequently, the Appeal is hereby dismissed with costs to the Respondent.

Orders accordingly .

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY\* 2024.**

**J. N. MULWA**

**JUDGE**

