



REPUBLIC OF KENYA



**Analo v Irungu (Civil Appeal E171 of 2021)  
[2024] KEHC 3611 (KLR) (5 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3611 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E171 OF 2021**

**MW MUIGAI, J**

**MARCH 5, 2024**

**BETWEEN**

**JOAB OBUSHURU ANALO ..... APPELLANT**

**AND**

**DICKSON MWANGI IRUNGU ..... RESPONDENT**

*(Being an Appeal against the judgment of Hon. B. Kasavuli (PM)  
delivered on 30/09/2021 in Mavoko CM's Civil Case No.39 of 2020)*

**JUDGMENT**

**Background**

1. By a Plaint dated 20<sup>th</sup> January, 2020 and filed in Court on 27<sup>th</sup> January, 2020, the Plaintiff sued the Defendant in Mavoko CMCC No. 39 of 2020. The Plaintiff sought judgment against the Defendant for;
  - a. General damages
  - b. Special damages of Kshs.3,550/-
  - c. Costs of the suit
  - d. Interest
  - e. Any other relief deemed fit to grant by this Court.
2. The Plaintiff had pleaded that the Defendant was at all material times relevant to this suit the driver, servant, agent in control, possession and the registered owner of motor vehicle Registration No. KAZ 832X Toyota Hiace.



3. That on or about the 10/11/2019 the Plaintiff was lawfully travelling as a fare paying passenger along Nairobi-Mombasa road at National Oil petrol station in motor vehicle Reg. No. KAZ 832X Toyota Hiace owned by the Defendant was negligently, recklessly and/or carelessly driven by the Defendant, his driver, servant, agent or employee at a high speed and without due regard to its passengers that while overtaking it lost control and rammed into motor vehicle Reg. No. KAT 329 X thereby causing a road traffic accident as a result of which the Plaintiff sustained serious injuries for which he claimed damages.
4. As a result of the said accident the Plaintiff suffered the following injuries:-
  - a. Blunt injuries to the anterior chest wall
  - b. Cut wound on the right foot
  - c. Blunt injuries to the left knee
  - d. Bruises on the left leg, on the knee and below the knee joint
  - e. Further particulars of injuries to be furnished at the hearing hereof by way of medical report.

### **Statement Of Defence**

5. The Defendant filed his Statement of Defence dated 20/02/2020 denied the averments of the Plaintiff and stated that the said accident was solely and/or substantially contributed by the negligence of the driver of Motor vehicle Reg. No. KAB 093F by;- driving without due care; failing to look out for other vehicles on the road; driving at excessive speed, endangering other road users disregarding traffic rules and failing to stop, slow down or swerve to manage the said vehicle so as to avoid the accident.
6. The Defendant denies the doctrine of Res Ipsa Loquitor being applicable herein and instead pleads the doctrine of volenti non fit injuria.
7. The hearing commenced on 26/11/2020 and the Plaintiff called 2 witnesses in support of his case. The Plaintiff was represented by Mr. Nyariki Advocate while the Defendant was represented by Mrs Kinge.

### **Court Proceedings**

#### **Plaintiff Case**

8. Pw1 Dr. Titus Ndeti told the Court that he examined the Plaintiff herein on 7/12/2019. He had injuries on the chest, cut wound on right foot and blunt injuries to the left knee. He had sustained soft tissue injuries and complete hearing was anticipated.
9. On cross – examination by Mrs Kinge, he stated that he examined the Plaintiff after about one month after the accident. The Plaintiff was not on any medication by then.
10. Pw.2 Joab O. Analo adopted his statement dated 14<sup>th</sup> November, 2019 where he had stated that on 10/11/2019 he was a passenger in the motor vehicle Reg. No. KAZ 832 X. On reaching Namanga Junction the vehicle was involved in an accident and as a result he sustained injuries on his chest and leg. He was taken to the Hospital. He later recorded his statement at Athi River Police Station and was issued with a P3 Form and later with a police abstract. He blamed the driver of motor vehicle Reg. KAZ 832 X for overlapping carelessly and/or negligently without due regard.
11. On cross examination by Mrs Kinge he stated that he had fastened his safety belt. The driver was overlapping. He could not tell the speed at which the vehicle was being driven. He did not know if the driver was charged for the traffic offence.



12. On re-examination he reiterated that he had fastened his safety belt but the driver was careless.

### **Defence Case**

13. The Defence did not tender any evidence or call any witness.

### **Judgment Of The Trial Court**

14. The Trial Court delivered its Judgment on 30<sup>th</sup> September, 2021 and entered judgment in favour of the Plaintiff as follows:

- a. Liability .....100%
- b. General damages .....Kshs.40,000/-
- c. Special damages .....Kshs. 3,500/-
- Total .....Kshs.43,550/-

15. The Plaintiff was also granted costs and interest on special damages from the date of filing suit till payment in full.

### **Appeal:**

16. The Appellant being dissatisfied by the Trial Court Judgment filed his Appeal to the High Court against the award on quantum of damages of the said decision on the following grounds:-

- 1. That the learned Magistrate erred in law and fact and ended up misdirecting himself in awarding extremely low quantum of damages of Kshs.40,000/- for pain and suffering by failing to appreciate and be guided by the prevailing range of comparable awards granted to the Appellant herein.
- 2. That the learned Magistrate erred in law in making such a low award as to show that the Magistrate acted on a wrong principle of law.
- 3. That the learned Magistrate's award on damages was so low as to be entirely erroneous.
- 4. That the learned Magistrate's award was made without considering the medical evidence before the Court and failed to appreciate the nature of injuries sustained by the Plaintiff and failed to be guided by authorities on comparable awards and hence ended up making a low award in view of the medical evidence presented before the Court.
- 5. That the learned Magistrate erred in law and fact in failing to consider the Plaintiff's submissions and authorities in making a finding on quantum.
- 6. That the whole judgment on quantum was against the weight of evidence before the Court.

17. The Appellant prays for setting aside of the Judgment of the Trial Court delivered on 30<sup>th</sup> September, 2021 and assessment be done based on evidence before the Court and prevailing range of comparable awards.

18. The Appeal was canvassed by way of Written Submissions.



## Written Submissions

### Appellant Submissions dated 26/07/2023

19. The Appellant submitted that the Trial Court erred in awarding general damages of Kshs.40,000/-.
20. Reliance is made in the case of Butt –vs- Khan [1977] eKLR 1 KAR where the Court laid out the principles upon which an Appellate Court will disturb an award for damages as follows;-

“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...”
21. In the case of P.J. Dave Flowers Limited –v- David Simiyu Wamalwa Civil Appeal No. 6 of 2017 [2018] eKLR the Court rendered itself on the matter of assessment of quantum as follows;-

“it is generally accepted from the laid down legal principles on assessment of quantum that personal injuries are difficult to assess with precision and accuracy so as to satisfy the claimant. The courts discretion has been left to individual judges to exercise judicious respect of the circumstances of each specific case. The sum total of the evidence and the medical reports positive findings will form part of the consideration in the award of damages. The Trial Court will also be expected to apply the principles in various case law and authorities decided by the Superior courts on the matter.”
22. It is further submitted that taking into account the rate of inflation and comparable authorities cited herebelow it is the Appellants prayer that the award of general damages be substituted with an award of Kshs.250,000/-.
  1. in the case of Joseph Kimani Gathaga & Anor -vs- Dickson Ndungu Njoroge [2019] eKLR where the High Court set aside the Trial Court’s decision and awarded kshs.240,000/- for soft tissue injuries to the legs, hands, back and chest.
  2. In the case of John Kaindo Ngugi & another –vs- John Kimani Iraya [2020] eKLR where the High Court set aside the lower Court’s decision and awarded Kshs.250,000/- for soft tissue swelling of the right upper limb, around the wrist joint, scalp and leg.
  3. In the case of Michael Okello –vs- Pricilla Atieno [2021] eKLR where the High Court set aside the lower Court’s decision and awarded Kshs.250,000/- for multiple soft injuries to the legs, chest and back.
23. It is finally submitted that the Trial Court’s award be set aside and substituted with Kshs.250,000/- for general damages and kshs.3,550/- for special damages together with costs to the Appellant together with interest at the court’s rates from the date of judgment.

### Respondent submissions dated 19/04/2023

24. It is submitted that this Court dismiss the appeal and uphold the entire finding of the Trial Court as it was sound considering the Appellant suffered mainly soft tissue injuries.
25. It is trite that the awards must be within consistent limits and Court awards for damages must be made taking into account comparable injuries or similar injuries and award.



26. In the case of Denshire Muteti Wambua – vs- Kenya Power & Lighting Co. limited [2013] eKLR (as quoted in Michael Okello –vs- Priscilla Atieno [2021] eKLR) it was held that the general method of approach for assessing damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.
27. The Respondent cited the following authorities;
- a. In HB (Minor suing through the mother and next friend DKM) –vs- Jasper Nchonga Magari and Anor [2021] eKLR, the Court awarded Kshs.60,000/- for soft tissue injuries.
  - b. In Kipkere limited –vs- Peterson Ondieki Tai [2016] eKLR [as quoted in JK (a minor suing through father and next friend NKM –v- Jasper Nchonga Magari & Anor the Trial Court awarded kshs.100,000/- for soft tissue injuries and the same was reduced on appeal to Kshs.30,000/-.
  - c. In Buds and Blooms limited –v- Lawrence Emusugut Obwa [2016] eKLR [as quoted in Kaimosi Tea Estate v Florence Mboka Bisia [2021] eKLR] the Trial Court had awarded Kshs.70,000/- for soft tissue injuries and the same was reduced on appeal to Kshs.50,000/-.
  - d. In Samuel Mburu N. Ng’aari and others –v- Wangiki Wangare & another [2014] eKLR [as quoted in Ndungu Dennis –vs- Ann Wangari Ndirangu & Anor [2018] the Court awarded Kshs.50,000/- for soft tissue injuries.
28. The Respondent prays that this Court dismisses the Appeal, uphold the judgment of the Trial Court and be granted costs of this Appeal based on Section 27(1) of the [Civil Procedure Act](#).

### **Determination**

29. This Court has considered the pleadings and written submissions filed by the parties through their respective Counsel.
30. The issue of liability was not contested by the Appellant and Respondent and thus remains at 100% against the Respondent.
31. The only issue that emerges for determination is of Quantum. The appellant alleged that the award of Ksh 43,550/- is extremely low compared to the injuries sustained and in light of comparable awards as illuminated by case-law.
32. The Respondent urged this Court to dismiss the appeal as the award is reasonable and sufficient.
33. The Plaintiff/Appellant sustained the following injuries arising out of the accident of 10/11/2019; Dr Titus Ndeti’s Medical Report of 7/12/2019 reads;
1. Blunt injuries on anterior chest wall
  2. Cut wound on right foot
  3. Blunt injuries to the left knee
34. The opinion & prognosis is that appellant suffered harm and sustained soft tissue injuries which caused him pain blood loss and suffering. Complete healing is anticipated with a residual scar which is permanent.
35. The Court considered the authorities cited by the Appellant which disclose Ksh 250,000/- the Respondent’s authorities range from Ksh 60,000/- Ksh 50,000/- Ksh 30,000/-.



36. The injuries sustained were assessed as harm, there was pain suffering and cost of medical care inconvenience etc and although damages are not supposed to be punitive and/r set one back to the pre- accident status, the compensation ought be reasonable. The award of Ksh 40,000/- does not cut it in relation to the injuries sustained by the appellant in fact the Respondent's authorities give higher figures than Ksh 40,000/- save for 1 authority.
37. In the circumstances, the Appeal is allowed and the quantum is increased to Ksh 80,000/- general damages + Ksh 3,550 /o Special damages. As to costs as prescribed under Section 27 CPA , this court orders each party to bear its own costs.

### **Disposition**

1. The appeal allowed on quantum, General damages increased from Ksh 43,550/- to Ksh 80,000/- + special damages of Ksh 3550/-.
2. Each party to bear own costs.

**DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 5<sup>TH</sup> MARCH, 2024  
(VIRTUAL/PHYSICAL CONFERENCE).**

**M.W.MUIGAI**

**JUDGE**

**(JUDGE BEREAVED)**

**FILE RELEASED TO THE REGISTRY ON 26/03/2024**

**M.W.MUIGAI**

**JUDGE**

