



**Muchoki v Ojiambo (Civil Appeal E049 of 2021)
[2024] KEHC 2379 (KLR) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E049 OF 2021
JRA WANANDA, J
MARCH 8, 2024**

BETWEEN

SAMWEL MUCHOKI APPELLANT

AND

MARYANNE CAMENE OJIAMBO RESPONDENT

JUDGMENT

1. This Appeal arises from a suit seeking compensation for injuries suffered by a 43 years old female which arose as a result of a road accident. The Appeal is framed as being against the trial Court's determination both on liability and on assessment of quantum. In the suit, the Appellant was the Defendant whereas the Respondent was the Plaintiff.
2. By the Plaint filed on 22/09/2017 in Eldoret Chief Magistrates Court Civil Case No. 1042 of 2017, the Respondent sued the Appellant seeking general damages, special damages, costs of the suit and interest. The Plaint was filed through Messrs Terer Kibii & Co. Advocates.
3. It was alleged in the Plaint that the Appellant was the owner of the Motor Vehicle Registration No. KAT 383C Nissan Matatu, that on 5/08/2017 while the Respondent was a lawful passenger in the said motor vehicle along the Eldoret-Kitale road at 8.00 pm or thereabouts when the Defendant so carelessly, negligently drove, controlled or managed the motor vehicle that he caused the same to be involved in an accident as a result of which the Plaintiff sustained injuries and suffered loss and damage for which she blamed the Appellant and held him liable directly or vicariously. The Respondent then gave particulars of the injuries and of expenses incurred as a consequence.
4. Together with the Plaint and the other usual pleadings, the Respondent filed her Witness Statement in which she reiterated the above matters.
5. The Appellant filed his Statement of Defence on 26/06/2019 wherein he denied liability and, in the alternative, blamed the Respondent for causing or contributing to the accident. The same was



filed through Messrs Kairu & McCourt Advocates. Subsequently, there was a Change of Advocates whereupon Messrs Kimondo & Gachoka Advocates took over conduct of the defence.

6. By the consent letter dated 3/07/2018, liability was apportioned at 90:10 in favour of the Plaintiff. The suit then proceeded to full trial wherein the Respondent called 3 witnesses. The Appellant did not call any witness.

Respondent's Evidence before the trial Court

7. PW1 was Dr. Joseph Sokobe who had examined the Plaintiff after the accident. He testified that the Respondent suffered soft tissue injuries and then produced his Medical Report and Receipts.
8. PW2 was one Wycliffe Nyambane a clinical officer at Uasin Gishu County Hospital. He testified that he examined the Respondent on 7/08/2017 who had been involved in a road accident and suffered soft tissue injuries on the chest, face and neck. He produced the Respondent's treatment notes, a letter and attendance card.
9. PW3 was the Respondent. She adopted her Witness Statement and produced his exhibits.

Judgment of the trial Court

10. After the hearing, the trial Court delivered its Judgment on 10/09/2020. The same was in favour of the Respondent and was in the following terms:
 - a) General damages Kshs 250,000/-
 - b) Special damages Kshs 6,000/-
 - c) Total Kshs 256,000/-
 - d) Less 10% contributory negligence Kshs 25,600/-
 - e) Grand total Kshs 230,400/-
 - f) Costs and interest
11. Aggrieved by the trial Court's said decision, the Appellant filed this Appeal on 17/05/2021. In the Memorandum of Appeal, the following 6 grounds were cited:
 - i. That the learned trial Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - ii. That the learned trial Magistrate erred in law and misdirected himself when he failed to consider the provisions set out in the Insurance (Motor Vehicle Third Party Risks) (Amendment) Act, 2013, Cap. 405.
 - iii. The learned trial Magistrate erred in law and in fact in awarding quantum of damages inconsistent with injuries pleaded and proved to have been sustained by the Plaintiff.
 - iv. The learned trial Magistrate having misapprehended and misunderstood the extent and severity of the injuries erred in law and fact in relying on authorities which were irrelevant and thus arrived at an award that is so manifestly high as to be erroneous.
 - v. The learned trial Magistrate erred in assessing an award, hereunder, both on liability and quantum, which was ordinally high and wholly erroneous estimate of the loss and damages suffered by Plaintiff



- vi. That the learned trial Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
12. As will be noted, ground 6 is a word by word duplicate of ground 1.

Hearing of the Appeal

13. It was then directed that this Appeal be canvassed by way of written Submissions. The Appellant filed his Submissions on 27/03/2023 and the Respondent filed on 30/03/2023.

Appellant's Submissions

14. The Appellant's Counsel submitted that awards for damages must be within consistent limits and must take into account comparable injuries and awards. He cited the case of Denshire Muteti Wambua vs. Kenya Power & Lighting Co. Ltd [2013] eKLR as quoted in Michael Okello v Priscilla Atieno [2021] eKLR and also Kigarrari vs Aya [1982-88] as quoted in Godfrey Wamalwa Wambua & Another v Kyalo Wambua [2018] eKLR. He urged the Court to disturb the award of Kshs 250,000/- in general damages as the same is so high as to be an erroneous estimate because the Plaintiff sustained soft tissue injuries. He again cited the case of Michael Otieno v Priscilla Atieno (supra) and also George Mugo & Another v AKM (minor suing through next friend and mother of A.N.K [2018], George Kinyanjui t/a Climax Coaches & Another vs Hussein Maghad Kuyala [2016] eKLR, Ndungu Dennis vs Ann Wangari Ndirangu & Another [2018] eKLR and other cases.
15. Counsel submitted that in line with the said decisions, vis a vis the injuries sustained by the Respondent, the award was unjustified and should be revised substantially if not wholly set aside. He urged a figure of Kshs 80,000/-. In conclusion, he submitted that costs follow the event and prayed for costs of the Appeal based on Section 27(1) of the *Civil Procedure Act*.

Respondents' Submissions

16. The Respondents' Counsel opposed the appeal and submitted that the principle litmus test guiding the Court when deciding quantum of damages to be awarded is *pari passu* awards, that the Medical Report by Dr. Sokoke set out the injuries suffered, that the Appellant did not produce any evidence to rebut that of the Respondent. He cited Section 112 of the *Evidence Act* on the issue of burden of proof and submitted that the Appellant never testified nor produce any evidence, all he did was deny and denial does not amount to evidence. He reiterated and Dr. Sokoke (PW1) and the clinical officer (PW2) confirmed the Respondent's injuries and produced supporting documents. He submitted further that general damages are at large and the Court should do the best it can in reaching an award that reflects the nature and gravity of the injuries, that in assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike. He cited the Court of Appeal cases of Simon Taveta v Mercy Mutitu CA Civil Appeal 26 of 2013 [2014] eKLR and also Bashir Ahmed Butt v Uwais Ahmed Khan [1982-88] KAR 5. He further cited the cases of West (H) & Son Ltd v Shepherd (1964) AC 326, Moses Theuri Ndumia v I.G. Transporters Ltd & Another [2018] eKLR and also Civil Appeal No. 315 of 2012 Kenya Power & Lighting vs Pamela Awino Ogunyo.
17. Counsel submitted that the Learned Magistrate did not misapprehend nor misunderstand the extent and severity of the injuries and the medical evidence in material respect and thus did not arrive at a wrong assessment of damages, that the Respondent, in her Submissions, proposed a sum of Kshs 400,000/- in general damages. He then cited further authorities and submitted that the Magistrate



correctly assessed the general damages, that the injuries suffered in the authorities cited by the Appellant are not as severe as those suffered by the Respondent in this case and that the current inflation should be considered. He prayed that the Appeal be dismissed with costs.

Determination

18. The duty of an appellate Court was set out in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, where the Court stated as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

19. As aforesaid, in the Memorandum of Appeal, the Appeal is framed as being against both determination of liability and assessment of quantum. However, from the Appellant’s Submissions, it is clear that only quantum has been challenged. In the circumstances, I presume that the Appellant has abandoned the portion of the Appeal challenging liability.

20. The only issue that therefore remains is “whether the trial Court’s assessment and award of general damages at KShs 250,000/- was excessive and/or inordinately high”.

21. I now proceed to analyse and determine the said issue.

22. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, the Court of Appeal pronounced itself as follows:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349

23. An appellate Court will not therefore 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 trial Court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.

24. *Kneller, JA* in the Court of Appeal decision in *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] eKLR also gave the following guidelines:

“The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a trial judge.

1. Each case depends on its own facts;
2. awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);
3. comparable injuries should attract comparable awards.



4. inflation should be taken into account; and
5. unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone.”

25. From the above, it is clear that in awarding damages, some degree of uniformity must be sought depending on the facts and the best guide would be to consider recent awards on comparable injuries. Indeed, the Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards.”
26. From the Medical Report of Dr. Joseph C. Sokobe dated 19/07/2019 and treatment notes produced in evidence, the Respondent suffered multiple soft tissue injuries with no resulting disability. She has also substantially healed from the injuries sustained.
27. I have perused various previous cases involving similar or comparable injuries and analyzed the awards therein. I find that most awards for multiple soft injuries range at between Kshs 100,000/- and Kshs 200,000/- each depending on the severity of the injuries.
28. For instance, in *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR, Joel Ngugi J reduced an award of Kshs 300,000/- to Kshs 100,000/-. The decision was delivered on 1/2/2018.
29. In *JFM (Minor suing through Mother and next friend MWM) v JNM & another* [2020] eKLR, R. Nyakundi J increased an award of Kshs 60,000/- to Kshs 100,000/-. The decision was delivered on 30/12/2020.
30. In *Daniel Gatana Ndungu & another v Harrison Angore Katana* [2020] eKLR, R. Nyakundi J reduced an award of Kshs 350,000/- to Kshs 140,000/-. The decision was delivered on 15/04/2020.
31. In *Francis Omari Ogaro v JAO (minor suing through next friend and father GOD)* [2021] eKLR, E. Maina J reduced an award of Kshs 230,000/- to Kshs 180,000/-. The decision was delivered in 28/10/2021.
32. While the prevailing status of our currency and economy have to be taken into account in awarding damages, astronomical awards must be avoided. The Court must therefore ensure that awards result in fair compensation
33. In light of the said comparable awards and the principles referred to, I find the sum of Kshs 250,000/- for general damages as awarded by the trial Magistrate to be considerably high and substantially excessive to justify interference by this Court. Accordingly, I set aside the award of Kshs 250,000/- awarded in general damages and substitute it with an award of Kshs 180,000/-.

Final Orders

34. In the premises, I make the following orders:
 - i. This Appeal succeeds only to the extent that the amount of Kshs 250,000/- awarded to the Respondent as general damages is set aside and substituted with an award of of Kshs 180,000/-.
 - ii. The rest of the findings by the trial Court, including on liability, special damages, costs of the lower Court case and interest, remain undisturbed.
 - iii. Since the Appeal has only partly succeeded, each party shall bear its own costs of this Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 8TH DAY OF MARCH 2024



.....
WANANDA J. R. ANURO
JUDGE

