



Mirie v Njoki (Civil Appeal E061 of 2021) [2024] KEHC 2337 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E061 OF 2021**

J WAKIAGA, J

MARCH 7, 2024

BETWEEN

JOSEPH GUCHU MIRIE APPELLANT

AND

IMELDA NJOKI RESPONDENT

*(Being an appeal from the judgement and decree of Hon. E. Agade SRM
Kigumo delivered on 6th October 2021 in Kigumo Civil Case No 1265 of 2019)*

JUDGMENT

1. This Appeal arises out of the judgement dated 6th October 2021 in which the Court found the Appellant liable at 100% and awarded the Respondent general damage of Kshs 800,000 and special damages of Kshs 12,050 as a result of injuries sustained by the Respondent out of a road traffic accident on 26th January 2019 involving the Appellant's motor vehicle registration number KBJ 817 W.
2. Being dissatisfied by the said judgment he filed this appeal and raised the following grounds of appeal:
 - a. The award was inordinately high and did not commensurate with the injuries sustained.
 - b. The Court did not consider comparable awards and therefore arrived at an erroneous estimate.
 - c. The Court did not consider the evidence adduced by the Appellant and submissions thereon.

Submissions

3. Directions were issued on the determination of the appeal by way of written submissions, which were duly filed. On behalf of the Appellant, it was submitted that the Respondent sustained linear non-displaced fracture in the walls of orbit and within the right ethmoid bone, mild swelling of the right periorbital soft tissue, bruised lateral and anterior tissue and tender swollen right leg and that these injuries were confirmed through the medical report by Dr. P.K. Mwangi and therefore the award of Kshs 800,000 was exorbitantly high and should be reduced to Kshs 300,000.



4. It was contended that comparable injuries should be compensated by comparable awards as was stated in the case of *Alex Otiemo Amolo & another v Hayer Bishan Singh & Sons Limited* [2016] eKLR and that the proposed award is supported by the decision of the Court in *Elizabeth Mokaya Bogoko v Fredrick Omondi Ouna* [2022] eKLR where the Court awarded Kshs 350,000 in respect of the Plaintiff who sustained head injury with loss of consciousness, fracture of the right zygoma among other injuries.
5. On behalf of the Respondent, it was submitted that the amount awarded was not inordinately high to warrant interference by the Court as there was no evidence presented that the Court acted on wrong principles. In support of the award, reference was made to the following cases where an award ranging between Kshs 1,000,000 and Kshs 1,700,000 was issued by superior Courts: (a) Nakuru HCCA No 21 of 2013 *Kyoga Hauliers (K) v Philip Mahiu Nyangi* (b) Machakos HCCA No 312 Of 2009 *Isaac Waweru Mundia v Kiilu Kakie Ndeti T/A Wikwatyo Services* (c) Nakuru HCCA No 171 of 1998 *John Joel Koskei v Kenya Power & Lighting Co. Ltd* (d) Nakuru HCCC No 192 of 2001 *Samuel Mwangi Kamau v Joseph M. Kimemia* [2004] eKLR.
6. It was contended that in the case cited in support by the Appellant of its proposed award of Elizabeth Mokaya Bongonko, the Court awarded Kshs 500,000, before contribution.
7. This being a first appeal, the Court is under an obligation to re-evaluate the evidence tendered before the trial Court and to arrive at its own determination with the usual injunction, that it did not have the advantage of seeing and hearing the witnesses.
8. To prove her case PW1 Patrick Mwangi, a Clinical Officer stated that the Respondent was aged one and half years at the time, he prepared a medical report on her which he produced in Court and cross examination stated that her head injuries would result in future convulsion and early dementia. PW2 Mary Njeri Maina relied upon her witness statement stated that the Appellant was admitted for one day. The Appellant called his driver DW1 Peter Muiruri Nganga who also adopted his witness statement.
9. In finding for the Respondent, the Court held that DW1 admitted having lost control of the motor vehicle and the police blamed him for the cause thereof and that the Respondent was not careless as there was nothing he could have done to avoid the accident. She relied on the case of *Maintenance Limited v WA* [2015] eKLR in reaching an award.

Determination

10. The only issue for determination in this appeal is whether the award herein was so high to enable the Court interfere with the same.
11. The principles upon which an Appellate Court would interfere with an award of the trial Court are now well settled in Kenya, that it must be so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or misapprehended the evidence in some material aspect as was stated in the case of *Beatrice Njeri Maina v Augustine Maina Ngetha* [2015] eKLR.
12. There is however no mathematical or scientific formula for calculating awards in general damages and that all that Courts attempt to do is to have a reasonable compensation as far as money can go. It must however be pointed out that inordinately higher awards in this country has led to the collapse of many Insurance Companies and the rise in insurance premiums and therefore Courts ought to be slow in making award that our economy may not support.



13. Was an award of Kshs 800,000 so inordinately high? This question may only be answered by looking at comparable awards, now that the injuries sustained by the Respondent seems not to be disputed from the records of the proceedings herein and liability not being contested.
14. I have looked at the following cases:
 - a. *Telkom Orange Limited v SO* [2018] eKLR where a minor who sustained fracture of the skull, the Court on Appeal reduced the award to Kshs 500,000 and noted that the case cited by the Court herein in reaching the award appealed against of Maintenance (supra) was in respect of more serious injuries.
 - b. *Edward Kitsau Karabu & another v John Sifa Baya* [2021] eKLR where the award was reduced to Kshs 700,000 for more severe injuries than those sustained by the Respondent herein.
 - c. *Moiz Motors Limited & another v Harun Ngethe Wanjiru* [2021] eKLR where the Court on appeal arrived at the sum of Kshs 500,000
15. Having looked at the above cases against the one used by the trial Court in arriving at her award and having looked at the medical report produced in Court and the evidence of the Respondent's mother, it is clear that the award of Kshs 800,000 was on the higher side and ought to be interfered with by this Court on Appeal, which I hereby do.
16. Exercising my powers as a first appellate Court and guided by the above cases, I am of the opinion that an award of Kshs 500,000 is appropriate which I hereby award.
17. The appeal is allowed, the award of Kshs 800,000 is reduced to Kshs 500,000. The award on special damages is affirmed as well as the finding on liability.
18. The Appellant is entitled to the cost of the Appeal while the Respondent is entitled to the cost at the lower Court. And it is ordered.
19. As a footnote and word of caution to all magistrates who might find this judgement useful, there is a creeping habit of making general awards without looking at the similar awards in respect of similar injuries, on what I consider to be an attitude of "what do I do with this monitory jurisdiction given." Though there is no scientific formula in assessing awards and though Courts have wide discretion in the same, Courts ought to consider our economy while giving awards.

DATED SIGNED AND DELIVERED AT MURANGA THIS 7th DAY OF MARCH 2024.

J. WAKIAGA

JUDGE

In the presence of :

Ms Rigaga for Ms Muya for Appellant

No appearance by the Respondent

Jackline – Court Assistant

