



**Njoki v Gitonga (Civil Appeal E078 of 2021)
[2024] KEHC 2497 (KLR) (Civ) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2497 (KLR)

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

CIVIL

CIVIL APPEAL E078 OF 2021

DAS MAJANJA, J

MARCH 12, 2024

BETWEEN

STANLEY KIMANI NJOKI APPELLANT

AND

JANET WAMBUI GITONGA RESPONDENT

(Being appeals from the Judgment and Decree of Hon. S. G. Gitonga, RM dated 22nd January 2021 at the Nairobi Magistrates Court, Milimani in Civil Case No. 4045 of 2018)

JUDGMENT

1. According to the Memorandum of Appeal dated 18.02.2021 the Appellant appeals against the judgment of the Subordinate Court dated 22.01.2021. In that Judgment, the court declined to allow the Appellant's material damage claim of Kshs. 625,855.96 and future medical expenses of Kshs. 1,000,000.00 and full costs of the suit.
2. The Appellant filed his claim seeking damages arising out of an accident that occurred on 03.12.2015. He was riding his motorcycle when the Respondent's motor vehicle hit him causing him injuries and damages to his motorcycle. After hearing the case, the court apportioned liability equally. The Subordinate Court awarded the Appellant Kshs. 1,600,000.00 as general damages and Kshs. 500,000.00 as future medical costs. It dismissed the Appellant's claim for material damages and ordered that each party shoulder their own costs.
3. As stated this appeal concerns the court's finding on quantity of damages. Both parties have filed written submissions which I have considered.
4. The Appellant sustained the following injuries; fracture dislocation of the left hip joint, fracture of the shaft of the left femur, bilateral fractures of the mandible, degloving injury left knee and facial



laceration wounds. The Appellant was examined by two doctors. Dr. Kinuthia in his report dated 03.10.2016 assessed the degree of permanent disability at 50% while Dr. Waithaka in his report dated 25.09.2019 assessed the degree of permanent incapacity at 14%. The trial court rejected the proposal of Kshs. 1,000,000.00 by Dr. Kinuthia who recommended this sum was necessary to remove metallic implants on the mandibles, left femur, left olecranon on the left hip. The trial court took the view that the sum was not based on any tabulation of how the sum would be used and whether it is the price in a high or low-cost hospital.

5. Having reviewed the evidence, it is not in doubt that the Appellant was entitled to damages for future medical treatment. This amount presented by Dr Kinuthia, an expert, was not controverted by any other material evidence. Dr. Waithaka confirmed that internal fixation of the fractures was done hence the Appellant would incur future medical expenses to remove the implants in various parts of his body. The Respondent contends that despite Dr Kinuthia recommending future medical care, this was not done for the period upto the judgment. When the Appellant testified in August 2020, he stated that the plates in his body would need to be removed. The fact that he has not removed them does not take away the liability as the tortfeasor takes his victim as he finds him. I therefore allow the appeal on this ground.
6. The trial magistrate rejected the claim for special damages on the ground that the Appellant did not produce receipts evidencing repair of the motor cycle. In my view this was an error because it was not disputed that the motorcycle was damaged as a result of the accident. He produced a detailed report by Capricon Motor and Risk Assessors outlining the nature of damage and an itemized list of the cost of damaged parts. In this respect I would do no better than cite what the Court of Appeal stated in *Nkuene Dairy Farmers Co-operative Society and Another v Ngacha Ndeiya* [2010]eKLR as follows:

In our view special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent's vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty. In *Ratcliffe v. Evans* [1892]2QB 524 Bowen L.J. said:

“The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pendency.”

Motor vehicle parts are sold in shops. An assessor, we think would be in a position to know their cost. The prices may vary from one shop to another but the prices are nonetheless ascertainable even without purchasing the item and fixing it on the damaged vehicle. Motor vehicle parts are common items and any price which the assessor might have given could be counter checked and either accepted or disproved. The appellants having not questioned those prices must be taken to have accepted the report as representing the correct market prices of the various parts which were shown on the Assessor's report. The experience of the Assessor was not challenged and we think Onyancha J. was right in describing him as an



expert, and his report as being opinion evidence. The court had the right to accept or reject his opinion if the circumstances so dictated.

7. The nature and extent of loss was duly quantified in the expert report by the assessor. It was therefore improper for the trial court to reject the claim when the value of the loss was specifically quantified, pleaded and proved. I allow this ground of appeal.
8. For the reasons I have stated, I allow the appeal on the following terms:
 - a. The judgment dated 22.01.2021 is allowed to the extent that the Appellant is awarded Kshs. 1,000,000.00 as future medical treatment is Kshs. 625,885.96 as special damages subject to apportionment.
 - b. The Respondent shall pay costs of the suit in the Subordinate Court
 - c. The Respondent shall pay costs of the appeal assessed at Kshs. 50,000.00.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH 2024.

D. S. MAJANJA

JUDGE

Mr Okeyo instructed by J. M. Njenga and Company Advocates for the Appellant.

Ms Chepkorir instructed by Wanyanga and Njaramba Advocates for the Respondent.

