



**Njue v Ngala (Civil Appeal E064 of 2021) [2024] KEHC 2637 (KLR) (11 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2637 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E064 OF 2021  
DAS MAJANJA, J  
MARCH 11, 2024**

**BETWEEN**

**BENJAMIN NDWIGA NJUE ..... APPELLANT**

**AND**

**GRACE NGALA ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. C. N. Ndegwa, SPM dated 16th April 2021 at the Magistrates Court at Mombasa in Civil Case No. 113 of 2020)*

**JUDGMENT**

1. This is an appeal against the judgment of the Subordinate Court finding the Appellant fully liable for injuries the Respondent sustained as a result of an accident that occurred on 24.04.2018 along Mombasa-Malindi road involving the Appellant's motor vehicle registration number KBJ xxxB in which the Respondent was a passenger and motor vehicle registration number KBX xxV. The Respondent was also awarded general damages of Kshs. 200,000.00 and special damages of Kshs. 2,000.00. It is the award of damages that has precipitated this appeal. It is grounded on his memorandum of appeal dated 27.04.2021.
2. In reaching the award for general damages, the Subordinate Court noted that the injuries sustained by the Respondent were expected to heal with no permanent disability and after considering the decision of John Njue v Daniel Nyaga Muriuki [2019]eKLR, held that a sum of Kshs. 200,000.00 would be appropriate as an award for general damages.
3. The general principle upon which an appellate court can interfere with an award of damages was stated in the case of Bashir Ahmed Butt v Uwais Ahmed Khan [1982-88] KAR 5 as follows:

An appellate court will not 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 judge



proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was inordinately high or low.

4. Since general damages are damages at large, the trial court has to examine the extent and gravity of the injuries suffered by the plaintiff, relevant and comparative case law to ensure fairness and where necessary take into account the rate of inflation in coming up with a reasonable award. In sum, as was stated by the Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR, “comparable injuries should attract comparable awards.” The Appellant faults the lower court for proceeding on the wrong principles when assessing the general damages which was inordinately high and excessive in the circumstances and thus occasioning a miscarriage of justice. He further states that the lower court did not consider his submissions and failed to consider the same in assessing the damages. He further states that the lower court erred in failing to adequately evaluate the evidence and exhibits and thus arrived at an unjust decision unsustainable in law.
5. In arriving at the decision to award the Respondent Kshs. 200,000.00, the learned magistrate stated that he had considered the submissions, the authorities of *Zainab Abubakar Ireri v Gladys Wamuyu & Anor NBI HCCC No. 3814 of 1990 (UR)* and *John Njue v Daniel Nyaga Muriuki (Supra)*, and the injuries sustained by the Respondent. Going through the record, I cannot fault the trial court’s discretion. I find that the decision of *John Njue v Daniel Nyaga Muriuki (Supra)* was relevant as it involved injuries that are almost similar and not as serious as those of the Respondent herein. The authority of *Zainab Abubakar ireri v Gladys Wamuyu & Anor (Supra)* cited by the Respondent was rightly held by the trial court to be “too old” to guide the court. On the contention that the trial court did not consider the Appellant’s submissions, I note from the record that the submissions were filed on the date the judgment was delivered and after the Appellant had been given opportunities to file them. Since the Appellant failed to comply with the court’s direction, the Appellant can only have himself to blame.
6. On the whole, I find that the trial court relied on a relevant decision to arrive at the conclusion that Kshs. 200,000.00 was an appropriate award as general damages. Further, even if the lower court could have considered the Appellant’s submissions, the decisions cited by the Appellant therein were delivered before the decision in *Njue v Daniel Nyaga Muriuki (Supra)* relied on by the lower court and thus, factoring in inflation, the trial court would still have arrived at a figure of around Kshs. 200,000.00.
7. The Appellant’s appeal lacks merit. It is dismissed with costs to the Respondent assessed at Kshs. 40,000.00

**SIGNED AT NAIROBI**

**D. S. MAJANJA**

**JUDGE**

**DATED AND DELIVERED AT MOMBASA THIS 11<sup>TH</sup> DAY OF MARCH 2024.**

**OLGA SEWE**

**JUDGE**

