



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyang'au v Mekenye & 2 others (Civil Appeal E089 of 2021)  
[2024] KEHC 2830 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2830 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E089 OF 2021  
WA OKWANY, J  
MARCH 7, 2024**

**BETWEEN**

**VICTOR MANYISA NYANG'AU ..... APPELLANT**

**AND**

**MARIKO NEKO MEKENYE ..... 1<sup>ST</sup> RESPONDENT**

**JEREMIAH ONGERI SAMBA ..... 2<sup>ND</sup> RESPONDENT**

**KEITH SAMBA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal against the Judgment of Hon. W. C. Waswa –  
SRM Nyamira dated and delivered on the 8th day of November  
2022 in the original Nyamira CM's Court Civil Case No. 49 of 2020)*

**JUDGMENT**

1. This appeal was on *quantum* and liability.
2. This court has already rendered itself on the subject of liability in a related file being Nyamira HCCA E087 and directed that said decision, on liability, be adopted as the judgment on liability in this appeal. The court rendered itself on liability as follows: -

“I find that, in the circumstances of this case, the trial court made the correct finding in apportioning liability equally between the Third Parties and the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents in view of the fact that the accident occurred right in the middle of a cross (plus) junction and that none of the drivers was charged with a traffic offence following the said accident.

I therefore uphold the trial court's findings on liability.”

3. I will therefore turn to determine the issue of whether the trial court made the correct findings on quantum.



4. It was not disputed that the 1<sup>st</sup> Respondent/Claimant sustained the following injuries in the accident: -
- a. Bruises on the face;
  - b. Chest contusion;
  - c. Tenderness on the chest;
  - d. Right humerus fracture;
  - e. Right shoulder dislocation;
  - f. Bruises on the right and left lower limbs; and
  - g. Blunt trauma to the knee.

5. The trial court rendered itself on quantum as follows: -

“Based on the foregoing medical evidence, it is evident that the plaintiff sustained right humerus fracture and right shoulder dislocation together with multiple soft tissue injuries.

The plaintiff submitted for a sum of Kshs. 1,800,000.00 as general damages. The defendants prayed for a sum of Kshs. 700,000.00 while the third party submitted for an award of Kshs. 200,000.00. This court has considered the authorities relied upon by the respective parties.

In assessing damages, the general approach should be that comparable injuries should as far as possible be compensated by comparable awards. However, it must be recalled that no two (2) cases are exactly alike.

The Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR that: -

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”

The Court of Appeal observed in the case of *Stanley Maore v Geoffrey Mwenda*, NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR THAT: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.

Having considered the injuries sustained by the plaintiff herein, this court awards the plaintiff the sum of Kshs. 700,000.00 as general damages. This court relies on the following authorities:

SUBPARA a.

*Martin Ireri Namu & another v Alicalinda Igoki Kiringa* [2019] eKLR; and

b. *Sophia Wanjiru Njuguna v Kyoga Hauliers Kenya Limited* [2020] eKLR.

#### Future Medical Expenses

Future medical expenses must be pleaded and proved. The plaintiff pleaded for future medical expenses. Doctor Momanyi noted that the plaintiff would require to undergo surgery for the fractured bone to be corrected with metal implants at a sum of Kshs. 150,000.00.



Neither the defendants nor the third party adduced medical evidence in rebuttal to Doctor Momanyi's position. At the same time, both the defendants and the third party failed to submit on this limb.

The Court of Appeal, in the case of *Tracom Limited & another v Hassan Mohamed Adan* [2009] eKLR held that: -

“We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v Gituma* [2004] 1 EA 91, this court, stated: -

“And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereon is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from the infringement of a person's legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require.”

The plaintiff did not plead the exact sum that he would require under this heading. In addition, Doctor Momanyi did not give a basis for his estimate of Kshs. 150,000.00. This court is guided by the expenses that the plaintiff incurred at Hema Hospital and awards him the sum of Kshs. 70,000.00 for future medical expenses.”

6. It is trite that award of damages is at the discretion of the trial court. An award of damages should however be within the limits set out in similar decided cases and must not be inordinately low or so high as to reflect an erroneous figure. In making an award of damages, the court must also consider the prevailing economic environment. This is the position that was taken in *Kivati v Coastal Bottlers Ltd* Civil Appeal No. 69 of 1984 where the court held that: -

“The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate.”

7. The issue for determination is whether this court should interfere with the award of damages made by the trial court. The Appellant's case was that the award of Kshs. 700,000 general damages was on the higher side. A perusal of the parties' submissions before the trial court reveals that the Appellant proposed an award of Kshs. 700,000 general damages while the 1<sup>st</sup> Respondent proposed Kshs. 1,800,000.
8. My finding is that the trial court's award of Kshs. 700,000 general damages is reasonable considering as it is in tandem with the Appellant's own proposal on damages before the trial court. I find that the



said award is commensurate with the nature and gravity of the 1<sup>st</sup> Respondent's injuries. I am guided by the decisions made in the following similar cases: -

- i. *Civicon Limited Richard Njomo Omwancha & 2 Others* [2019] eKLR where the court awarded Kshs.450,000 for a deep cut wound on the left ear lobe, a tender left lateral chest wall, swollen and tender left arm, bruises on the left hand, swollen and tender left elbow, bruises on the left elbow, cut wound on the left foreleg, fracture of the left tibia and fibula and dislocation on the left hip joint.
  - ii. *Akamba Public Road Services v Abdikadir Adan Galgalo* [2016] eKLR where the award of Kshs.800,000 by the trial court was substituted with an award of Kshs.500,000 on appeal for injuries particularized as fracture to the right tibia leg bone malleolus, right fibular bone and blunt injury to the right ankle.
  - iii. *Joseph Mwangi Thuita v Joyce Mwole* [2018] eKLR, where the plaintiff suffered fractured femur, compound fracture of the right tibia and fibula, shortening of the right leg and episodic pain in the right thigh and inability to walk without support. The court awarded Kshs. 700,000 general damages.
  - iv. *Tirus Mburu Chege & Another v JKN & Another* [2018] eKLR, where the respondent suffered fracture of the tibia and fibula of both legs blunt injury on the forehead, broken upper right second front tooth, nose bleeding and consistent loss of consciousness. On appeal the award of Kshs. 800,000 was reduced to Kshs. 500,000.
9. I do not find any fault in the trial court's findings on special damages as the same was based on the pleadings and the evidence presented before the said court.
10. In sum, I find that the instant appeal is not merited and I therefore dismiss it with costs which I assess at Kshs. 30,000
11. Orders accordingly.

**JUDGMENT, DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 7TH DAY OF MARCH 2024.**

**W. A. OKWANY**

**JUDGE**

