



REPUBLIC OF KENYA



**KENYA LAW**  
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**Obach v Odongo (Civil Appeal E018 of 2022)  
[2024] KEHC 2490 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2490 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E018 OF 2022**

**KW KIARIE, J**

**MARCH 12, 2024**

**BETWEEN**

**HUMPHREY ODHIAMBO OBACH ..... APPELLANT**

**AND**

**COLLETTA ACHIENG ODONGO ..... RESPONDENT**

*(Being an Appeal from the judgment in Homa Bay Chief Magistrate's  
CMCC No. E023 of 2023 by Hon. J.S. Wesonga–Principal Magistrate)*

**JUDGMENT**

1. Humphrey Odhiambo Obach, the appellant herein, was the defendant in Homa Bay Chief Magistrate's CMCC No. E023 of 2023. This was a claim from a road traffic accident involving a motorcycle whose registration number was unknown, where the respondent was a pillion passenger, and motor vehicle registration number KCH 080Y, owned by the appellant. As a result of the collision, the respondent sustained injuries. The learned trial magistrate delivered a judgment dated 10<sup>th</sup> February 2022.
2. The parties entered a consent on liability on the 2<sup>nd</sup> day of December 2021, with 20% in favour of the plaintiff (now the appellant) and 80% in favour of the defendant (now the respondent). The learned trial magistrate awarded Kshs. 1,100,000.00 in general damages.
3. The appellant was aggrieved by the judgment and filed this appeal through L.G. Menezes & Company Advocates. The following grounds of appeal were raised:
  - a. The learned trial magistrate grossly misdirected himself in superficially treating the evidence and submissions on quantum before him and consequently coming to a wrong conclusion.



- b. The learned trial magistrate misdirected himself by ignoring the principles applicable to awarding a quantum of damages and the relevant authorities on the quantum cited in the written submissions presented and filed by the appellant.
  - c. The learned trial magistrate proceeded on wrong principles when assessing the damages to be awarded to the respondent (if any) and failed to apply precedents and terms of law applicably.
  - d. The learned trial magistrate erred in awarding a sum for damages so inordinately high that it represented an entirely erroneous estimate of the respondent's claim.
  - e. The learned trial magistrate failed to apply himself judicially and adequately evaluate the evidence and exhibits tendered on quantum, thereby arriving at an unsustainable legal decision.
4. The respondent was represented by Everlyne Kuke & Company Advocates. They opposed the appeal and contended that the learned trial magistrate made an appropriate award in general damages.
  5. This court is the first appellate court. I am aware of my duty to evaluate all the evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
  6. The appeal is on the quantum of damages awarded. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt v Khan* [1981] KLR 349 on page 356, Law JA stated:

...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 a figure which was either inordinately high or low.
  7. The appellant sustained the following injuries as a result of the accident:
    - a. Multiple facial bruises;
    - b. Multiple bruises on the left and right hand;
    - c. Compound fracture of the right distal tibia and fibula bones; and
    - d. Open wound on the right ankle joint.
  8. The medical report the appellant produced to support her case confirmed the injuries as pleaded. This report was prepared at Homa Bay County and Referral Hospital and was signed by Michael Ochola.
  9. In the trial court, the respondent proposed an award of Kshs. 9,000,000.00. She relied on the decision in the case of *Tusho Capital Kenya Ltd & 2 others v Viona Nasimiyu Ndombe* [2020] eKLR. In this case, the appellant was awarded general damages of Kshs.3,000,000/=. The injuries she sustained can be gleaned from the following paragraph:

...the Appellant suffered injuries as captioned in his medical report, which included several burns, amputation of the left arm around the shoulder joints, fractured pubic bone and was admitted to Kenyatta National Hospital. He stated that the Appellant was given appropriate medication, an X-ray was conducted, and on observation, she had a huge, irregular, extensive scar along the left pectoral region.



PW2 testified that the Appellant suffered serious skeletal injuries and endured a lot of pain and loss of blood. He stated that the loss of the left arm was permanent and she will require an artificial arm which will cost around Kshs.3 million in India and 4 million abroad.

These injuries are not comparable to the ones she sustained.

10. On their part, the appellant proposed an award of Kshs.300,000.00 and relied on the decision in the case of Gladys Lyaka Mwombe v Francis Namatsi & 2 others [2019] eKLR. The injuries are captured in the following paragraph as follows:

The injuries detailed in the report are head injury, cut wound on the scalp, spinal cord neck injury, and fracture of the left lower limb. X-rays and CT scans were done, together with an operation to fix a plate on the tibia fracture. The soft tissue injuries were cleaned and dressed and she was put on antibiotics, analgesics and sedatives for the head injury. She was left with scars on the face and on both lower limbs, and mild headaches from the head injury.

11. An award of Kshs. 300,000.00 was made. These injuries are closely compared to those suffered by the respondent. The appellant has justification for claiming that the award was inordinately high. I am persuaded to interfere with the award by the learned trial magistrate. I set aside the award by the learned trial magistrate and substituted it with an award of Kshs.500,000.00 before factoring in the contributory negligence. The appellant will be entitled to half the costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 12TH DAY OF MARCH 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

