



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ongwae v Omeka (Civil Appeal E068 of 2022)  
[2024] KEHC 3392 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E068 OF 2022  
JM CHIGITI, J  
MARCH 12, 2024**

**BETWEEN**

**ERICK ORINA ONGWAE ..... APPELLANT**

**AND**

**BENJAMIN OMEKA ..... RESPONDENT**

**JUDGMENT**

1. The Appeal herein was lodged by the Appellant having been aggrieved following a judgment delivered by Honourable P.K Mutai (SRM) at Kisii dated the 17<sup>th</sup> day of August 2022 in Kisii CMCC No. 773 of 2019 wherein the court made the following awards;The plaintiff is awarded Kshs. 550,000/= as general damagesThe plaintiff is awarded Kshs. 146,884/-special damagesCosts of the suit and interests from the date of judgment till payment in full
2. Paragraph 5 of the plaint, the appellant pleaded the following injuriesHead contusionHead injury %-Frontal skull fractureLaceration on the frontal scalp regionAnterior left leg laceration.
3. The appellant was treated and admitted at Kisii and Moi Teaching Referral Hospitals where he was admitted for cumulatively nine (9) days.
4. The injuries were further confirmed by the medical reports of Daniel Nyameino and Dr. David Onyango Olima.
5. The appellant lodged a memorandum of appeal dated the 12<sup>th</sup> day of September 2022 sought to have the judgment and/or decree set aside and judgment on quantum reviewed.
6. It is his case that the higher courts should not be quick in interfering with the amount of general damages awarded in the trial courts as the same is discretionary. However, the principles to be applied in deciding whether or not to interfere with the trial court's discretion to assess damages are well set us follows;



- i. When the award is inordinately high or low as set to represent an entirely erroneous estimate.
  - ii. The trial court proceeded on wrong principles or misapprehended evidence in some material respect. Reliance is placed in the case of *Texcal House Service Station Limited and another v Jappien and another* (Nairobi CA NO. 134 of 1998).
7. As a matter of principle, damages must be within limits set out by previous comparable decided cases and also within limits the Kenyan economy can afford. There must be uniformity in awards in cases involving similar injuries.
  8. The appellant argues that the amount awarded is low and he and he invites this honorable court to overturn the award.

### **The Respondent's case**

9. The respondent opposes the appeal and submits that. The trial magistrate properly and adequately considered and analyzed the evidence presented before court and was properly guided in the assessment of general damages to make an award commensurate with the injuries sustained by the appellant, taking into account court awards made in other cases with comparable injuries.
10. The trial magistrate considered the medical records presented in court namely: The discharge summary of the Kisii Teaching & Referral Hospital dated, 19<sup>th</sup> July, 2019; The Medical report by Dr. David Onyango Olima dated 12/6/2020; The Medical report by Daniel Nyameino dated 30/07/2019; The Discharge summary of Moi Teaching & Referral, P3 form prepared by the Kisii Teaching & Referral Hospital.
11. All those medical records confirmed that the appellant sustained mild head injury with a depressed skull fracture, Laceration on the left leg and left frontal region.
12. Both medical reports by Dr. David Onyango Olima and a clinician Daniel Omayio Nyameino confirm that the injuries were soft tissue in nature that had healed well having been treated through analgesics, antibiotics, tetanus toxoid, cleaning, suturing, dural repair and conservative management.
13. The trial magistrate captured those injuries in his judgment. The trial magistrate then proceeded to consider court awards made in comparable cases where claimants bore similar or comparable injuries to guide him in assessment of general damages in line with the principles of assessment of general damages that require consistency.
14. Specifically, the trial magistrate considered the following cases in his judgment for guidance to arrive at the award he made:
  - a. [\*Kyoga Hauliers \(K\) & Another V Philip Mabihi Nyingi\*](#) (2017) eKLR
  - b. [\*Moiz Motors Limited & Another V Harun Ngethe Waniiru\*](#) (2021) eKLR
15. In their view these cases were relevant and bore comparable injuries to the ones sustained by the appellant. The trial magistrate was therefore properly and correctly guided in his assessment of general damages. The award of Kshs. 550,000/= as general damages for the injuries sustained by the appellant is therefore based in law and commensurate with the injuries sustained.
16. [\*Daniel Otieno Owino & Another V Elizabeth Atieno Owuor\*](#) 120201 eKLR; in that case the trial magistrate had awarded the plaintiff/respondent Kshs. 600,000/= general damages for compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury, blunt chest injury and soft tissue injuries.



17. On appeal the High Court lion. R.E. Aburili, J found that the award of Kshs. 600,000/= for general damages for the said injuries was inordinately high and reduced the award and substituted it with an award of Kshs. 400,000/=.
18. *Atunga v Mogambi* (Civil Appeal E009 of 2021) [2022] KEHC 9854 (KLR); In that case the plaintiff/respondent sustained the following injuries: - bruises on the frontal part, cut wound on the parietal region, chest trauma, dislocation of the right wrist, bruises with multiple cut wounds, fracture of the right tibia/fibula bones, dislocation of the right hip joint. He was awarded a sum of Kshs. 550,000/= by the trial court which award was affirmed by the High Court.
19. *Juliet Kemunto Ondati v Gladys Mwendu Mwendu* [2021] eKLR; In that case the appellant had sustained a fracture of the tibia, blunt trauma to the back and chest contusion. She was awarded a sum of Kshs. 350,000/= as general damages for the injuries. She appealed to the High Court on the grounds, inter alia, that the amount was too low and not commensurate with the injuries sustained. The High Court, Hon. R.E. Ougo, J found that the award of Kshs. 350,000/= awarded by the trial court was commensurate with the injuries sustained in view of recent comparable awards made by courts for similar injuries.
20. *Jitan Nam v Abidnego Nvandusi Oigo* [2018] eKLR; In that case the respondent had sustained fractures of the right tibia/fibula, bruises and trauma to the chest. The High Court, Hon. D.S. Majanja, J while considering the general trend of awards in comparable cases and the need to maintain consistency, found the award by the trial court of Kshs. 1,000,000/= inordinately high and substituted it with an award of Kshs. 450,000.
21. In those cases, the injuries involved fractures, lacerations & traumas which are comparable to the injuries sustained by the appellant. The awards in those cases range between Kshs. 350,000/= and Kshs. 550,000/=. The award by the trial court herein is adequate and commensurate with the injuries sustained by the appellant.

### **Analysis and determination;**

22. In *Selle & Another v Associated Motor Boat Co Ltd & Others* [1968] EA; The court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
23. The Supreme Court of India on the 27<sup>th</sup> day of April, 2015 in the case of *K. Anbazhagan v. State of Karnataka and Others*, as follows;

“The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely.....The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasoning in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind - sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable



from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.”

24. This court has looked at paragraph 6 of the Plaint where in the Respondent pleaded that he sustained the following injuries paragraph 5 of the plaint, the appellant pleaded the following injuries Head contusion Head injury %- Frontal skull fracture Laceration on the frontal scalp region Anterior left leg laceration.
25. The appellant was treated and admitted at Kisii and Moi Teaching Referral Hospitals where he was admitted for cumulatively nine (9) days.
26. The injuries were further confirmed by the medical reports of Daniel Nyameino and Dr. David Onyango Olima.
27. In the case of *Nguku Joseph & Another V Gerald Kibiu Maina* 120201 eKLR; The respondent had sustained the following injuries: mild head injury, lacerated wound on the left supra orbital region of the face, blunt injury to the abdominal wall leading to gall bladder and Liver lacerated wound on the scalp. The trial magistrate awarded Kshs. 2,500,000/= general damages which the High Court, Hon. Mumbua T. Matheka, J found inordinately high considering comparable awards in comparable cases. The high court while setting set aside the award, substituted it with award of Kshs. 500,000/= as general damages for the injuries.
28. In the case of *Peter Gakere Ndiangu v Sarah Wangari Maina* 120211 eKLR; In that case the plaintiff/ respondent suffered pelvic fractures, blunt injuries in the chest, head, buttocks, right thigh, head concussion and right lung bruises, the trial court awarded a sum of Kshs. 1,200,000/= general damages for the injuries. On appeal, the High Court Hon. J.K. Sergon, J found that the award is inordinately high and substituted it with an award of Kshs. 500,000/= being commensurate with the injuries and awards in comparable cases.
29. Upon evaluating the pleadings, the medical reports I am satisfied that the trial court exercised her discretion within the applicable principles in the assessment of damages.
30. The amount awarded as damages accords with amounts issued in the precedents after considering inflation and I so hold.

#### **Disposition;**

31. The appeal lacks merit and the same is dismissed with costs.

#### **Orders:**

The appeal is dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2024**

.....

**CHIGITI. J (SC)**

**JUDGE**

