



REPUBLIC OF KENYA



Budul Investment Company Limited & another v Odhiambo (Civil Appeal 70 of 2023) [2024] KEHC 5765 (KLR) (13 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 70 OF 2023**

DAS MAJANJA, J

MAY 13, 2024

BETWEEN

BUDUL INVESTMENT COMPANY LIMITED 1ST APPELLANT

ABDIKADIR AHMED SAID 2ND APPELLANT

AND

FLORENCE AKINYI ODHIAMBO RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. B. Kalo, CM dated 2nd June 2022 at the Magistrates Court at Mombasa in Civil Case No. 2284 of 2019)

JUDGMENT

1. In his Memorandum of Appeal dated 24.03.2023, the Appellants complain about Kshs. 750,000.00 awarded as general damages to the Respondent. They pray that the award be varied or set aside. According to the plaint filed in the Subordinate Court, the Respondent was injured by the 1st Appellant's motor vehicle driven by the 2nd Appellant while riding in a tuk tuk on 05.03.2019 along Shimanzi Road, KPA Mombasa area. The trial court found the Appellants fully liable.
2. The question in this appeal is whether the award of damages was merited. The Respondent pleaded that she sustained the following injuries: fracture of the right iliac bone, fracture of the right superior and inferior pubic rami extending to the acetabulum, fracture of the right pubic symphysis, head injuries involving a deep Y shaped 9 cm long wound on the right forehead, a 3cm cut wound on the pinna of the left ear, dental alveolar fracture associated with fracture of teeth numbers 11,12,21,22 and 23 and multiple bruises on both legs and both forearms. These injuries were confirmed by Dr Ndegwa who testified and produced his report dated 29.07.2019. He noted that the injuries were severe and healing was expected with 5% permanent disability due to chronic pain, multiple weak bone unions that could easily fracture following future lesser traumas, frontal dental injuries and prominent depressed facial scars that ruined her appearance thus affecting her self-esteem. The Appellant relied



- on the report of Dr Udayan R. Sheth dated 28.10.2020. At the time of examination, he noted that the Respondent had fully recovered with no deformity or permanent disability.
3. In her submission before the Subordinate Court, the Respondent contended that Kshs. 1,000,000.00 would be sufficient compensation. She relied on several cases. *Enoch Kedogo v Hillary Isaac Jilani* MSA HCCC No. 176 of 2006 (UR) where the court affirmed an award of Kshs. 800,000.00 for a fracture of the right hip. *Michael Maina Gitonga v Serah Njuguna alia Serah Wanjiku Muigai* [2012]eKLR where the plaintiff sustained fractures of the pelvis, dislocation of the right hip with displaced fracture of the right acetabulum, comminuted fractures of the right tibia and fibula and soft tissue injuries and was awarded Kshs. 1,500,000.00. In *Edwin Otieno Japaso v Easy Coach Company Limited* [2016] eKLR the claimant sustained a fracture of the right little finger, dislocation of the right hip with a fracture of the acetabulum, fracture of the pelvis involving both superior and inferior pubic rami bilaterally and lacerated wounds on both legs. He was awarded Kshs. 2,000,000.00. In *Millicent Atieno Ochuoyo v Katola Richard* [2015] eKLR, the claimant was awarded Kshs. 2,000,000.00 having suffered pelvic injuries with fracture of the right pubic ramus and diastasis of the symphysis pubic, small abdominal wall haematoma and minimal haemoperitoneum. In *Peace Kemuma Nyang'era v Michael Thuo and another* [2014]eKLR the claimant sustained a fracture of the sacrum bone, fracture of the right pubic ramus of the pubic bone, fracture of the right ischium/inferior pubic ramus of the pubic bone, haematoma on both thighs and lumbo-sacral haematoma and was awarded Kshs. 2,500,000.00.
 4. On their part, the Appellants were of the view that Kshs. 450,000.00 was sufficient compensation. They cited *Francis Wachiuri Murage & Pwani United Builders v PGK & another* [2016] eKLR where the plaintiff sustained a cut wound on the left forehead and eyebrow, pelvic fractures involving left superior and inferior pubic ramii, fracture of the right olecranon (elbow), blunt injuries over the abdomen with tenderness and was awarded Kshs. 400,000.00. In *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] eKLR where one of the respondents was awarded Kshs. 450,000.00 for swollen lacerated iliac region, bruises on the left knee joint, swollen and tender left knee, bruised and tender left ankle joint and bruises on the left foot and pelvic fractures.
 5. The Appellant is aggrieved with the lower court's assessment of the general damages and award of Kshs. 750,00.00. 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 which was that 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.
 6. In determining general damages, 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 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."
 7. Although the Appellants doubted that the Respondent sustained fractures, Dr Ndegwa noted that X-rays and C-T scans done confirmed her injuries. The Respondent's injuries largely comprised fractures of the pubic area and soft tissue injuries including fractures of the teeth. The subsequent medical report shows that the Respondent's injuries had fully healed without disability. Looking at these injuries vis-à-vis the authorities sustained, I cannot say that the award of Kshs. 750,000.00 is inordinately high or excessive. It is neither below the awards cited by the Respondent which involve similar injuries to the pelvis nor is it higher than the cases cited the Appellants when inflation is taken into account. Therefore, the award is neither inordinately high nor excessive to call for interference.



8. I dismiss the appeal. The Respondent is awarded costs of Kshs. 20,000.00.

SIGNED AT NAIROBI

D. S. MAJANJA

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JUDGE

DATED AND DELIVERED AT MOMBASA THIS 13TH DAY OF MAY 2024.

OLGA SEWE

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JUDGE

