



REPUBLIC OF KENYA



**Orina v Dorothy & another (Civil Appeal E011 of 2023)  
[2024] KEHC 6498 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E011 OF 2023**

**WA OKWANY, J**

**MAY 23, 2024**

**BETWEEN**

**CHARLES ORINA ..... APPELLANT**

**AND**

**OJIAMBO AKINYI DOROTHY ..... 1<sup>ST</sup> RESPONDENT**

**WILFRED OBIERO MATAGARO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Chief Magistrate's  
Court in Nyamira in CMCC No. E028 of 2022 delivered by Hon.  
C.W. Waswa, Senior Resident Magistrate on 27th March 2023.)*

**JUDGMENT**

1. The Appellant herein was the Plaintiff before the trial court where she sued the Respondent/Defendant seeking compensation for damages arising out of a road traffic accident which occurred on 2<sup>nd</sup> August 2021. The Appellant's case was that he was on the material day a lawful pillion passenger aboard motorcycle Registration No. KMEX 269T along Kisii-Nyamira road when an accident occurred at Nyabioto area. He explained that the Defendant's driver, employee and/or agent negligently and carelessly drove, managed and/or controlled motor vehicle Registration No. KBQ 351M thereby permitting it to lose control, veer off its lane and violently knocked down the said motorcycle as a result of which the Plaintiff sustained multiple severe bodily injuries.
2. The Defendant (1<sup>st</sup> Respondent), on his part, denied the Appellant's claim and averred that the Appellant should pursue his claim against the motorcycle rider. The Defendant took out Third Party proceedings and enjoined the 2<sup>nd</sup> Respondent herein as a third party to the suit. The 2<sup>nd</sup> Respondent did not enter appearance or file a defence before the trial court.



3. The matter proceeded for hearing and on 6<sup>th</sup> October 2022, parties recorded consent, on liability, at 15:85% in favour of the Appellant. Judgment was thereafter entered in favour of the Plaintiff/Appellant as follows:

Liability at 15:85% in favour of the Plaintiff

- a. General Damages – Kshs. 500,000/=
  - b. Special Damages – Kshs. 513,103/=
  - c. Future Medical Expenses – Kshs. 300,000/=
  - d. Sub-Total : Kshs. 1,313,103.00/=
- Less 15% contributory Negligence – (Kshs. 196,965.45/=)
- Total Award – Kshs. 1,116,137.55/=

Costs and interests of the Suit.

4. Aggrieved by the trial court's decision on quantum, the Appellant filed the present appeal and listed the following grounds of appeal in the Memorandum of Appeal: -

1. That the Learned Trial Magistrate erred in law and in fact by failing to consider and appreciate the applicable principles in the assessment of damages and thereby arrived at an inordinately low and unjustified award on General Damages.
2. That the Learned Trial Magistrate erred in law and in fact in awarding the Appellant a sum of Kshs. 500,000/= as General Damages, an amount that was inordinately low considering the serious injuries sustained by the Appellant.
3. That the Learned Trial Magistrate erred in law and in fact in failing to consider the evidence on Record in so far as the injuries sustained by the Appellant were concerned.
4. That the Learned Trial Magistrate erred in law and in fact in failing to consider the Appellant's submissions and authorities relied on.
5. That the Learned Trial Magistrate erred in law by failing to award the Appellant General Damages and compensation for injuries sustained.
6. That the Learned Trial Magistrate's decision on quantum albeit a discretionary one was plainly wrong.

5. The Appellant seeks orders to set aside the assessment of damages made by the trial court and that this court substitutes the said award with its own assessment. He also seeks the costs of the appeal.

6. The Appeal was canvassed by way of written submissions which I have considered.

7. The duty of a first appellate court was stated in *Peters vs. Sunday Post Limited* [1958] EA 424 thus: -

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction



to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

8. I have considered the record of appeal and the parties’ rival submissions. I find that the main issue for determination is whether the trial court arrived at the correct finding on quantum.
9. It is trite that an appellate court will not ordinarily interfere with the trial court’s findings on quantum unless it is satisfied that the trial court acted on some wrong principle of law, or that the amount awarded was inordinately high or so low as to make it, in the judgment of the Court, an entirely erroneous estimate of the damages to which the Appellant was entitled. This was the position taken in the case of *Butt v. Khan* [1981] KLR 349.
10. The Appellant listed the particulars of his injuries under paragraph 6 of the Plaint as follows: -
  - a. Right Femur fracture
  - b. Left Femur Fracture
  - c. Blunt trauma to the back
  - d. Chest contusion
  - e. Bruises on the right upper limb
  - f. Bruises on the left upper limb
11. PW1, Dr. Morebu, produced a Medical Report (P.Exh2), Discharge Summary and the P3 Form (P.Exh5) which confirmed the above injuries. He stated that the injuries would take more than a year to heal and assessed permanent disability at 50%.
12. DW1, Dr. Michelle Muhanda, examined the Appellant on 7<sup>th</sup> November 2022, one year after the accident but did not give an assessment on permanent disability. Dr. Muhanda only mentioned that the patient had a permanent disability and had to undergo another surgery to remove the metal implants on his femur bones.
13. This Court will, when considering the Appellant’s injuries and the appropriate award for damages, be guided by the principle that comparable injuries should attract comparable awards. (See *Simon Taveta vs. Mercy Mutitu Njeru* [2014] eKLR).
14. I have considered awards made in various similar cases as follows: -
  - a. In *David Mutembei vs. Maurice Ochieng Odoyo* [2019] eKLR, the court on appeal reduced an award of Kshs. 1,600,000/= to Kshs. 800,000/= where the Respondent had suffered a fracture of the right femur and a proximal fracture of the left tibia.
  - b. In *Vincent Mbogholi vs. Harrison Tunje Chilyalya* [2017] eKLR, the court, on appeal, declined to disturb an award of Kshs. 500, 000/= where the Respondent had suffered a fracture of the left tibia leg bone (medial malleolus), blunt injury to the chest and left lower limb and bruises on the left forearm, right foot and right big toe.
  - c. In *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR, the court awarded the Respondent Kshs. 450,000/= general damages for lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur.



- d. In *Joseph Mwangi Thuita vs. Joyce Mwole* [2018] eKLR the court awarded Kshs. 700,000/= as general damages where the plaintiff suffered a fractured right femur, compound fracture in right tibia and fibula, shortening right leg and episodic pain on the right thigh with inability to walk without support.
- e. In *Jackson Mbaluka Mwangangi v Onesmus Nzioka & another* [2021] eKLR the Court awarded Kshs. 600,000/= in general damages where the Appellant had a fracture of the femur and blunt injury to the right shoulder fracture of the left femur.
15. A perusal of the trial court's judgment reveals that the said court relied on several similar authorities when assessing the quantum of damages due to the Appellant. My finding is that the trial court applied the proper legal principles in assessing quantum.
16. From the above cited cases, it is clear that comparable awards for injuries similar to those suffered by the Appellant range between Kshs. 450,000/= and Kshs. 800,000/=. It is my finding that the trial court properly exercised its discretion in arriving at the award of Kshs. 500,000/= general damages as the said award is within the limits established by other courts. I find no reason to disturb the award.
17. In sum, I find that the appeal lacks merit and I therefore dismiss it with costs to the Respondent which I hereby assess at Kshs. 40,000.
18. It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS  
THIS 23<sup>RD</sup> DAY OF MAY 2024.**

**W.A. OKWANY**

**JUDGE**

