



REPUBLIC OF KENYA



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

Owuor & another v Jackline Nakangu Namugaka aka Jackline Nakangu (Civil Appeal E074 of 2022) [2024] KEHC 5605 (KLR) (22 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E074 OF 2022**

KW KIARIE, J

MAY 22, 2024

BETWEEN

PATRICK OTIENO OWUOR 1ST APPELLANT

WEHAB TRADING LIMITED 2ND APPELLANT

AND

**JACKLINE NAKANGU NAMUGAKA AKA JACKLINE
NAKANGU RESPONDENT**

*(Being an Appeal from the ruling in Oyugis Senior Principal Magistrate's
SPMCC No.151 of 2019 by Hon. Celesa Okore–Principal Magistrate)*

JUDGMENT

1. Patrick Otieno Owuor and Wehab Trading Limited, the appellants herein, were the defendants in Oyugis Principal Magistrate's SPMCC No. 151 of 2019. This claim arose from a traffic accident involving motor vehicle registration number KCV 085P and motor vehicle registration number KBM 187Z. The learned trial magistrate delivered judgment dated the 4th day of August 2022 and made an award of Kshs.350 000.00 general damages and Kshs.32 057.00 special damages, in favour of the respondent.
2. The appellants were aggrieved by the judgment and filed this appeal. They were represented by Kimondo Gachoka & Company Advocates. They raised grounds of appeal as follows:
 - a. That the learned magistrate erred in law and misdirected herself when she failed to consider the appellants' submissions on both points of law and facts.
 - b. That the learned magistrate's decision was unjust, against the weight of evidence, was based on misguided points of fact and wrong principles of law, and has occasioned a miscarriage of justice.



- c. That the learned magistrate erred in law and misdirected himself when he failed to consider the provisions set out in the [Insurance \(Motor Vehicle Third Party Risks\) \(Amendment Act, 2013, Cap 405.](#)
 - d. That the learned magistrate erred in law and fact in finding the defendants/appellants 100% liable given the evidence produced before the trial court, whereas the plaintiff/respondent failed to prove his case on liability against the defendants.
 - e. That the learned trial magistrate erred in law and, in fact, in awarding general damages for kshs.350,000.00, which was manifestly too high and excessive.
 - f. That the learned trial magistrate erred in law and, in fact, in awarding special damages of kshs.32,000.00, which was manifestly too high, inordinate, and excessive.
 - g. That the learned trial magistrate erred in law and in applying wrong principles while assessing both general and special damages and the decision therein being exorbitantly high and excessive in the circumstances.
 - h. That the learned trial magistrate erred in law and facts by disregarding the evidence in the trial and thus arriving at the wrong decision in assessing the general and special damages exorbitantly high and excessive in the circumstances.
 - i. That the learned trial magistrate erred in law and fact, allowing the respondent's claim, which was not proved on the balance of probability required by law.
 - j. That the learned trial magistrate's decision, albeit a discretionary one, was wrong.
 - k. That the learned trial magistrate erred in law and fact in over-relying on the respondent's evidence and submissions.
 - l. That the learned trial magistrate erred in venturing to have issues as core issues for determining the case.
3. The respondent opposed the appeal. She was represented by Nyatundo & Company Advocates.
 4. As the first appellate court, I understand my responsibility to review the evidence presented. However, since I did not have the opportunity to observe the witnesses testify and assess their behaviour, I will be relying on the principles stated in the case of [Selle vs Associated Motor Boat Co. Ltd.](#) [1965] E.A. 123. This case establishes that the first appellate court must reassess and evaluate the evidence submitted in the trial court, analyze it, and draw its conclusions.
 5. Corporal Zakayo Ndabo (PW2) testified that after investigations into the accident, it was concluded that the motor vehicle registration number KCB 085D driver was to blame for the accident. The court was not presented with any other contrary version. Therefore, the learned trial magistrate was justified to hold the appellants 100% liable.
 6. The appellants contend that the judgment on the special and general damages was inordinately high.
 7. The legal principle regarding special damages is well-established. For the court to grant special damages, they must be both pleaded and proven. This was established by the Court of Appeal in the case of [Hahn vs Singh](#) [1985] KLR 716, at P. 717 and 721, which stated the following:
Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from



the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.

8. In the instant case, the respondent pleaded Kshs.31,927.46 as special damages. Her bundle of receipts added up to Kshs. 31,957.00. The difference between the two was Kshs. 29.54. This is an arithmetical error. There is no merit, therefore, in the appeal against the special damages awarded.
9. 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 vs 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 at a figure which was either inordinately high or low.
10. In the accident complained of, the respondent sustained the following injuries:
 - a. Bruises on the left hand;
 - b. Deep cut wounds on the left knee;
 - c. Chest contusion;
 - d. Blunt trauma to the neck;
 - e. Deep cut wound on the face;
 - f. Bruises on the left lower limb and
 - g. Bruises on the left arm.
11. At the trial court, she had proposed an award of Kshs.1,000,000.00 compensation for the injuries. She relied on the decision in the case of *Lucy Ntibuka vs Bernard Mutwiri & others* [2007] eKLR. The plaintiff was awarded Kshs.500,000.00 for the following injuries:
 - a) head injuries;
 - (b) lacerations on the lateral side of the right eye and
 - (c) Lacerations and cut wound on the left arm (elbow).She also relied on the decision in *Catherine Wanjiru Kingori & 3 others v Gibson Theuri Gichubi* [2005] eKLR. In this case, the First Plaintiff suffered an injury on the left ankle, injuries on the legs and injuries on the chest. She was awarded Kshs.300,000.00
12. The respondents had proposed an award of not more than Kshs. 50,000.00. Their proposal relied on the decision in *Kipkebe Limited v Peterson Ondieki Tai* [2016] eKLR. The respondent who sustained a deep cut wound on the left leg, chest contusion and bruises on the left shoulder was awarded Kshs.30,000.00. They also relied on the decision in *George Mugo & another v A K M (Minor suing through next friend and mother of A M K)* [2018] eKLR. An award of Kshs.300,000.00 for blunt injury to left shoulder, blunt chest injury interior, bruises of left wrist region and a blunt injury to left arm was reduced to Kshs. 90,000.00 on appeal.
13. On examination, Dr Morebu found the respondent with multiple healing scars on the body. He was of the opinion that she would be left with permanent ugly scars.



14. Given the permanent ugly scars, I have not been persuaded that the award was inordinately high. Secondly, the authorities cited by the respondent closely mirror the injuries she sustained and support the award of general damages.

15. I, therefore, dismiss the appeal with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF MAY 2024

KIARIE WAWERU KIARIE

JUDGE

