



Ruth v Oyoko (Civil Appeal E003 of 2023) [2024] KEHC 4863 (KLR) (9 May 2024) (Judgment)

Neutral citation: [2024] KEHC 4863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E003 OF 2023
DO OGEMBO, J
MAY 9, 2024**

BETWEEN

OTIANGA ATIENO RUTH APPELLANT

AND

JOANES OLUOCH OYOKO RESPONDENT

*(Being an Appeal from the Judgment of Hon. Limo. B. Benjamin,
SRM, delivered on 29.11.2022 in Siaya CM's CMCC No. 93 of 2019)*

JUDGMENT

1. The Appellant, Otianga Atieno Ruth, was sued in the above case by the Respondent Joanes Oluoch Oluoch Oyoko in the above case for General Damages, Special Damages of Ksh 2,500/=, costs and interests. In the judgment of the court delivered on 29/11/2022, the court confirmed judgment on liability at 80:20 in favour of the plaintiff.
2. The court assessed and awarded the Plaintiff General Damages of Ksh1,200,000/= and Special Damages of Ksh 12,500 subject to the agreed contribution.
3. Being aggrieved of the decision of the court, the Respondent (Defendant) has appealed to this court. The Appellant has listed the following grounds of appeal in the memorandum of appeal filed herein on 30/5/2023 and dated 20/1/2023:-
 1. That the learned magistrate erred in law and fact in failing to set out in the judgment the points for determination, the reasons for determination contrary to Order 21 Rule 4 of the Civil Procedure Rules.
 2. That the learned trial magistrate erred in law and fact in failing to find that the Respondent did not discharge the burden of proving the pleaded injuries placed upon him by law.



3. That the learned magistrate erred in law in completely failing to consider and analyze the medical evidence presented, pleaded injuries and the submissions made on those injuries and thus reached an insupportable decision.
 4. That the learned magistrate erred in law by failing to make any findings on injuries sustained by the Respondent.
 5. That the learned magistrate erred in law and fact in failing to resolve the glaring contradictions and inconsistencies between the Respondent's pleaded injuries, his discharge summary and a radiology report made 3 months after the accident thereby reaching an insupportable award.
 6. That the learned magistrate erred in law and fact in making an award of general damages without stating the proven injuries for which he was making the award.
 7. That the learned magistrate erred in law and in fact in making an award without considering the principles that apply in awarding general damages especially the principle that similar injuries attract similar awards.
 8. That the learned magistrate erred in law and fact in failing to consider the submissions made by the Appellant and the authorities cited therein before making his decision thereby making an award that was excessive and inordinately high in the circumstances.
 9. That award of the trial magistrate is insupportable on facts and the law.
 10. That the learned trial magistrate erred in law and in fact in failing to find and apportion greater liability upon the deceased.
4. The Appellant has pleaded that this Appeal be allowed and the matter remitted to the trial court to make a judgment in conformity with the law. And that in alternative that the judgment on quantum be set aside and be reviewed. The respondent has opposed this appeal.
 5. This appeal was canvassed by way of written submissions. The Appellant filed submissions on 11/9/2022 in which it was submitted that his appeal is against the quantum awarded. That the plaintiff (Respondent) had pleaded the following injuries:-Fracture of the 2nd, 3rd and 4th ribs at the axillary lineFracture of the right hand humerus in lateral displacement and medical angulationFracture of the right tibia and fibula bonesRight shoulder dislocationCut on the back of the headHead contusion.Bruises on the right elbow extending to mid armDeformed right upper limbDislocation of right ankleCut wound on left earCut on the right legFrictional burns on the buttocks
 6. That while the fracture of the humerus and hip location were established to have been the injuries for which he was admitted and treated in hospital for 1 ½ months, the rib fractures were not shown on the x-ray and were not captured on the discharge summary. That the court went ahead to award Ksh1,200,000/= against a plea for Ksh2,000,000/= by the Plaintiff and ksh500,000/= by the Defendant.
 7. Counsel relied on *Densbire Muteti Wambua v KPLC Co. Ltd* [2013 eKLR, on the jurisdiction of this court as 1st Appellate Court, and also *Kemfuo Africa Ltd v Meru Express Services*, [1982-88] KAR, that:-
 8. The principles to be observed by an Appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial court..... to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out a relevant one, or that short



of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

9. It was submitted that the trial court did not give reasons for its judgment nor rely on any authorities. Cases of *Timsales (k) Ltd v Grace Bosibori* [2010] eKLR, and *Sony Co. Ltd v Omwando Omwando* [2011] eKLR, were relied on amongst other authorities.
10. Further submissions were to the effect that the trial court did not make any finding on the injuries sustained nor consider the authorities relied on, and in the process ignored the principle in assessment of damages that similar injuries ought to attract similar awards. Also that the authorities relied on by the Plaintiff ie *Michael Maina Gitonga v Serah Njuguna* [2012] eKLR *Thuge Caroline & 2 Others v Kimani Nganga Kago*[2022] Eklr, And *Moi Teaching And Referral & Ano v Leonard Kibiwot Kosgei*[2020] eKLR, had no relationship with the instant case in view of the injuries involved.
11. That to the contrary, the authorities of the Defendant, *Patrick Marianya v Ronald Ondicho Mose* [2021] eKLR, *Maina Onesmus v Charles Wanjobi Gitbome* [2014] eKLR, and *Naftali Amiru v Servitel Supplies Ltd*[2011] eKLR, were more relevant.
12. It was further submitted that this court do allow this appeal and set aside the judgment award and proceed to award 500,000/= to the Respondent. Appellant also prays for costs of this appeal.
13. The Respondent, on the other hand, has submitted that at pages 144 and 145 of the record of appeal, the trial magistrate considered the evidence of injuries before arriving at the award, and also applied the general principles on award of general damages.
14. Further, that the plaintiff had produced several treatment records including the discharge summary, treatment notes, P3 form, Xray reports, medical imaging reports, produced by consent. That the Appellant did not contest the injuries of the Plaintiff and also did not adduce any contrary medical report. That the issue for determination is therefore assessing the damages. Counsel relied on *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982 – 1988] KAR, where the Court of Appeal held;

An Appellate court will not disturb an award for general damages unless it is so inordinately high or 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....”
15. Counsel also cited the case of *Gitobu Imanyara & Others v A.G* [2016] eKLR, and *Shabani v City Council of Nairobi* [1985] KLR 516 on the same point.
16. On the quantum awardable, the court was referred to pages 34- 36 of the record of appeal to prove that the sum awarded was reasonable.
17. I have considered the submission made by the parties herein. I have also considered the authorities relied on. And also the proceedings before the trial as reflected on the record of appeal filed, liability having been recorded by consent at 80:20 in favour of the Plaintiff (Respondent herein), the only issue for determination is whether the general damages awarded is reasonable in the circumstances.
18. From the record of proceedings before the trial court, among the exhibits that were produced by the plaintiff by consent of the Respondent were a discharge summary form (PEXH – (a). The same lists the many injuries shown therein include:-Fractures of 2nd, 3rd and 4th ribs anaxillary lineFracture of the right hand humerous in lateral displacement.Fracture of the right tibia and fibula bonesPosterior dislocation of the right hip jointRight shoulder dislocationCut on the back



of the headHead concussionBruises on the right elbow extending to the mid armDeformed upper limbDislocation of the right ankleCut wound on the left ear

19. In addition the Plaintiff, during the trial produced an x-ray report confirming the said injuries from Medical Imagic Clinic, Kisumu, dated 17/1/2019.
20. The two medical documents capture the injuries (other than soft tissue) injuries that the Plaintiff suffered. It is therefore not correct for the Appellant to submit that the Respondent did not sustain the rib fractures on the basis that the same were not captured on the discharge summary.
21. On the contrary, the Appellant did not, at the trial offer any contrary medical opinion on the injuries.
22. Both sides are agreed on how and when the Appellant court can interfere or disturb an award of general damages from the lower court *Kemfro Africa Ltd T/a Meru Express Service* [1982 – 88] Kar, *Bashir Ahmed Bhutt v Uwais Ahmed Khan* [1982-88] Kar, *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, *Shabani v City Council Of Nairobi* [1985]KLR 516). The test is whether the award is inordinately high or inordinately low. It is whether the trial court proceeded on wrong principles or misapprehended the evidence in some material respect as to reach an entirely erroneous estimate of the damage to which the Plaintiff is entitled.
23. The Appellant herein has not shown how the trial court applied any wrong principle in reaching the judgment. And considering the serious nature of the injuries suffered by the Respondent, based on the medical records produced, I am not convinced that the award given by the trial court of Ksh.1,200,000/ = is inordinately high or excessive in the circumstances. To say the least, the award of the trial court, I so find, is in fact very reasonable in the circumstances.
24. I am accordingly not persuaded that this appeal of the Appellant on the quantum of damages awarded, has any merit. I dismiss the same with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF MAY, 2024.

D.O. OGEMBO

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Read out in Court in presence of

Ms. Awino for Appellant and Ms. Awuor for Respondent.

