



**Karanja & another v Mwachala (Civil Appeal E749 of 2021)
[2024] KEHC 7171 (KLR) (4 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E749 OF 2021**

REA OUGO, J

JUNE 4, 2024

BETWEEN

STEPHEN GICERU KARANJA 1ST APPELLANT

ZACHARIA GATHOGO NDUNGU 2ND APPELLANT

AND

GEORGE DAUDI MWACHALA RESPONDENT

*(Appeal from the judgment of Honourable A.M Obura
(Mrs.) (CM) delivered on 29th October 2021 in CMCC)*

JUDGMENT

1. A brief background to this appeal is that the 1st appellant was driving the 2nd appellant's motor vehicle, registered as KBZ 956F, negligently thereby knocking the respondent and causing him serious injuries. According to paragraph 4 of the plaint, the respondent sustained the following injuries: compound (open) fracture of the left tibia and compound (open) fracture of the left fibula. Liability was apportioned at 90:10 in favour of the respondent as against the appellants:
2. The trial magistrate in her judgment made the following award:
 - a. General damages Kshs 900,000/-
 - b. Loss of earnings Kshs 72,000/-
 - c. Special Damages Kshs 6,450/-



3. The appellants dissatisfied with the finding of the trial magistrate have filed this instant appeal on the following grounds:
 1. The learned Magistrate erred in law and in fact in failing to consider the defendant's evidence by way of submissions on record.
 2. The Learned Magistrate erred in law and in fact in awarding general of Kenya Shillings Nine Hundred Thousand (Kshs 900,000/-) which is in excess of the injuries suffered by the plaintiff.
 3. The Learned Magistrate erred in law and in fact in making an award of general damages which is too high in comparison with current awards for similar injuries as per the authorities in the defence submissions.
4. The appellant in his submissions argues that the damages awarded were not commensurate with the injuries suffered by the respondent. The appellant submits that there is no indication of how the trial court arrived at an award of Kshs 900,000/-. Had the trial court considered the authorities cited the appellant it would have arrived at a different outcome. They cited the Court of Appeal decision in Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No 147 of 2002 (2004) eKLR. In assessing damages, courts must have a presence of mind to ascertain the sum of general damages that other courts, especially appellate courts would ordinarily award in respect of a particular injury. A plaintiff's compensation ought to be comparable to awards by other courts. They urged the court to disturb the award of general damages as the same is manifestly high.
5. The respondents submit that the trial court carefully employed the correct approach by looking at the injuries sustained, cited authorities and inflation. The respondent in this appeal sustained fractures of the tibia and fibula. For fractures of the tibia and fibula (one leg), the current level of award is Kshs 800,000/-. They relied on the case of Francis Ndungu Wambui & 2 Others v VK (a minor suing through next of friend and mother MCWK) [2019] eKLR and Patrick Kinyanjui Njama v Evans Juma Mukweyi [2017] eKLR where the court made an award of Kshs 1,000,000/ and Kshs 1,500,000 respectively.

Analysis And Determination

6. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR thus:

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 Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account 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.
7. The injuries sustained by the respondent are not contested. The respondent sustained a compound (open) fracture of the left tibia and compound (open) fracture of the left fibula. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable



awards. In the case of Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR where the Court of Appeal held:

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

8. The appellants at the subordinate court proposed that an award of Kshs 400,000/- would be sufficient compensation. They cited the case in Mohammed Younis Quereshi & Another v Chris Maina Mathu [2020] eKLR where the respondent therein, sustained soft tissue injuries and fracture of the tibia and was awarded Kshs 400,000/- as general damages. In Jitan Nagra v Abidnego Nyandusi Oigo [2018] eKLR, where the respondent sustained soft tissue injuries, compound fracture of the right tibia/fibula and segmental distal fracture of the femur and the court made an award of Kshs 450,000/- for general damages. The cases cited by the respondent contain more serious injuries than those sustained by the respondent herein. In Patrick Kinyanjui Njama v Evans Juma Mukweyi [2017] eKLR the respondent therein sustained a segmental fracture of the right femur midshaft; segmental fracture of the right tibia shaft (open); fracture of the right fibula; and, fracture of the left 3rd metatarsal bone. The court awarded a sum of award of Kshs 1,000,000/= general damages. In Daniel Oduor Shieuda v Christopher Wambugu [2021] eKLR the court observed that the courts have been awarding damages ranging between Kshs.450,000 to Kshs.1,300,000/- for fractures of tibia and fibular bones depending on the specific case and other injuries suffered by the same claimant in the accident. The appellant therein was awarded Kshs 800,000/-.
9. In this case, the trial magistrate, in her judgment, did not provide reasons why she was not persuaded by the cases cited by the appellants. The authorities cited by the appellants, in my view, did not contain comparable injuries to the injuries sustained by the respondent herein. According to the medical report by Mr. W.M Wokabi, permanent disability as a result of the respondent’s injuries was assessed at 10%. The respondent’s quality of life would be adversely affected due to the injuries sustained.
10. In the case of Nahson Nyabaro Nyandega v Peter Nyakweba Omboga [2021] eKLR, the respondent in that case, sustained similar injuries compared to those suffered by the appellant herein. The court awarded Kshs 650,000/- considering that it would take a long time to heal. In this case, the healing process was expected to take 15-18 months.
11. Having taken into account the current awards, the rate of inflation and the injuries sustained by the respondent herein as well as the fact that disability was assessed at 10%, I find that the award of Kshs 900,000/- was excessive.
12. Consequently, the appeal succeeds and I set aside the award of general damages of Kshs. 900,000 and substitute the same with an award of Kshs. 700,000 as general damages. The award shall be subjected to the liability as agreed by the parties herein. The appellant shall have the cost of the appeal.

DATED, SIGNED AND DELIVERED ONLINE AT BUNGOMA ON THIS 4TH DAY OF JUNE 2024.

R.E. OUGO

JUDGE

In the presence of:

Miss Mburu -For the Appellant



Mr. Kaburu -For the Respondent

Wilkister/ Diana -C/A

