



**Priceleen Cabs & another v Ahmed (Civil Appeal E500 of 2023)
[2024] KEHC 7308 (KLR) (11 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7308 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E500 OF 2023
DKN MAGARE, J
JUNE 11, 2024**

BETWEEN

PRICELEEN CABS 1ST APPELLANT

PHILIP MWENDWA 2ND APPELLANT

AND

NOOR MOHAMED ABDULLAH S AHMED RESPONDENT

*(Being an appeal from the Judgment and Order of Hon. Selina Muchungi -
SRM in Milimani CMCC No. E1552 of 2022, delivered on 6th April, 2023)*

JUDGMENT

1. This is an appeal from the ruling and order of the Hon. Selina Muchungi, SRM given on 6/4/2022. The same was filed pursuant to leave granted on 7/11/2023. The same is only on quantum.
2. The Appellant sought General damages of Kshs.720,000/= be set aside and be reassessed. They sought for costs in this court and the court below.
3. The Appellant was the defendant in the lower court. The fact is that the Appellant was complaining of award of excessive damages.
4. The main injury suffered was fracture of the 4th and 6th ribs and deep and long lacerated scar on the left frontal scalp.

Analysis

5. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.



6. In the case of Mbogo and Another vs. Shah [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
7. The duty of the first appellate Court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus Classicus case of Selle and another Vs Associated Motor Board Company and Others [1968]EA 123, where the law looks in their usual gusto, held by as follows;-

“.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.”
8. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them.
9. In the case of Peters vs Sunday Post Limited [1958] EA 424, court therein rendered itself as follows:-

“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...”
10. In Nyambati Nyaswabu Erick Vs Toyota Kenya Ltd & 2 Others (2019)eKLR , Justice D.S Majanja held as doth:

“General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.”
11. The duty of the court regarding damages is settled that the state of the Kenya economy and the people generally and the welfare of the insured and injury public must be at the back of the mind of the trial Court.
12. The foregoing was settled in the cases of Butter Vs Butter Civil Appeal No. 43 of 1983 (1984) KLR where the Court of Appealed held as follows as paragraph 8.

“In awarding damages, a Court should consider the general picture of all prevailing circumstance and effect of the injuries of the claimant but some degree of uniformity is to be sought in the awards, so regard would be paid to recent awards in comparable cases in local Courts. The fall of value of monies generally, the levelling up and down of the facts of exchange between currencies...should be taken into consideration.”



13. Finally, in deciding whether to disturb quantum given by the Lower Court, the Court should be aware of its limits. Being exercise of discretion the exercise should be done Judiciously conclusively are circumstances to ensure that the award is not too high or too low as to be an erroneous estimate of damages.
14. The court of Appeal, pronounced itself succinctly on these principles in *Kemfro Africa Ltd Vs Meru Express Servcie Vs. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.
15. The foregoing statement had been ably elucidated by Sir Kenneth ‘Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Counsel, that is *Nance vs British Columbia Electric Co Ltd*, in the decision of *Henry Hilanga vs Manyoka* 1961, 705, 713 at paragraph c, where the Learned Judge ably pronounced himself as doth regarding disturbing quantum of damages:-

“The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance...”
16. Therefore, for me to interfere with the award it is not enough to show that the award is high or had I handled the case in the subordinate court, I would have awarded a different figure.
17. So my duty as the appellate court is threefold regarding quantum of damages: -
 - a. To ascertain whether the Court applied irrelevant factors or left out relevant factors.
 - b. To ascertain whether the award is too high as to amount to an erroneously assessment of damages.
 - c. The award is simply not justified from evidence.
18. To be able to do this, I need to consider similar injuries, take into consideration inflation and other comparable awards.
19. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in *Pandya -vs- Republic* [1957] EA 336 is as follows:-

“On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court’s own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite



apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

20. For the appellate court, to interfere with the award it is not enough to show that the award is high or low or even that had I handled the case in the subordinate court, I would have awarded a different figure.
21. In the case of Bolpak Trading & Anor –Vs- Gilbert Onyango Odie [2020] eKLR Justice R.E. Ougo awarded Kshs. 250,000/= for fractures of 7th and 8th ribs.
22. In the case of Morris Miriti –Vs- Nahashon Muriuki & Anor the court awarded Kshs. 300,000/= in 2018 for traumatic fracture of 3rd and 4th ribs, left lung contusion and fracture of scapula.
23. In the case of Joseph Kimanathi Nzau –Vs- Johnson Macharia [2019] eKLR Justice G.V. Odunga as he then was, awarded Kshs. 800,000/= for fracture of vertical vertebrae, C1, C2 and C4 and fracture of 2nd, 3rd, 4th, 5th, 6th, 7th and 8th ribs, left scapula fracture.
24. The damages thus awarded were for more serious injuries. A sum of Kshs. 400,000/= will suffice.
25. I therefore set aside the award of Kshs. 720,000/= and substitute with Kshs. 400,000/=.

Determination

26. In the circumstances I make the following orders:-
 - a. The Appeal is partly allowed by setting aside the award of Kshs. 720,000/= and in lieu thereof substitute with a sum of Kshs. 400,000/= subject to contribution of 10% making it Kshs. 360,000/=.
 - b. Each party to bear their own costs.
 - c. Stay of 30 days.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 11TH DAY OF JUNE, 2024.

KIZITO MAGARE

JUDGE

In the presence of:-

Miss. Kamau for the Appellant

Miss. Owino for the Respondent

Court Assistant - Jedidah

