



Aluda v Hughes (Civil Appeal E002 of 2023) [2024] KEHC 8242 (KLR) (9 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E002 OF 2023**

F GIKONYO, J

JULY 9, 2024

BETWEEN

CAXTON LUDA ALUDA APPELLANT

AND

ADRIAN HUGHES RESPONDENT

*(Being an appeal from the Judgement of Hon. A.N. Sisenda
(S.R.M.) in Narok CMCC No. 12 of 2019 delivered on 27/02/2023)*

JUDGMENT

Impugned judgment

1. This appeal challenges the judgment of the Chief Magistrate's Court at Narok in Civil Suit No. 12 of 2019 delivered on 27/02/2023 in which the trial court ordered as follows;
 - a. Liability: 80% against the respondent
 - b. General damages: Kshs. 300,000/=
 - Less 20%: Kshs. 60,000/=
 - 80%: 240,000/=
 - c. Plus, costs of the suit and interest at court rates.
2. The memorandum of appeal dated 24/03/2023, cited 3 grounds of appeal as follows;
 - i. That the learned trial magistrate erred in law and fact in awarding the appellant damages which were inordinately low and not commensurate with the injuries suffered by the appellant.
 - ii. That the learned trial magistrate erred in law and fact in writing a judgment which is at variance with the pleadings and against the weight of evidence.



- iii. That the learned trial magistrate erred in fact by failing to appreciate the degree, extent, and long-term effect of the appellant's injuries thereby awarding the appellant damages which were too low/little in the circumstances.
3. The appellant urged this court to set aside the trial court judgment and make its own findings based on the record of the appeal and the costs of the appeal.

Background

4. Summary of the matter is that on 19/9/2016, the Plaintiff was a passenger in motor vehicle registration number KAV 336K, when at Ntulele along Narok-MaiMahiu road the motor vehicle rammed into the rear of a moving lorry on the left side of the motor vehicle which resulted in the appellant sustaining injuries.

Directions of the court.

5. The appeal was canvassed by way of written submissions.

Appellant's Submissions

6. The appellant in his submissions stated that he wished to abandon the issue of liability and proceed to submit on the issue of quantum.
7. The appellant proposed that an award of Kshs. 1,000,000/= in general damages would be reasonable compensation to the Appellant for the injuries suffered. The appellant relied on *Kiautha v Ntarangwi (Civil Appeal E050 of 2021)* [2022] KEHC 10595 (KLR) (30 June 2022) (Judgment) in which the honourable judge awarded the respondent Kshs.800,000/= in general damages for pain suffering and loss of amenities.

The Respondent's Submissions

8. The respondent submitted that that the trial magistrate vide the court's judgment in Narok CMCC No. 12 of 2019 dated 27th February 2023 relied on precedents that highlighted similar degrees of injuries in arriving at the quantum of damages and thus was a fair award given the circumstances. The respondent relied on Sheikh Mustaq Hassan versus Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457 cited with approval in the case of China Wu Yi Limited & Another versus Irene Leah Musau [2022] eKLR, SLH versus Kevin John Barrett [2019] eKLR highlighted this issue by relying on Jane Chelagat Bor versus Andrew Otieno Onduu [1988-92] 2 KAR 288 [1990-1994] EA 47, and Cleophas Shimanyula versus Mohamed Salat (2018).
9. The respondent submitted that the trial court fairly exercised its discretion in awarding the quantum of damages of Kshs.240,000/= (after contribution). The respondent urged this court not to interfere with the award granted by the Trial Court. The respondent relied on Apungu Arthur Kibira Versus Independent Electoral & Boundaries Commission & 3 others [2019] eKLR, Patrice Kipkemei Chepkwony Versus National Bank of Kenya Limited [2016] eKLR, Shah Versus Mbogo [1967] E. A 116, NRB HCCA No.503 of 2009 [2015] eKLR Bhachu Industries Limited versus Peter Kariuki Mutura, civil appeal no. 82 of 2008, T A M (minor suing through her father and next friend JOM) Richard Kirimi Kinoti and Another (2015) eKLR Ibrahim Kalema Lewa versus Estee Company Limited (2016)eKLR, Kisii HCCA No. 66 of 2017 Erick Ratemo versus Joash Nyakweba Ratemo (2018) eKLR, Eldoret Civil Appeal No.106 of 2013 Hashim Mohamed Said & Another Versus Lawrence Kibor Tuwei [2018] eKLR and Waititu Versus Republic (Petition 2 of 2020) [2021] KESC 11(KLR).



Analysis and Determination

Duty of court

10. The first appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein (Section 78(2) of the [Civil Procedure Act](#)).
11. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyze the same, and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify a benefit this court lacks. See *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, *Selle -vs- Associated Motor Boat Co.* 1968 EA 123.
12. This court has considered the record of appeal, and the appellant and respondent's submissions.
Issues for determination
 - i. This appeal relates to quantum of damages only.

I. Quantum

13. An appellate court will only interfere with the trial court's discretion in the assessment of damages where; i) there is an error in principle; and or ii) the award of damages is so inordinately high or low as to represent an entirely erroneous estimate (*Bashir Ahmed Butt vs. Uwais Ahmed Khan* (1982-88) KAR).
14. The appellant proposed that an award of Kshs. 1,000,000/= in general damages would be reasonable compensation to the Appellant for the injuries suffered.
15. The respondent, on the other hand, considers the award to be reasonable compensation for injuries sustained; and one that was made upon proper exercise of discretion. Therefore, urged this court not to interfere with the award by the trial court.
16. The Appellant's Plaintiff dated 15th May 2017 indicates the particulars of injuries sustained by the Appellant as follows;
 - a. Cut wound on the left upper eye;
 - b. Backache;
 - c. Multiple bruises on the left lower arm; and
 - d. Fracture of the left femur bone
17. According to the medical report from AIC Kijabe Hospital dated 9/12/2009, (P. Exh.2), the plaintiff sustained a fracture of the left femur and complained of abdominal pain but was later found to be normal on ultrasound.
18. The Medical Report from AIC Kijabe Hospital indicates that the accident occurred on 17/06/2009. The appellant was referred to Narok District Hospital but was later transferred to AIC Kijabe Hospital. On 2nd December 2009 upon further review, an X-ray was done and the Doctor noted good callus formation and good healing. Moreover, the Appellant returned the crutches he was using and was discharged from the clinic which confirms that the Appellant had completely healed.



19. The Trial Court in its judgment noted that the Appellant did not make available a recent Medical Report to assist the Court in determining any permanent incapacity.
20. The trial court in its judgment relied on the case of Cleophas Shimanyula versus Mohamed Salat (2018) in which an award of Ksh.500,000/= was granted to the Respondent who suffered a fracture of the right humerus, loss of 3 teeth, and multiple soft tissue injuries to the legs, head, eye, nose and mouth.
21. The respondent has cited authorities where the Court awarded General Damages ranging from Kshs. 200,000/=to Kshs. 300,000/=, where the Plaintiffs sustained injuries which were similar to what was sustained by the Appellant herein. However, the said authorities are relatively old.
22. The appellant has cited an authority that is more recent but the injuries sustained by the plaintiff were more severe than those sustained by the appellant herein.
23. In Pestony Limited & Another V Samuel Itonye Kagoko [2022] eKLR, (C Meoli J) reviewed an award of general damages downwards from Kshs. 1,400,000 to Kshs. 800,000 for a single fracture to the femur which he had since healed.
24. In this case, a serious injury was suffered by the appellant; fracture of the left femur. There other injuries were soft tissue. Given the nature of the injuries, inflation and being guided by the comparable authorities, the award of Kshs. 300,000 was manifestly low in the circumstances.
25. In the circumstances, this court considers an award of Kshs. 500,000 to be reasonable compensation.
26. In the premises, and based on the reasons stated above, the court finds the appeal to be merited and it is allowed.
27. The court hereby sets aside the trial court’s award of general damages of Kshs. 300,000 and substitutes therefore an award of general damages of Kshs. 500,000/=.
28. All the other orders by the trial court remain in situ.
29. Costs of the appeal shall be in the cause.
30. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 9TH DAY OF JULY, 2024.

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HON. F. GIKONYO M
JUDGE

In the Presence of: -

C/A: Otolo

Ms. Okoth Jane for Respondent – Present

Odino for Appellant - Present

