



REPUBLIC OF KENYA



Bonafide Clearing & Forwarding Co Ltd & another v Karanja (Civil Appeal 19 of 2023) [2024] KEHC 8586 (KLR) (Civ) (11 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL 19 OF 2023
CM KARIUKI, J
JULY 11, 2024**

BETWEEN

BONAFIDE CLEARING & FORWARDING CO LTD 1ST APPELLANT

FRANCIS MUTUNGU MAINA 2ND APPELLANT

AND

JOHN KAMAU KARANJA RESPONDENT

JUDGMENT

1. The Appellants, being aggrieved by the Judgement/Decree of Hon. S.N. Mwangi, Senior Resident Magistrate, delivered on 9th October 2018 in Nyahururu CMCC No. 151 of 2017, appealed the same vide their memorandum of appeal dated 1st November 2018 on the following grounds:-
 - i. That the learned trial magistrate erred in law and fact in finding the Appellant liable contrary to the evidence on record.
 - ii. The learned trial magistrate erred in making a finding and arriving at an award of damages that was inordinately high to represent an erroneous estimate of damages payable.
 - iii. That the learned trial magistrate erred in applying wrong principles and failing to take into account material facts in arriving at an erroneous award.
 - iv. The learned trial magistrate erred in law and fact in disregarding the Appellants' submissions and on all points of fact and law regarding awarding damages.
 - v. That the learned trial magistrate erred in law and fact in awarding Kshs. 1,800,000/- as general damages plus special damages of Kshs. 7,550/- which is excessive and unrealistic in the circumstances against the injuries allegedly sustained.



2. Reasons wherefore the Appellants pray for:-
 - i. That the trial magistrate's finding on quantum be set aside, reviewed, and/or revised and/or be substituted with the judgment of this honorable Court.
 - ii. This honorable Court does make such further orders as it may deem fit.
 - iii. The appeal should be allowed with costs to the Appellants.
3. Appellant's Submissions
4. The Appellants submitted that the trial magistrate erred in making a finding and arriving at an award of damages that is inordinately too high to represent an erroneous estimate of damages payable. The Respondent proposed Kshs. 2,500,000/- as general damages, and the Court went ahead and awarded Kshs. 1,800,000/-. It was stated that the trial magistrate did not give a basis for how she arrived at the said amount. The case relied on by the Respondent presented injuries that were not in tandem with the injuries in this case as they were more severe. Reliance was placed on Charles Oriwo Odeyo Vs. Apollo Justus Andabwa & Another [2017] eKLR, Order 20 Rule 4 Civil Procedure Rules
5. The Appellants proposed that the award of Kshs. One million eight hundred thousand be substituted with an award of Kshs. 250,000/-Reliance was placed on Bolpak Trading Co. Ltd & Another vs. Gilbert Onyango Odie [2022] eKLR. Lastly, they prayed that the Court set aside the trial court judgment and proceed to allow the appeal.
6. Respondent's Submissions were not available in the file at the time of drafting this judgment.
7. Analysis and Determination
8. The issue for determination herein is whether the award of general damages for pain and suffering of Kshs. In order to persuade this Court to interfere with it, 1,800,000.00/= in light of the Respondent's injuries, which is inordinately high.
9. The Court of Appeal in Odinga Jacktone Ouma v Maureen Achieng Odera [2016] eKLR stated that "comparable injuries should attract comparable awards."
10. First and foremost, the injuries suffered by the Respondent were listed in Dr. Kiamba's medical report as:-Fracture of 2nd and fourth ribs on the right side of the chestSoft tissue injuries of the neckSoft tissue injuries of the shoulder jointsSoft tissue injuries of the right armAbrasions on the legsSoft tissue injuries of the left thumb
11. On the issue of quantum, I will rely on the Court of Appeal's decision in the case of Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR, which held that:-

“...it is firmly established that this Court will be disinclined to disturb a trial Judge's finding as to the amount of damages merely because they think that if they had tried the case in the first instance, they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages, it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extraordinarily high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.



This principle is enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:

'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an 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.'

12. Further, 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, the Court of Appeal stated that 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 thus:

- i. Where an irrelevant factor was taken into account
- ii. Where a relevant factor was disregarded.
- iii. Where the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.

13. Notably, the rationale for the award of damages for pain and suffering is explained in Paragraph 883 in *Halsbury's Laws of England 4th Ed, vol. 12(1) page 348-883:-*

Damages are awarded for the physical and mental distress caused to the plaintiff, both pre-trial and in the future, due to the injury. This includes the pain caused by the injury itself and the treatment intended to alleviate it, the awareness of and embarrassment at the disability or disfigurement, or suffering caused by anxiety that the plaintiff's condition may deteriorate.

14. The Appellants urged the Court to reduce the award of general damages from Kshs. 1,800,000/- to Kshs. 250,000/- based on the pleaded injuries. I have scrutinized the authority that was cited by the Respondent in the trial court and relied on by the learned magistrate as comparable awards previously made in the following cases in her judgment:

15. It was worth Noting that the Court could not find the judgment In this case on Kenya Law, but it was cited in the case of *Eugene Reeksting v Attorney General & another* [2021] eKLR as follows:-

"In the case of *Zachary Kariithi v Jashon Otieno Ochola* [2016] eKLR, the plaintiff therein sustained compound fractures of the right tibia/fibula, compound fracture of the left femur bone mid-shaft, fracture of the right femur bone, fracture of the 3rd, fourth fifth ribs of the right side and injuries to the forehead, hip joint, big left toe, waist, and pains in the chest. In 2016, Hon. Majanja J awarded a sum of Kshs 1,500,000/= general damages, pain and suffering and loss of amenities....."

16. In this case, the plaintiff therein sustained the following injuries:Compound fracture of the right tibia/fibula.Compound fracture of the left femur bone mid-shaft.Fracture of the right femur boneFracture of the 3rd, 4th 5th ribs of the right sideinjuries to the forehead, hip joint, big left toe, and waist, and pains in the chest

17. The Court awarded a sum of Kshs. 1,500,000/- in general damages. I believe the injuries suffered by the Respondent herein were less grievous than those sustained by the plaintiff in the aforementioned case. Therefore, the learned trial magistrate erred in relying on this case and, consequently, awarded Kshs. 1,800,000/- to the Appellant in general damages.



18. Further, I have assessed the cases relied on by the Appellants during the trial, and I find that the same cases also do not present comparable to the injuries suffered by the Respondent. The injuries suffered by the Respondent were more severe than in the cases stated by the Appellants.
19. The Appellants proposed that the award of Kshs. One million eight hundred thousand be substituted with an award of Kshs. 250,000/-Reliance was placed on Bolpak Trading Co. Ltd & Another vs. Gilbert Onyango Odie [2022] eKLR. In this case, Respondent sustained the following injuries: a seventh right rib fracture, eighth right rib fracture, chest contusion, bruises on the face, and blunt trauma to the lower back, right knee, and left hand. The appellate Court substituted the award of Kshs. 400,000/- awarded by the trial court with Kshs. 250,000/-.
20. I have also analyzed several authorities:-
21. Furthermore, in the case of Monyoro Mong'are Shem & Another v Rose Kebaki [2021] eKLR, the Respondent sustained the following injuries as a result of the accident: displaced fracture of the right femur, soft tissue injuries on the neck, soft tissue injuries of the chest, soft tissues injuries of the shoulder joint and soft tissue injuries of the forearms. The appellate Court substituted the award of Kshs. 1,500,000/- for Kshs. 600,000/-
22. In Aloise Mwangi Kahari v Martin Muiya & another [2020] eKLR, the Appellant suffered a compound fracture of the right tibia and fibula, severe soft tissue injuries on the face, and soft tissue injury on the left shoulder joint. The Court awarded Kshs. 500,000/-
23. In Daniel Otieno Owino & another v Elizabeth Atieno Owuor [2020] eKLR, the Court reduced an award of Kshs. 600,000 to Kshs. 400,000/= for compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with a cut wound on the nose and blunt chest.
24. In Harun Muyoma Boge v Daniel Otieno Agulo [2015] eKLR, where the plaintiff sustained multiple injuries and fractures of the right tibia and fibula, the appellate Court set aside an award of Kshs. 1,500,000/= and substituted it with an award of Kshs. 300,000/=.
25. In Third Engineering Bureau China Construction Group Limited v Edwin Kinanga Atuya [2021] eKLR, the plaintiff suffered bruises on the scalp, hands, and right leg, compound left and right tibia fractures. The Court awarded Kshs 500,000/- as general damages.
26. However, it is almost impossible to find an authority where one person's injuries are fully comparable to another. However, a court is to consider what is, as far as possible, comparable" to the other person's injuries and the after-effects. I am inclined to find that the trial court made an inordinately high award compared to the injuries suffered by the Respondent, thus calling for interference by this Court.
27. In the case, Jesky Enterprises Limited & another v Nancy Wachinga Wanjiru & another [2019] eKLR, the Court cited the case of Kigaraari vs. Aya [1982-88] 1 KAR 768 where it was stated as follows: -

“Damages must be within the limits set out by decided cases and within the limits the Kenyan economy can afford. Large awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and fees.”
28. In view of the above analysis and taking the above authorities into account as well as the nature and extent of the injuries sustained by the Appellant, I, therefore, substitute the award under general damages for pain and suffering from kshs, 1,800,000 to kshs. 500,000/-. The award on special damages remains kshs. 7,550/-



29. Accordingly, the final orders are as follows: -

- I. Appeal on quantum is allowed in the following terms.
- II. The trial court order is set aside and substituted with an award of Kshs. 500,000 as general damages for pain and suffering.
- III. Each party is to bear the costs of the appeal.
 - i. Orders apply to Civil Appeal 20 of 2023; thus, general damages for HCA 20 of 2023 are reduced to ksh 500,000, with other awards as per trial court judgment.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 11TH DAY OF JULY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

C. KARIUKI

JUDGE

