



REPUBLIC OF KENYA



**East Africa Institute of Certified Studies & another v Lewis (Civil Appeal
E024 of 2023) [2024] KEHC 9008 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E024 OF 2023
GMA DULU, J
JULY 11, 2024**

BETWEEN

EAST AFRICA INSTITUTE OF CERTIFIED STUDIES 1ST APPELLANT

SMART COACH LIMITED 2ND APPELLANT

AND

FRANCIS SAHA LEWIS RESPONDENT

*(From the judgment/decree in Civil Case No. E083 of 2022 delivered
on 25th May 2023 by Hon. T. N. Sinkiyian (PM) at Voi Law Courts)*

JUDGMENT

1. In a judgment delivered on 25th May 2023 the learned trial Magistrate found the appellant 100% liable in negligence and awarded the respondent Kshs. 300,000/= in general damages together with interest and costs against the appellants jointly and severally.
2. Dissatisfied with the award of general damages, the two appellants who were the defendants in the trial court, have come to this court on appeal through counsel Kimondo Gachoka & Company Advocates on the following grounds:-
 1. The learned trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the respondent.
 2. The learned trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.
 3. The learned trial Magistrate erred and misdirected herself by awarding a sum in respect of damages which was inordinately high in the circumstance which was excessive in the circumstances occasioning a miscarriage of justice.



4. The learned trial Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 5. The learned trial Magistrate erred and misdirected herself by ignoring the defendant's submissions on record hence arriving a wrong decision on quantum.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the appellants, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
 4. This is an appeal on quantum of damages awarded, as there is no ground of appeal against liability, maybe because the respondent was a passenger in the subject motor vehicle KCV 850M.
 5. This being an appeal against quantum of damages, I have to be guided by the principle consistently applied by courts, which was restated in *Catholic Diocese of Kisumu v Tete* Kisumu CA No. 284 of 2001 (2004) eKLR; wherein the court stated as follows:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, as by taking into account some irrelevant factor or leaving out of account some relevant one or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate.”
 6. In the present case, the amount of award in contest is Kshs. 300,000/= general damages awarded by the trial court.
 7. It is not in dispute that the injuries suffered by the respondent were as stated by the trial Magistrate which were soft tissue injuries, expected to heal with no permanent incapacity as described in the medical report (P3 form) filled by Dr. Darius Kiema – as follows:-

“Bruises and abrasions right leg, bruises and abrasions left leg, blunt object trauma, soft tissue injuries to the pelvis and pains on the lower back and occasional headache.”
 8. In assessing the general damages in particular, the trial Magistrate observed that though the appellants' counsel had cited decided court cases and awards made therein at the trial, the counsel did not supply copy of the cases cited.
 9. On this appeal, the appellants counsel having the onus to persuade this court that the trial Magistrate erred in assessing general damages, was expected to demonstrate the justifications for proposing for general damages of between Kshs. 80,000/= to Kshs. 100,000/=
 10. I note that counsel also did not supply any copy of any judgment, though counsel mentioned the case of *Ndungu Dennis v Ann Wangari Ndirangu & Another* (2018) eKLR. where they state that in a case of blunt injury to the chest and both hands suffered and the general damages award therein of Kshs. 300,000/= was reduced to Kshs. 100,000/=; and in the case of *Eva Karemia & 5 Others v Koskei Kieng & Another* (2020) eKLR where the victim suffered injuries to her thigh and bruises on her lower and upper limbs, damages awarded was Kshs. 70,000/=.



11. In my view, since the determination of general damages is an exercise of discretionary power of a trial court, and not having been persuaded through the appellants' submissions that the trial Magistrate went outside reasonable figures in exercising discretion or made an error in assessing the general damages, in my view the appeal herein cannot succeed. In my view, the figure of Kshs. 300,000/= for general damages for the injuries suffered herein cannot be said to be inordinately excessive, though it might appear slightly high.
12. I thus find no merits in the appeal. I dismiss the appeal with costs to the respondent payable by the appellants jointly and severally.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

No appearance for appellant

Mr. Kazungu for respondent

