



**Gichokia v Wanyoike (Civil Appeal E474 of 2021)  
[2024] KEHC 8665 (KLR) (Civ) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8665 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E474 OF 2021**

**JN NJAGI, J**

**JULY 10, 2024**

**BETWEEN**

**GIBSON KARIUKI GICHOKIA ..... APPELLANT**

**AND**

**JAMES KAMAU WANYOIKE ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. L Wanjala, Principal Magistrate, in Milimani CMCC No. 6786 of 2021 delivered on 23/7/2021)*

**JUDGMENT**

1. The trial magistrate in Milimani CMCC No. 6786 of 2021 awarded the respondent herein a sum of Ksh.1,850,000.00/= in general damages after he was injured in a road traffic accident involving the appellant's motor vehicle. The appellant was aggrieved by the award on quantum and lodged the instant appeal.
2. The grounds of appeal are that the trial court awarded excessively high amount of damages and that the trial magistrte failed to consider the appellant's submissions and precedents in relation to the injuries sustained by the respondent.
3. The appeal was disposed of by way of written submissions.

**Appellant's Submissions**

4. The appellant submitted that the respondent pleaded to have suffered the following injuries: -
  - a. Unstable pelvic fracture;
  - b. Urethral injury leading to post traumatic urethral structure.



5. The appellant submitted that the P3 form dated 22/6/2017 together with treatment notes from Kenyatta National Hospital dated 16/5/2017 also confirmed the pelvic fracture. He contended that the injuries cited in the authorities relied upon were more severe compared to the injuries sustained by the respondent.
6. The appellant urged this Court to set aside the trial court's judgment, re-assess the quantum and allow the appeal with costs.
7. It is to be noted that the appellant did not down load page 3 and 4 of his submissions. He indicated in his submissions that he was also relying on the submissions made at the trial court wherein he had submitted that an award of Ksh. 300,000/= would have been sufficient compensation for the respondent for the injuries sustained. He made reliance on the case of *Josbua Mwaniki Nduati v Samuel Muchiri Njuguna* (2005) eKLR where an award of Ksh. 250,000/= was made in general damages for a fracture of the pelvic and fracture of the right side 3 ribs. He also cited the case of *Absolom Agala v IMCO Building & Engineering Construction* (2012) eKLR where the plaintiff sustained a torn urethra with excessive blood loss, developed a urethra stricture and required surgical intervention. He was awarded Ksh.350,000/=.
8. In his submissions before this court the appellant annexed the case of *Mususya Penninah Mueni v Nicodemus Kasyula Muthini* (2022) KEHC 227 (KLR) where the High Court reduced an award of Ksh.1,300,000/= to Ksh.800,000/= for head injury with loss of consciousness, cut ear, bruises on both hands and both legs and fractured pelvis. Also annexed was the case of *Anthony Keriga Mogesi v Florence Nyomenda Tumbo* (2015) eKLR where the High Court reduced an award of Ksh.1,500,000/= to Ksh.600,000= for cut wound on the left upper eye lid, open book fracture of pelvis bones and weak lower limbs.

### **Respondent's submissions**

9. Counsel for the respondent submitted that by all standards the injuries suffered were serious and/ or grievous. That the respondent was admitted at Kenyatta National Hospital for 36 days following the accident and was later admitted at Kijabe Hospital after developing urological complications. That it was the evidence of the respondent that he is yet to fully heal and that he regularly visits hospital for checkups and that he is unable to have any sexual activity due to the injury on his urethra. That the accident had gravely impaired his life since he can no longer carry out his construction work due to the injuries.
10. It was submitted that the injuries suffered by the respondent were confirmed by the clinical officer PW2, who produced the medical report as exhibit, P. Exh.4. That the said report also confirmed that the respondent had been treated for the injuries sustained including urethraplasty (repair of urethral stricture). The Clinical Officer equally confirmed that the respondent was experiencing pelvic pain, unable to walk or carry luggage for long distance and also has a permanent scar on his abdomen. The degree of injury was classified as grievous harm (severe).
11. Counsel submitted that the duty of the appellate court as regards damages is discretionary. Reliance was placed in the case of *Ufrab Motors Bazaar & another vs. Hanna Wangui Kibe* (2021) eKLR to reiterate that the appellant has not demonstrated that the damages awarded are excessive as to warrant interference by this court.
12. The respondent submitted that an appellate court cannot disturb an award of damages unless it is shown that the trial court applied irrelevant factors or left out relevant factors, or that the award was too high or too low as to be an erroneous estimate of damages or that the award was simply not justified



from the evidence. Reliance was made in the case of *Kemfro Africa Ltd vs. Meru Express Service vs. A.M Lubia & another* 1957 KLR 27 in support of that proposition.

13. It was further submitted that the appellant had not pointed out any irrelevant factor that was considered by the trial court in arriving at its decision. That the evidence placed before the trial court confirms that the respondent suffered serious life-threatening injuries and had to undergo an operation to repair the urethral stricture. That according to the respondent and the clinical officer who testified in the case, the operation has led to the respondent being unable to pass urine properly and unable to have sex. That the trial court took into consideration all the relevant factors and evidence on record in assessing the award, including similar injuries and comparable awards of damages.
14. The respondent had at the trial court proposed an award of Ksh.2,000,000/= and relied on the case of *Ibrahim Omar Osman & another v Jonathan Kenga* (2019) eKLR where the plaintiff suffered rupture of urethral structure which further had urinary retention and urethral stricture blockage and blunt injuries to the abdomen, penis and abrasions to the chest. The High court awarded Ksh.1,200,000/= in general damages. The respondent urged this court not to disturb the award but to dismiss the appeal with costs.

### **Analysis and Determination.**

15. This being a first appeal in this matter, the duty of the court is to re-evaluate and re-assess the evidence adduced before the trial court and arrive at its own independent conclusion but at the same time keeping in mind that the trial court saw and heard the parties and should thus give allowance for that. This was observed in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123.
16. I have considered the pleadings, the evidence adduced at the trial court and the respective submissions of counsels for the parties. The singular issue for determination is whether the award was excessively high as to warrant interference by this court.
17. The respondent was involved in the accident on 11<sup>th</sup> April 2017 and was examined by Dr. Muoki on the 24<sup>th</sup> October 2017. According to the medical report of the said doctor, the respondent sustained unstable pelvic fracture and urethral injury leading to post traumatic urethral stricture. The treatment given was: skeletal traction; suprapubic catheterization; wound dressing and urethroplasty (repair of urethral stricture). The report indicates that the respondent had been hospitalized for 36 days at Kenyatta National Hospital and later admitted at Kijabe Hospital for urological complications. At the time of examination by the doctor which was more than six months after the accident, he complained of recurrent pelvic pains, not able to lift heavy luggage or walk for long distance.
18. Though Dr. Muoki did not make an opinion in his report on the residual effect of the injuries in his report, the clinical officer who produced the medical report in court on his behalf, PW2, told the court that the respondent had the catheter in situ and that he will have to use it throughout his life.
19. The respondent in his evidence in court told the court that he had not healed as he cannot hold urine for long. That he can no longer work as he cannot lift heavy metal as he used to do at his place of work. That he feels pain when engaged in sex.
20. I have considered the injuries suffered by the appellant. It is clear from the medical report of Dr. Muoki that the appellant suffered serious injuries that necessitated him to undergo surgery. The injuries left him with recurrent pelvic pains, not able to work as he cannot lift heavy metal and not being able to walk for long distance.
21. When Dr. Muoki examined the respondent, the only complains he noted that time was recurrent pelvic pains. He did not make any note that the respondent was still using the catheter. The respondent



himself in his evidence in court did not say that he was still using a catheter. He only made complaints of not retaining urine for long and that he could not perform sexually. There was no evidence to support the evidence of using the catheter and not performing sexually.

22. I have considered the authorities cited by both the appellant and the respondent. The injuries in the cases cited by the appellant were far less serious and did not compare with those sustained by the respondent. I find the injuries in the case of *Ibrahim Omar Osman & another v Jonathan Kenga* (*supra*) cited by the respondent to have contained comparable injuries to those sustained by respondent herein as concerned urethral structure. A sum of Ksh.1,200,000/= was awarded in that case. The appellant herein however had additional injuries in the form of pelvis fracture that had left him with recurrent pains.
23. I have considered other cases where comparable awards were made. In the case of *Macharia Miriam & Another v Muema Ndila* [2017] eKLR, the appellate court upheld an award of Ksh. 1,400,000/= where the respondent had sustained an unstable pelvic fracture, injuries to the bladder and urethra, deep cut wound to the perineum region, cut wound to the abdomen, urethral stricture and bruises to the right hand.
24. In *Millicent Atieno Ochuonyo v. Katola Richard* [2015] eKLR the plaintiff was awarded Ksh 2,000,000/= for injury to the pelvis involving fracture of ramus and diastasis of the symphysis pubis.
25. In *Michael Maina Gitonga vs Serah Njuguna* [2012] eKLR multiple fractures to the pelvis and was awarded Ksh.1,500,000/=.
26. In the case of *Alfas Ochieng Were vs Joseph Maina & Another* [1997] eKLR the court awarded a sum of Kshs. 1,000,000/= to a plaintiff who had been hospitalized for two months following a fracture of his pelvis which tore into his bladder and urethra. He also sustained injuries to parts of his intestine.
27. The respondent in this appeal suffered very severe injuries. Taking into consideration the passing of time, I find that the award of the trial magistrate was not excessive. Accordingly, I find the appeal to be without merit and dismiss the same with costs to the respondent.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2024**

**J. N. NJAGI**

**JUDGE**

In the presence of:

Mr. Njuguna for Appellant

Mr. Bundi for Respondent

Court Assistant – Mokeira

30 days Right of Appeal.

