



REPUBLIC OF KENYA



**Kamau v Syengo & another (Civil Appeal E217 of 2021)
[2024] KEHC 8789 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E217 OF 2021**

JM NANG'EA, J

JULY 24, 2024

BETWEEN

JAMES NJOROGE KAMAU APPELLANT

AND

DAVID MUSEE SYENGO 1ST RESPONDENT

ALEX MWANGI 2ND RESPONDENT

*(Being an appeal from the judgement of Hon. V. Kachuodho – SRM
delivered on 30th September 2020 in Thika CMCC NO. 566 of 2020)*

JUDGMENT

Grounds of Appeal and reliefs sought.

1. By a Memorandum of Appeal filed on 29/10/2020, the appellant faults the trial court's judgment dated 30/9/2021 on the following grounds:
 1. That the Learned Magistrate erred in law and fact in awarding the appellant, the plaintiff in the suit before the lower court, a sum that is manifestly low in the circumstances considering the damage sustained.
 2. That the Learned Magistrate erred in law and fact by not awarding special damages as evidenced by the requisite documents and proved.
 3. That the Learned Magistrate erred in law and in fact in failing to consider the totality of evidence on record in making award on account of special damages.
 4. That the Learned Magistrate erred in law and fact in failing to award general damages despite the weight of evidence adduced.



5. That the Learned Magistrate erred in law and fact by failing to consider and rely on the already filed submissions on record thus arriving at a grossly erroneous award.
2. The appellant therefore seeks the following orders;
 1. That the appeal be allowed.
 2. That the Judgment of the Lower Court be set aside and/or varied accordingly.
 3. That the special damages and general damages sought in the plaint be allowed as prayed or as proved with interest from the date of instituting the suit.
 4. That the court does assess and make proper award of General damages commensurate to the loss suffered by the appellant taking into consideration the filed submissions.
 5. That the appellant be awarded the costs of this appeal.

Analysis and determination.

3. It would appear that only the appellant filed submissions which I have perused together with the trial court's record. In the impugned judgment, the trial magistrate granted the appellant who was the plaintiff in the suit Kshs. 500,000 general damages for pain and suffering on account of a bilateral open tibia fibula fracture on both legs and generalized body pain and trauma. Based on payment receipts that the trial court said it was able to discern, the special damages claim was assessed in the sum of Kshs. 12,188. The court thought that judicial decisions cited in the appellant's submissions in support of the general damages claim relate to more severe injuries relative to those sustained by the appellant.
4. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR cited in the appellant's submissions).
5. Beginning with the appeal on special damages, the appellant sought a total of Kshs. 303,500 on account of particularized medical expenses and obtaining of records of ownership of motor vehicle allegedly involved in a road accident from which the cause of action herein arises. In awarding Ksh. 12,188 special damages, the trial magistrate does not specify the particular claims she accepted and the ones she rejected for reason of illegibility. Upon my perusal of the supporting receipts exhibited by the appellant, I note that a receipt for Kshs. 3,000 in medical fees dated 12/9/2019; a receipt for Kshs. 850 dated 2/8/2017 issued by Mwioko Pharmacy; another receipt of Kshs. 1,813 issued by Batian Peak Pharmaceuticals Ltd dated 14/6/2017 and a receipt for Kshs. 6,525 issued by Kenyatta National Hospital dated 14/6/2017 are all decipherable. The stated receipts represent an amount of Kshs. 12,188 that was allowed by the trial magistrate. I must agree that there are other two copies of documents included in the bundle of receipts that are not discernable owing to poor photocopying quality.
6. The trial magistrate therefore correctly awarded the sum of Kshs. 12,188 in special damages. Grounds 2) and 3) of the appeal regarding special damages as set out above fail in the circumstances.
7. Concerning general damages, I have perused the appellant's submissions in the lower court. He claimed general damages of Kshs. 2,000,000 relying on judicial decisions in *Zackary Kariithi vs. Jashon Otiemo Ochola* [2016] eKLR; *Kajuna Idd Noor v Rapid Kate Services & 4 others* [2013] eKLR and *Teresiah*



Ngugi & Another vs. Michael Masia Kimende[2018] eKLR in which Kshs. 1,500,000 was granted in general damages in each of the cases. These cases refer to severe injuries that include multiple fractures, amputation and compound fractures among other soft tissue injuries.

8. The appellant herein suffered fractures of both legs that confined him to a wheel chair and use of crutches for sometime as per a medical- legal report dated 12/9/2018. The doctor , however , opined that the fractures would resolve albeit necessitating physiotherapy.
9. I have sampled two other judicial determinations which I think are relevant. In Kensilver Express Limited vs. Nzangu (Civil Appeal E039 of 2021) (2022) KEHC 1033 (KLR) rendered in July 2022, the claimant sustained a cut wound to the right ear; two rib fractures and severe chest pain. He healed well with no permanent disability. The court assessed general damages in the sum of Kshs. 500,000.
10. In Deneva Heavy Trucks & Another vs. Christpine Otieno [2022]eKLR, the claimant sustained fractures of the left tibia and fibula and another fracture on the pelvis. He walked with a limping gait and supported himself with crutches. He was nevertheless expected to heal permanently. Kshs. 800,000 damages were assessed in his favour.
11. As shown above, I concur with the trial magistrate that the injuries subject of the cases referred to in the appellant's submissions are more severe and thus not quiet comparable to the instant case. Instead, I find the cases in Kensilver Express Limited and Deneva Heavy Trucks supra more comparable to this case. I , however, take into account that the decisions were handed down about two years ago and therefore inflation is a factor to be reckoned with.

Final determination.

12. The upshot is that although the trial magistrate correctly opined that the case cited by the appellant related to more severe injuries, the court failed to discharge its duty of seeking guidance from comparable cases in line with the doctrine of stare decisis. Its award of Ksh 500,000 general damages does not therefore have a basis in law. Ground 4 of the appeal partly succeeds in the circumstances.
13. Considering all the relevant circumstances including the incidence of inflation , the trial court's judgement of Ksh. 500,000 in general damages is substituted with a sum of Ksh. 850,000.
14. The total award of both special and general damages is therefore computed at Ksh. 862,188.
15. The appellant will have the costs of the appeal.
16. Judgement accordingly.

JUDGEMENT DELIVERED VIRTUALLY THIS 24TH DAY OF JULY, 2024 IN THE PRESENCE OF :

The appellant's Advocate, Mr Munga

The 1st respondent, Absent

The 2nd respondent, Absent

The Court Assistant, Ruth

J. M. NANG'EA

JUDGE

