



**Kiminza & another v Matenge (Civil Appeal 119 of 2020)
[2024] KEHC 8959 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 119 OF 2020
AB MWAMUYE, J
JULY 11, 2024**

BETWEEN

JUSTUS KIOKO KIMINZA 1ST APPELLANT

MATUNDA (FRUITS) BUS SERVICE LTD 2ND APPELLANT

AND

GEDEON MUTUA MATENGE RESPONDENT

*(Being an Appeal against the Judgment and Decree of the Hon. I. F. Koome (RM)
delivered on 23rd September, 2020 in Limuru PMC Civil Suit No. 53 of 2017)*

JUDGMENT

1. The Appellants herein have approached this Court aggrieved at the Judgment of the Trial Court delivered on 23rd September, 2020 in Limuru PMC Civil Suit No 53 of 2017. The Memorandum of Appeal dated 25th September, 2020 contains six grounds of appeal; all of which revolve around the issue of quantum of general damages. The Appellants are dissatisfied with the Trial Court's finding condemning the Appellants to pay to the sum of Kshs 320,000.00 to the Respondent herein as general damages arising from the motor vehicle accident that occurred on 16th November, 2015. The Trial Court attributed the same to the Appellant's negligence, and rejected the defence raised by the then Defendants who are the Appellants herein that sought to hold the Respondent herein wholly or partly liable for the injuries that he suffered.
2. The Appellants are not aggrieved with the Trial Court's finding of 100% liability, nor are they aggrieved with the Trial Court's findings and computation on Special Damages.
3. The Parties have filed and exchanged written submissions; with the Appellants' Written Submissions being dated 15th May, 2024 while those of the Respondent are dated 23rd April, 2024.



4. In their written submissions, the Appellants argue that the sum of Kshs 320,000.00 awarded by the Trial Court as general damages was excessive; and they seek that the same be substituted with an award of Kshs 80,000.00 which they contend would be fair, just, and reasonable based on the authorities they cited. The Appellants do not dispute the P3 Form that was canvassed at the trial stage; rather they contend that for the injuries suffered by the Respondent the amount awarded by the Trial Court meets the criteria for interference by the appellate court set out in the famous case of *Kenya Power and Lighting Limited & another v Zakayo Saitoti Naingola & another*, NRB HCCA No 522 of 2004 for being too high, of an amount that enriches rather than compensates the injured party, and are not commensurate with the injuries suffered by the injured party.
5. The Appellants cited two authorities as a basis for their contention that Kshs 80,000.00 would suffice; with the Appellant's contending that similar injuries had received general damages of Kshs 100,000.00 and Kshs 60,000.00 respectively. Their proposal for Kshs 80,000.00 was thus an average of the two awards they produced.
6. On his part, the Respondent urged this Court to maintain the awards of both general damages and special damages made by the Trial Court. The Respondent invited this Court to examine the authorities submitted by the then Plaintiff to the Trial Court, and to thereafter note that the Plaintiff had provided authorities for an award of Kshs 400,000.00 as general damages.
7. The Respondent also argued that the award of general damages by the Trial Court was fair and just; and it was not too high or otherwise improper to the standard required for this Court to interfere with the Trial Court's computation.
8. The Parties herein are in agreement on what the duty of this Court is. Both sides have cited authorities that eloquently state that an appellate court should only interfere with the award made by the Trial Court if it was one which was either too high or too low in relation to the injuries suffered. The case of *Kenya Power and Lighting Limited & another v Zakayo Saitoti Naingola & another* (*supra*) cited by the Appellants observes that the past cases cited by Parties are to be used only as guides and that each case should be examined in light of its own circumstances.
9. Having examined the judgment of the Trial Court in light of the testimony given and the evidence tendered by the parties during the trial, and after considering the pleadings and submissions filed at this appellate stage; it is my finding that the decision of the Trial Court does not meet the criteria for interference by this Court sitting on appeal. The award of Kshs 320,000.00 was neither too high nor too low, and it was commensurate with the injuries suffered by the Respondent herein.
10. Consequently, I find that the Appeal herein is not merited and it is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11TH DAY OF JULY, 2024.

BAHATI MWAMUYE

JUDGE

In the presence of:

Mr. Kabita h/b Mr. Njuguna Counsel for the Appellants

Mr. Kiama Counsel for the Respondent

Mr Guyo, Court Assistant

