



REPUBLIC OF KENYA



**Maina & another v Odongo (Civil Appeal E045 of 2023)  
[2024] KEHC 9202 (KLR) (23 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9202 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E045 OF 2023  
GMA DULU, J  
JULY 23, 2024**

**BETWEEN**

**REUBEN MAINA ..... 1<sup>ST</sup> APPELLANT**

**MALIK BOEKI C. LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SIMON ODUOR ODONGO ..... RESPONDENT**

*(From the decision in Civil Case No. E094 of 2022 delivered by Hon.  
T. N. SINKIYLAN (SRM) on 28th April 2023 at Voi Law Courts)*

**JUDGMENT**

1. In a judgment delivered on 28<sup>th</sup> April 2023 the trial Magistrate found in favour of the plaintiff and awarded general and special damages, costs and interest.
2. Dissatisfied with the quantum of damages awarded, 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.
  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 in awarding a sum in respect of damages which was inordinately high on injuries of soft tissues in the circumstances which was excessive in the circumstances occasioning a miscarriage of justice.



4. The learned Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibit and thereby arrived at a decision unsustainable in law.
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. Both sides relied upon decided court cases.
4. This being an appeal against the quantum of damages awarded, I have to be guided by the legal principle restated by the Court of Appeal in *Butt v Khan* and later the case of *Catholic Diocese of Kisumu v Tete* (2004) eKLR that:-

“...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.

An 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 a relevant one or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate...”

5. In the present case, only one witness testified for the plaintiff who is now the respondent. The appellants did not call any witnesses.
6. PW1 Simon Oduor Odongo stated in evidence in court that he was a teacher at Voi Girls Secondary School. He adopted his witness statement and produced several documents. He stated that he suffered bruises on the head and elbow. He was not cross-examined and counsel for the parties then filed written submissions.
7. The injuries suffered were not contested, but the damages to be awarded were contested.
8. It was stated in evidence the injuries suffered were bruises and abrasions left elbow, bruised and abrasions parietal area of the scalp, blunt trauma to the head, blunt trauma to the neck, and complaint of pains on the neck and headache. This was not in dispute. Though the respondent’s counsel asked for general damages of ksh 290,000/= the appellant’s counsel asked for general damages of ksh 60,000/=.
9. The trial Magistrate after considering the evidence, awarded general damages of ksh 250,000/= which is the subject of the present appeal.
10. On appeal, relying on the case of *Ndungu Dennis v Ann Wangari Ndirangu & Another* (2018) eKLR where an award of ksh 300,000/= was reduced to ksh 100,000/= and the case of *Eva Karemi & 5 Others v Koskei Kieng & Another* (2020) eKLR where various injured persons were awarded damages of between ksh 70,000/= and ksh 40,000/=, counsel for the appellants has asked that the award of general damages herein be varied to between ksh 50,000/= to ksh 100,000/=.
11. The burden was on the appellants in this appeal to demonstrate to this court that the award of the trial court herein was inordinately high.
12. In my view, they have not done so as they have not brought to this court or referred to any cases of similar injuries as suffered by the respondent herein. In my view, the injuries suffered by the respondent



in the present case, are more severe than the injuries suffered in the cases relied upon by the appellant's counsel. I will thus not disturb the quantum damages awarded.

13. To conclude, I find no merits in the appeal. I dismiss the appeal and award costs of the appeal to the respondent against the appellants jointly and severally.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

No appearance for the appellant

Mr. Kazungu for the respondent

