



REPUBLIC OF KENYA



**Mwangi & another v Kawira (Civil Appeal E044 of 2023)
[2024] KEHC 9540 (KLR) (16 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E044 OF 2023
GMA DULU, J
JULY 16, 2024**

BETWEEN

WILSON WACHIRA MWANGI 1ST APPELLANT

**BEAVERLINE MANCHESTER TRAVELLERS SACCO LIMITED 2ND
APPELLANT**

AND

GLORY KAWIRA RESPONDENT

*(From the judgment in Civil Case No. 166 of 2022 delivered by Hon.
A. M. Obura (Mrs.) (CM) on 10th August 2023 at Voi Law Courts)*

JUDGMENT

1. In a judgment delivered on 10th August 2023 the learned trial Magistrate found in favour of the plaintiff on 100% liability, and awarded general damages in the sum of Kshs. 200,000/= together with costs and interest against the defendants.
2. Aggrieved by the decision of the trial court, the appellant's who were the defendants in the trial court, have come to this court on appeal through counsel Kimondo Gachoka & Company 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 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 for soft tissues in the circumstances occasioning miscarriage of justice.
 4. The learned 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 at a wrong decision in awarding damages.
 6. The learned trial Magistrate erred and misdirected herself by ignoring the evidence of witnesses on record especially the police officer hence arriving at a wrong decision in awarding damages.
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 being an appeal on quantum of damages, I have to be guided by the principle that the function of awarding damages is an exercise of discretionary power by a trial court and that an appellate court is to be slow in interfering with that discretion. In this regard, I will only cite the case of Butt =Versus= Khan (1981) KLR 349 at page 356 wherein Law J A stated as follows:-

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or the evidence in some material respects, and so arrived at a figure which was either inordinately high or low.”
 5. In the present case, counsel for the appellant has proposed in submissions that the appellant should be awarded Kshs. 80,000/= as damages and relied upon Homa Bay HCCA No. 111 of 2021 James Kwanya Rege =Versus= Lizzy Awuor and Homa Bay Civil Appeal No. 113 of 2021 Kwanya Rege =Versus= Loice Mkone Cweya wherein an award of Kshs. 300,000/= was on appeal reduced to Kshs. 80,000/=.
 6. Counsel for the respondent, on the other hand, has submitted that the award of damages made by the trial court was reasonable.
 7. I note that in the case cited by counsel for the appellants, Homa Bay HCCA No. 113 of 2021 the injuries suffered were described by the learned Judge as blunt trauma to the neck; blunt trauma to the chest; and blunt trauma to the chest; and blunt trauma to the abdomen, which were classified by Dr. Morebu Peter Momanyi as severe soft tissue injuries.
 8. In our present case, the appellant's counsel has listed in his submissions, the injurie suffered by the respondent as bruises, abrasions and lacerations on the right side of the face; blunt trauma to the right eye; bruises, abrasions and lacerations on the upper lip; blunt trauma to the chest; blunt trauma to the upper and lower limbs; blunt trauma to the lower back; and complaints of pains at all injury sites, which the doctor prescribed as soft tissue injuries expected to heal with no permanent disability.
 9. The burden was on the appellants to demonstrate to this court that the damages awarded by the trial court were inordinately high. It is not enough merely to say that another Magistrate might have awarded a slightly lower figure.
 10. In my view, the injuries suffered by the respondent herein as described, even though soft tissue injury in nature, were more severe than in Homa Bay HCCA No. E113 of 2021 case cited by counsel, both



on the various parts of the body which suffered blunt trauma, and also the fact that in the present case, there were injuries in the form of lacerations which was not the situation in the Homa Bay case. Thus the two cases are not comparable, and that this case should attract higher damages as the injuries suffered are more severe.

11. I thus find no merits in the appeal.
12. I dismiss this appeal, and uphold the award of damages made by the trial court. I award costs of appeal to the respondent payable by the appellants jointly and severally.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Nganga for appellant

Mr. Kazungu for respondent

