



REPUBLIC OF KENYA



KENYA LAW
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**Ngila v Wairimu (Civil Appeal E139 of 2022)
[2024] KEHC 9420 (KLR) (22 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E139 OF 2022**

**AM MUTETI, J
JULY 22, 2024**

BETWEEN

ANNAH NDUKU NGILA APPELLANT

AND

ALICE WANGARI WAIRIMU RESPONDENT

*(Being an appeal against the Judgment delivered by Hon. Lilian
Kwamboka (RM) on 26th May 2022 in Kikuyu SPMCC No. E 112 of 2021)*

JUDGMENT

Introduction

1. The appellant in this matter vide memorandum of Appeal dated 23rd June 2022 raised 3 (three) grounds of Appeal challenging the learned Honourable Magistrate's decision on the award for General damages and special damages.
2. According to the Appellant the general damages awarded by the court in respect of pain, suffering and loss of amenities were manifestly excessive as to amount to an erroneous estimate of the loss suffered by the Respondent.
3. The Appellant further argues that the special damages were not strictly proved thus the award thereof was erroneous. The appeal does not challenge liability.

Facts

4. The Respondent was a lawful pedestrian at Kwa Magu stage area along Kikuyu- Wangige road when she was knocked down by the Appellants motor vehicle registration No. KCV 346 G. Following the accident the Respondent suffered;-
 - a. deep cut wounds on the head.



- b. Painful swollen right knee and left ankle
 - c. Chest pains
 - d. Loss of one tooth
 - e. Fracture of the left Tibia plateau and right ankle.
5. At the end of the trial the learned Honourable magistrate apportioned Liability at 85%:15% in favour of the Respondent.
 6. The learned Magistrate awarded quantum of general damages for pain and suffering in the sum of Ksh. 1,000,000 and special damages were assessed at 61,250/=.
 7. The cumulative award in damages was Ksh. 902,062.50 plus cost and interests at court rates.
 8. It is against this judgment by the trial court that the learned Honourable Magistrate the Appellant has come on appeal and wishes that this court interferes with by setting aside and awarding a figure that is commensurate with the injuries suffered by the Respondents.

Analysis

9. The court sitting as a first appellate court is under duty to undertake an independent evaluation of the evidence available and draw its own conclusions on the same appreciating that the court did not, unlike the magistrate, have the advantage of hearing the witnesses. See *Selle & Another v Associated Motor Boat Co. Ltd & Others* 1968 EA123.
10. The court is not bound to accept the finding of fact by the court below.
11. It is however important for the appellate court to remain alive to the fact that an assessment of quantum is a matter of discretion and the same is not to be interfered with unless the assessment is so manifestly high or inordinately low. The court must look at whether the damages are proportionate to the injuries sustained by the party to whom damages were awarded.
12. It is settled law that for a court to interfere with the exercise of discretion there must be evidence that the learned trial court misdirected itself on principles of law applicable to a matter or there is an error apparent on the face of the record.
13. An appellate court may also intervene where the decision by the court is arrived at in total disregard of the evidence presented by the parties.
14. The court is guided by the decision of *Mbogo v Shab*[1968] at 94 on circumstances under which a court can interfere with the exercise of discretion by a court.
15. In this case the Respondent in the lower court simply filed a statement and documents which were adopted in evidence and the parties filed written submissions on the basis of which the lower court delivered a judgment.
16. The parties having agreed before the trial court to have the matter disposed of by way of written submissions, the matter was entirely left to the discretion of the learned Honourable Magistrate to assess the quantum of damages.
17. In my considered view the damages awarded by the learned Honourable court considering the nature of injuries sustained were reasonable and proportionate. I find not material misdirection or error apparent on the face of the record to justify the interference with the court's exercise of discretion. In [Margaret](#)



T. Nyaga v Victoria Wambua Kioko [2004] eKLR the court citing with approval the case of Bhutt v Khan [1977] 1KAR 1 stated as follows:-

“ An Appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”.

Conclusion And Determination

18. The appellant in this appeal has not demonstrated that the magistrate misdirected himself in any way or that the figures arrived at were, exceedingly high. The magistrate awarded 1 Million Shillings as damages against the plaintiff's prayer for Ksh. 2 Million. The sum in my view was reasonable and proportionate considering the injuries sustained. A fracture injury is a serious injury thus taking everything into consideration I do not find any reason to interfere with the magistrate's finding.
19. The award for special damages was also based on the receipts tendered by the Respondent thus the same was proved.
20. Accordingly, the appeal fails in its entirety. It is dismissed with costs to Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY, 2024.

HON. A.M MUTETI

JUDGE

In the presence of:

Kinyua: Court Assistant

Njoroge for the Respondent

Meege holding brief Ndegwa for the Appellant

No appearance for the Appellant

