



REPUBLIC OF KENYA



**SN (A minor suing through her father and next friend JK v Nyanchera & another  
(Civil Appeal 9 of 2020) [2024] KEHC 9870 (KLR) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9870 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL 9 OF 2020**

**F GIKONYO, J  
JULY 15, 2024**

**BETWEEN**

**SN (A MINOR SUING THROUGH HER FATHER AND NEXT FRIEND  
JK ..... APPELLANT**

**AND**

**TOM ONCHARI NYANCHERA ..... 1<sup>ST</sup> RESPONDENT  
BOARD OF GOVERNORS HIGHWAY VIEW ACADEMY ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. A.N. Sisenda  
(R.M.) delivered on 06/05/2020 in Narok CMCC No. 316 of 2018)*

**JUDGMENT**

**Impugned judgment**

1. This appeal challenges the judgment of the Resident Magistrate's Court at Narok in Civil Suit No 316 of 2018 delivered on 06/05/2020 in which the trial court made awards as follows: -
  - a. Liability: 95% against the Defendants
  - b. General damages: Kshs 500,000/=
  - Less 5 % Kshs 475,000/=
  - 95% Kshs 475,500/=
  - c. Special damages: Kshs 18,950/=
  - Total Kshs 493,950/=
  - d. Plus costs of the suit to the plaintiffs and interest at the court rates.



2. The judgment on liability was entered in the ratio of 5:95 against the respondents as per the consent recorded on 04/11/2019.
3. The memorandum of appeal dated 02/06/2020 cited Two (2) grounds of appeal which relate to quantum of damages as follows: -
  - a. That, the Learned Magistrate erred in Law and fact in awarding the damages for pain and suffering and loss of amenities which were too low.
  - b. That, the Learned Magistrate erred in Law and fact in not appreciating that the appellant sustained permanent disability.
4. The appellant was injured in a road traffic accident which occurred on 09/10/2018 while traveling in motor vehicle registration No KBT 676E along Narok- Bomet road opposite the total petrol station area.

#### **Directions of the court**

5. The appeal was canvassed by way of written submission. The respondents have not filed. There is no affidavit of service to prove that they were served with judgment notice.

#### **The Appellants' Submissions**

6. The appellant submitted that the authorities they relied on at trial, the injuries are within range of the injuries sustained by the appellant herein. The appellant relied on the case of *Jericho Furniture Ltd T/A George Wood Funeral Society v Norah Chepngetich Bett* [2015] eKLR in which the court awarded Kshs 1,200,000/= for pain, suffering, and loss of amenities for a fracture of the pelvis and soft tissue injuries. The appellant proposed Kshs 2,000,000 /= to be reasonable compensation.
7. The appellant submitted that the trial court did not take into consideration the fact that the appellant sustained a permanent disability of 20%. The authority relied on by the trial court, the victim did not sustain a permanent disability.
8. The appellant contends that the award made by the trial court in the circumstances was too low. The appellant urged this court to award Kshs 2,000,000/=. The appellant relied on the cases of *Kenya Power & Lighting Co. Ltd v Mathew Kagage Wanyiri* [2016] eKLR, *Tridev Construction v Charkes Wekesa Kasembeli* Civil Appeal 121 of 2002, and *Kemfro Frica Ltd T/A Meru Express Services Gathogo Kanini v A.M. Lubia And Olive Lubia* (1982-88) KAR 727 at page 730.

#### **Analysis And Determination**

##### **Duty of court**

9. The first Appellate Court should, therefore, evaluate the evidence afresh and make any of its conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & another v Associate Motor Boat Co. Ltd* 1968 EA 123.

##### **Issues**

10. Whether damages awarded were inordinately low.



## Quantum

11. An appellate court will only interfere with the trial court's discretion in the assessment of damages where; i) there is an error in principle; and or ii) the award of damages is so inordinately high or low as to represent an entirely erroneous estimate (*Bashir Ahmed Butt v Uwais Ahmed Khan* (1982-88) KAR).
12. The trial court awarded Kshs 500,000/= as general damages for pain and suffering.
13. The appellant proposed that an award of Kshs 2,000,000/= in general damages would be reasonable compensation to the Appellant for the injuries suffered.
14. According to the medicolegal report of Dr. Wellington Kiamba (P Exh5a), the appellant sustained the following injuries;
  - a. Fracture of the pelvis.
  - b. Soft tissue injuries of the forehead.
  - c. Soft tissue injuries of the right shoulder joint.
  - d. Soft tissue injuries of the arms.
  - e. Soft tissue injuries of the lower back.
15. The injuries were classified by the said doctor as grievous harm. The report also listed the present complaints as;
  - a. Persistent severe left-sided headache.
  - b. Pain in the pelvis.
  - c. Severe backache.
  - d. Pain in the left shoulder joint.
16. The trial court noted that the minor sustained multiple soft tissue injuries and fractures on the pelvis. The trial court also noted that the appellant suffered a permanent incapacity of 20%. The trial court relied on the case of *Hassan Farid & another v Sataiya Ene Mepukori & 6 others* [2018] eKLR in which an award of Kshs 450,000/= was granted for multiple soft tissue injuries and fractures sustained by the 6<sup>th</sup> respondent.
17. In *George Osewe Osawa v Sukari Industries Limited* [2015] eKLR the plaintiff sustained a fracture of the pelvis and was awarded Kshs 400,000/= in general damages in 2015.
18. In *Eston Mwirigi Ndege & another v Joseph Macharia Kawira* [2019] eKLR the respondent suffered fracture of the right femur, right arm, right forearm and was admitted for 3 months. He was assessed to have suffered 15% incapacity. The court assessed general damages at Kshs 500,000.
19. Majanja J. in *Joseph Njeru Luke & others v Stella M. Kioko* [2020] eKLR awarded the respondent Kshs 750,000 general damages for pelvic fracture and soft tissue injuries. However, this is distinguishable from the present case as there was no assessment of disability.
20. In this case, the appellant suffered a fracture of the pelvis, with the rest of the injuries being multiple soft tissue. The present complaints were listed as;
  - e. Persistent severe left-sided headache.



- f. Pain in the pelvis.
  - g. Severe backache.
  - h. Pain in the left shoulder joint.
21. In light thereof, the award of Kshs 500,000 was manifestly low in the circumstances.
  22. In the upshot, this court considers that an award of Kshs 750,000 would be adequate compensation and comparable to the award.
  23. Accordingly, for the reason set out above the court finds merit in the appeal and it is allowed.
  24. The court hereby sets aside the trial court's award of general damages of Kshs 500,000 and substitutes therefore an award of general damages of Kshs 750,000/=
  25. Costs in the cause.
  26. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,  
THIS 15<sup>TH</sup> DAY OF JULY, 2024.**

.....

**HON. F. GIKONYO M.**

**JUDGE**

In the Presence of: -

C/A: Mr. Otolo

Ms. Oganga for Appellant – Present

N/A for Ogutu for Respondent - Absent

