



**Ready Consultancy Co Ltd v Elijah (Civil Appeal E257 of 2018)  
[2024] KEHC 16777 (KLR) (Civ) (2 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 16777 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E257 OF 2018**

**NIO ADAGI, J**

**AUGUST 2, 2024**

**BETWEEN**

**READY CONSULTANCY CO LTD ..... APPELLANT**

**AND**

**KEPHA KENYANYA ELIJAH ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. A. M. Obura (SPM)  
in Milimani CMCC. No. E6525 of 2016 delivered on 11/05/2018)*

**JUDGMENT**

1. The Appellant in the Memorandum of appeal dated 06/06/2018 has raised 6 grounds of appeal which basically challenge the judgment of the trial court on quantum.
2. Liability was apportioned by consent at 20% against the Respondent and 80% against the Appellant.
3. This being a first appeal, I am reminded of the primary role as a first appellate court namely, to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & another v Associated Motor Boat Co. Ltd.& others* and in *Peters v Sunday Post Limited* (1968) EA 123, (1958) EA page 424
4. In the case of *Mursal & another v Manese* (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022), the court held that: -

A first appellate court has jurisdiction to reverse or affirm the findings of the trial court.  
A first appeal is a valuable right of the parties and unless restricted by law, the whole case



is therein open for rehearing both on questions of fact and law. The judgment of the appellate court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.

5. A first appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard on both questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. While considering the scope of Section 78 of *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion.
6. The Respondent in this matter instituted this suit against the Appellant by way of a Plaint dated 23/9/2016 and filed in Court on the same date. He claimed general damages for pain, suffering and loss of amenities, and special damages following an accident in which he was involved in on the 11/7/2016 during and in the course of his employment with the Appellant. The Respondent is said to have sustained grievous bodily injuries classified as “Maim” resulting into loss and damages as a result of the said accident.
7. The suit came up for hearing on 19/2/2018 when Liability was apportioned by consent in the ratio of 20%:80% in favour of the Respondent as against the Appellant. Parties then filed their respective submissions and the Court delivered judgement on 11/5/2018 as follows:
  - General damages- Kshs. 400,000/=
  - Special damages- Kshs. 1,500/=
  - Kshs. 401,500/=
  - Subject to 20% apportionment of liability plus costs of the suit and interest.
8. The Appellant being dissatisfied with the judgment of the trial court on quantum has now appealed to this court basically challenging the awarded damages which it considers to be manifestly excessive as to be erroneous in the circumstances having regard to the nature and extent of the injuries.
9. I have anxiously and carefully considered the grounds of appeal, the pleadings in the lower court, the evidence in the medical report adduced on the injuries before the trial court, the written submissions filed by respective counsels as well as the authorities cited.
10. From the medical report prepared by Dr. C. O. Okere dated 9/9/2016 together with case summary from Kenyatta National Hospital, the Respondent sustained the following injuries: Partial amputation on the distal phalanges of the left middle finger and ring finger-2% permanent incapacity
11. The Doctor’s said report confirms that on physical examination of the Respondent, three months after the accident, the injured fingers were tender on deep palpation.
12. The Respondent’s counsel submitted that general damages of Ksh.700,000/=less the 20% liability and a global sum of Ksh.300,000/= and relied on the case of Shadrack Zacharia Omayo V Road Services Ltd where the Plaintiff was in the year 2002 awarded Ksh.385 for loss of two fingers of the right hand and contracted middle finger.



13. The Appellant's counsel submitted Ksh.60,000/= general damages would suffice and relied on the case of Nairobi HCCA no. 759 of 2003 Simon Muzee alias Simon Musee V Satvinder S. Sekhon(sued as chairman of and on behalf of the National Officials of the Royal Nairobi Golf Club where the appellate court upheld the award of Ksh.150,000/=as general damages for amputation of the left index finger, compound fracture third middle phalange shaft, cut wound on the dorsal of the fourth digit and deep cut on the right scalp.
14. Upon looking at the authorities referred to by both Parties, the trial Magistrate considered the injuries sustained therein to be more severe than the present case. The authorities were also not recent. He thus considered severity of the Respondent's injuries, the authorities, the passage of time and the inflationary trends and found a sum of Kshs.400,000/= to be fair and reasonable compensation for the Plaintiff in the circumstances which he awarded.
15. On Special Damages, it is trite law that special damages must be pleaded and strictly proved. The Plaintiff attached a receipt to the Medical Report by Doctor Okere to support the claim for Kshs.1,500/=. Which was awarded subject to the agreed apportionment on liability plus costs and interest.
16. For an Appellant Court to interfere with an award of damages, it must be shown that the trial court in awarding damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that the wrong principle of law was applied.
17. The Appellant has cited the case of Butt vs. Khan {1981} KLR 349 relating to assessment of general damages.

See also Maraga V Musila (1984) 1 KLR 251, where the Court of Appeal when addressing its mind to this issue expressed itself thus;

“The assessment of damages is more like an exercise of discretion and an appellate court is slow to reverse a lower court on the question of the amount of damages unless it is satisfied that the judge acted on a wrong principle of law or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. The question is not what the appellate court would award but whether the lower judge acted on the wrong principles”.

18. The approach taken by courts in the assessment of damages is that comparable injuries should as far as possible be compensated by comparable awards although the court should bear in mind that no two cases are exactly the same. The court will also consider factors such as the state of the economy and the rate of inflation in its assessment of damages. (See Stanley Maore v Geoffrey Mwenda [2004] eKLR and Ugenya Bus Service v Gachoki [1982] eKLR).
19. In the circumstances, it is my considered finding that the authorities relied on by the Appellant's counsel appear to be for less serious injuries and therefore inapplicable to the facts hereof. In the same vein, the precedents cited by the Respondent are for far more grievous injuries than those in issue herein. Having given due consideration to the submissions made herein by counsel for the Parties and the authorities relied on, I find the following authorities more comparable on the aspect of general damages:
  1. Pietro Canobbio V Amani Hinzano [2016] eKLR in which the Plaintiff suffered amputation of left index, ring and small fingers. The lower court award of Kshs.500,000/= was enhanced on appeal to Kshs.750,000/=.



2. Tile & Carpet Center Warehouse V Okello (Civil Appeal 74 of 2019) [2022] KECA 5 (KLR) (4 February 2022) (Judgment) Both medical reports concluded that the Plaintiff suffered a traumatic amputation of the little finger of his predominant right hand. That the disability was assessed at 2% and 4% by Dr Noorani and Dr Adede respectively, and Dr Adede's report also concluded that the respondent had a defective right hand power grip as a result of the amputation. The lower court awarded Kshs.300,000/= in general damages which was not disturbed by the appellate court.
20. Hence, from the foregoing comparison, the lower court's award of Kshs.400,000/= as general damages for pain suffering and loss of amenities cannot be said to be so excessive as to amount to a wrong assessment, given the age of the second case. In the premises, there is no sufficient cause, in my view, for disturbing the award made by the lower court under the general damages head.
21. For all the foregoing reasons, it is my finding that this appeal is not merited. It is consequently dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY AT MACHAKOS THIS 2<sup>ND</sup> DAY OF AUGUST 2024**

**NOEL I. ADAGI**

**JUDGE**

