



**Maiso v Olwal (Civil Appeal E109 of 2022)
[2024] KEHC 14927 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 14927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E109 OF 2022
A. ONG'INJO, J
SEPTEMBER 19, 2024**

BETWEEN

BOSCO ANYONA MAISO APPELLANT

AND

LAWRENCE OLWAL RESPONDENT

((An appeal from the Judgment / Decree of the Civil Case No. 116 of 2021 at Rongo by Hon. S. N. MUTAVA (RM) dated and delivered on 15/08/2022))

JUDGMENT

1 The Appellant's claim plaint dated 27th August, 2021 seeking general damages for pain suffering and loss of amenities, special damages of Kshs, 8,050/=. Costs of the suit and interest was determined on 15th August 2022 where the trial magistrate awarded Kshs. 70,000/= as general damages and Kshs. 8050/= as special damages together with costs. The Appellant being dissatisfied has lodged the appeal herein as the following grounds:-

1. That the award of Kshs. 70,000/= for general damages was inordinately low in the circumstances;
2. That the learned trial magistrate erred in law and fact in awarding general damages so manifestly low as to amount to a misapplication of the principles of assessment of damages despite quoting them in the judgment;
3. That the learned trial magistrate erred in law and fact in not positively considering the current and future medical requirements, continuing pain and suffering and medical complications in assessing damages;



4. That the learned trial magistrate erred in law and fact in failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum;
 5. That the learned trial magistrate erred in law and facts by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low;
 6. The learned trial magistrate erred in law and fact for failing to consider passage of time;
 7. The learned trial magistrate erred in law and fact in over relying on the submissions and authorities of the Respondent to the detriment of the Appellant;
 8. The learned trial magistrate erred in law and fact in failing to apply proper legal principles regarding quantum and thus arriving at a wrong decision.
- 2 The Appellant proposed a request to the court to issue orders as follows:- That the Judgment and/or decree of the trial magistrate dated 15th August 2022 on quantum be set aside, varied and/or quashed; That the court be pleased to re-visit the issue of assessment of quantum of General damages payable and assess/review/vary the same to the reasonable amount commensurate with the evidence tendered by the Appellant; That cost of the appeal be borne by the Respondent; Any such and/or further orders that the court shall deem just and expedite in the circumstances.
- 3 This appeal was canvassed by way of written submissions. The Appellant's counsel in submissions filed on 23rd May 2024 argued that the trial magistrate ignored substantial parts of the Appellant's pleadings and uncontroverted evidence that was tendered. That the trial court misapprehended in operational material respects substantial parts of the Appellant's pleadings and the evidence that was tendered thereon and in doing so arrived at incomplete and inordinately low awards. It was further contended that the decisions is arbitrary and an off short of glaring omissions of substantial parts of the Appellants' pleadings and the evidence that was tendered. That no reasons were offered for the inordinately low awards.
- 4 The Appellant's counsel submitted that Appellants injuries were proved and ought to have attracted sufficient award.
- 5 On whether the trail magistrate based his decisions on correct principles and considerations for award of general damages for pain and suffering it has been submitted that the trial court had no regard for the multiple injuries suffered by the Appellant. It was argued that the trial magistrate failed to regard the cited authorities of *Easy Coch Ltd vs. Emily Nyangasi (2017)eKLR* where general damage of Kshs. 70,000/= was awarded for similar injuries in 2015. It was submitted that the authorities that the trial court relied on and which were provided by the Respondent had injuries that are less serious than those of the Appellant in this case where the Appellant suffered multiple severe injuries. The Appellants counsel is of the view that the trial magistrate's award was unreconcilably inconsisted with awards made in comparable cases e.g *Penina Waithira Kaburu vs. LPNYR HCCA NO. 59 of 2016*; *Naomi Momanyi vs. G4S Security Services Kenya Limited & Another (2018) eKLR*; The appellants counsel submitted that Kshs. 1,000,000/= would be just and fair compensation to the Appellant.
- 6 On Costs the Appellants counsel submitted that same follows the event and relied on the case of *Universal Engineering Works vs. Mohamedali Suleiman Essaji (1951) 2 LKR 99* where it was held:-

A successful party is entitled to costs unless there are good reasons for depriving him of the costs.”



- 7 The Appellant's counsel in conclusion submitted that the trial court proceeded upon glaring omissions of substantial parts or the Appellant's pleadings and the evidence that was tendered. That the trial court failed to appreciate the weight of the evidence adduced and proceeded on the wrong principles, misapprehended the evidence in operating material, respects and arrived at incomplete and inordinately low awards. That the decision of the trial magistrate occasioned a miscarriage of justice to the Appellant.
- 8 On the other hand, the Respondents counsel filed submissions on 29/11/2023 dated 28/11/2023 and argued that the duty of the 1st Appellate Court is to reconsider and re-evaluate the evidence while bearing in mind and give due allowances to the fact that the trial court had the advantage of seeing and hearing the witnesses testifying before her / him. That it is not open to the 1st Appellate court to review the findings of a trial court. Simply because it would have reached a different result if it were hearing the matters for the 1st time. This court found that the defendant was 100% liable for the accident that caused injuries to the plaintiff herein is Bosco Anyona Maiso as well as Charles Chibasa Oichoe in C. A. No. E108 of 2022.
- 9 The authorities that the trial magistrate considered as having similar injuries and which ought to have guided in the award of general damages in personal injuries are Jyoti Structures Limited and Another vs. Truphena Chepkoeach Too & Another (2020) eKLR where an award of Kshs. 125,000/= was made; *Maimuna Kilungwa vs. Motrex Transporters Ltd (2019)eKLR Makueni Civil Appeal No. 11 of 2017* where the court awarded Kshs. 125,000/= for injuries to the neck, left ear and left shoulder; Civil Appeal No. 54 of 2016 Ndung'u Dennis vs. Ann Wangari Ndiangu & Another (2018) eKLR where the Respondent suffered minor bruises on the back, no fractures on the tibia or fibula area of the right leg which was hit; tenderness on the right leg, blunt injury; head concussion (brief loss of consciousness); blunt injuries to the chest and both hands and the trial court awarded 300,000/= but the same was reduced to Kshs. 100,00/= on appeal.
- 10 The trial magistrate also considered the award of Kshs. 120,000/= in John Wambua vs. Mathew Makau Mwololo & Another (2020) eKLR where the plaintiff sustained blunt injury to the right shoulder and a blunt injury to the right big toe.
- 11 The plaintiff herein suffered chest contusion, bruises on the right upper limb, blunt trauma to the back, bruises on the left upper limb, bruises on the right lower limb blunt trauma, to the neck and bruises to the left lower limb. These injuries were sustained in an accident that occurred on 9th May 2021 long after the awards in the cited cases / authorities were made. By all standards some of the injuries in those authorities are much less severe and this court therefore finds that the trial magistrate failed to factor in inflation to the award made to the Appellant and also failed to appropriately compare and find that for the injuries suffered by the Appellant the award for general damages was inordinately low to be said to be commensurate with injuries sustained.
- 12 In consideration of the grounds of appeal and submission by the parties as well as re-evaluation of the evidence on record of the trial court, this court is of the opinion that an award of Kshs. 150,000/= would suffice for the injuries suffered by the Appellant herein. Special damages assessed by the trial court of Kshs. 8,050/= remains in force. The costs of the suit in the lower court and on appeal will go to the Appellant.
- 13 Interest on general damages to accrue from date of judgment in the lower court whereas interest on special damages to accrue from date of filing the suit in the lower court. Orders accordingly.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 19TH DAY OF SEPTEMBER, 2024

A. ONGINJO



JUDGE

Ruling delivered in the presence of:-

Mr. Ochwangi Advocate holding brief for Angasa Advocate for the Appellant.

Mr. Mattah for the Respondent.

Victor Court Assistants.

