



REPUBLIC OF KENYA



**Mwangi v Njuguna (Civil Appeal 278 of 2023)
[2024] KEHC 11063 (KLR) (9 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 278 OF 2023
AC BETT, J
SEPTEMBER 9, 2024**

BETWEEN

HANNAH NDUTA MWANGI APPELLANT

AND

PETER NGANGA NJUGUNA RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. S. Atambo
(CM) in Thika CMCC No. 774 of 2019 delivered on 4th July 2023)*

JUDGMENT

1. By way of a plaint dated 25th November 2019, the respondent sued the appellant for general damages, special damages of Kshs. 4,050/, costs of the suit and interest at court rates.
2. The respondent's case was that on or about the 23rd of August 2019 he was lawfully travelling as a passenger in motor vehicle registration no. KBK 615P along Kiganjo- Thika bypass near Blue Nile when the appellant's motor vehicle registration no. KBK 615P was so negligently driven thereby causing an accident as a result of which he suffered grievous bodily injuries.
3. The appellant in a statement of defence dated 6th January 2020 denied the respondent's claim and averred that if any such occurrence as the respondent may prove occurred, then it was solely contributed by the respondent's own negligence.
4. The trial court in a judgment delivered on 4th July, 2023 found the appellant 100% liable for the accident and awarded the respondent general damages for pain, suffering and loss of amenities in the sum of Kshs. 250,000/, special damages in the sum of Kshs. 550/, costs of the suit and interest therein.
5. Aggrieved by the decision of the trial court, the appellant lodged a memorandum of appeal dated 1st August 2023 seeking orders that the appeal be allowed, the judgment of the trial court on quantum be



set aside and same be assessed afresh, and that she be awarded costs of this appeal and that of the trial court. The appeal is premised on the following grounds: -

- a. That the learned trial magistrate failed to apply herself judicially and to adequately evaluate the defendant's evidence and witness exhibits on record thereby arriving at an erroneous finding on quantum.
 - b. That the learned trial magistrate misdirected herself and erred both in law and in fact in failing to consider the appellant's submissions on record and hence arrived at an erroneous finding on quantum
 - c. That the learned trial magistrate erred in fact and law and misdirected herself by apportioning 100% liability to the appellant and awarding.
 - i. General damages for pain, suffering and loss at Kshs. 250,000/.
 - ii. Special damages at Kshs. 550/.
 - d. That the learned trial magistrate erred in law and in fact in finding that the plaintiff was entitled to general damages of Kshs. 250,000/ which was too high in view of the injuries suffered by the plaintiff that it presented a miscarriage of justice.
 - e. That the learned trial magistrate proceeded on wrong principles when assessing quantum to the respondent. (To apply precedents and tenets of law applicable).
 - f. That the learned trial magistrate erred in law and in fact 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 high.
 - g. That the learned trial magistrate failed to analyze the evidence on record with regard to quantum on a balance of probabilities and thereafter arriving at a finding of quantum.
 - h. That the learned trial magistrate erred in law and fact in arriving at her said decision.
 - i. That the learned trial magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principle of law and had occasioned miscarriage of justice.
 - j. That the learned trial magistrate erred in fact and in law in failing to consider conventional awards in cases of a similar nature.
6. This court has considered the grounds of appeal and the issue that arises for my determination is whether the quantum of damages awarded by the trial court was excessive.
7. The circumstances under which an appellate court can interfere with an award of damages was addressed by the Court of Appeal in the case of Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 where it was held as follows:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some



relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

8. Similarly, in the case of Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47, the Court of Appeal held that;

“In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.”

9. According to the medical report of Dr. George K. Karanja, the respondent sustained the following injuries;

- a. Soft tissue injuries on the scalp with small cut
- b. Bruises on both knees
- c. Soft tissue injuries on right shoulder

10. I have looked at the judgment of the trial court where the court observed as follows;

“Taking into account the injuries sustained by the plaintiff, decided cases and also inflation, I do assess the general damages to be paid to the plaintiff for pain, suffering and loss of amenities at Kshs. 250,000/”

11. I have observed that the trial court did not cite the authorities considered in awarding the quantum and it is for that reason I made the effort to look into a number of authorities where a plaintiff suffered comparable injuries and the award given by the court, this being the criteria for assessment of quantum as was addressed by the court in P. J. Dave Flowers Ltd v David Simiyu Wamalwa Civil Appeal No. 6 of 2017 [2018] eKLR where it was held as follows;

“... it is generally accepted from the laid down legal principles on assessment of quantum that personal injuries are difficult to assess with precision and accuracy so as to satisfy the claimant. The courts discretion has been left to individual judges to exercise judicious in respect of the circumstances of each specific case. The sum total of the evidence and the medical reports positive findings will form part of the consideration in the award of damages. The trial court will also be expected to apply the principles in various case law and authorities decided by the superior courts on the matter.”

12. I have considered the below cases;

- a. In Jyoti Structures Limited & another v Truphena Chepkoech Too & another [2020] eKLR, for a respondent that had sustained blunt injury to the head, neck, chest, back, both thighs, the trial court assessed general damages at Kshs. 250,000/=. For the 2nd respondent that had sustained bruises on the parietal scalp, blunt injury to chest, deep cut wound on right forearm and right hand, general damages were assessed at Kshs. 200,000/=. On appeal, the court set aside both awards and substituted them with Kshs. 125,000/= each.



- b. In *Maimuna Kilungwa vs Motrex Transporters Ltd [2019] eKLR Makueni Civil Appeal No. 11 of 2017*, the court awarded Kshs. 125,000/= for soft tissue injuries to the neck, left ear and left shoulder.
- c. In Civil Appeal No. 54 OF 2016: *Ndung'u Dennis v Ann Wangari Ndirangu & 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, the trial court awarded Ksh. 300,000/= which was reduced to Ksh. 100,000/= on appeal.
- d. In *John Wambua v Mathew Makau Mwololo & another [2020] eKLR* the Plaintiff sustained blunt injury to the right shoulder and a blunt injury to the right big toe. He was treated as an outpatient and was put on painkillers. The trial court assessed general damages for pain and suffering in the sum of Ksh. 120,000/- and this was affirmed by the High Court.
13. This court is also mindful of the decision in *Gitobu Imanyara and 2 Others -vs- Attorney General [2016] eKLR*, where the Court of Appeal held: -
- “It is firmly established that his court will be disinclined to disturb the findings as to the amount of damages merely because they think that if they had tried the case in the first instance, they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages, it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgement of this court an erroneous estimate of the damage to which the plaintiff is entitled.”
14. Relying on the aforestated decision, it is evident that where an appellant seeks a review of an award of general damages, he must demonstrate that there was a clear departure from the known established principles when the trial court made the award. There must be a clear demonstration that the award is too high or too low in the circumstances and when compared with recent decisions with comparable injuries it is not enough that the award may be slightly higher or slightly lower than the appellate court would have made had it heard the case in the first instance.
15. Looking at the damages awarded in the above cited cases and the lapse in years when the determinations were made, I find that the trial magistrate correctly exercised her discretion in awarding the respondent general damages in the sum of Kshs. 250,000/. I will therefore not disturb the award.
16. On the special damages awarded, the respondent produced a receipt for a motor vehicle search amounting to Kshs. 550/ which was rightfully awarded by the trial court.
17. Accordingly, for the reasons set out above, I find this appeal to be devoid of merit and the same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 9TH DAY OF SEPTEMBER, 2024.

A. C. BETT

JUDGE

In the presence of:-

Katitu for appellant



Kering for respondent

Court Assistant: Polycap

