



**Biwot v Chege & another (Civil Appeal E017 of 2022)  
[2024] KEHC 12356 (KLR) (15 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CIVIL APPEAL E017 OF 2022  
JR KARANJA, J  
OCTOBER 15, 2024**

**BETWEEN**

**MOSES KIPKEMOI BIWOT ..... APPELLANT**

**AND**

**JAMES GITHI CHEGE ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KIPKOSGEI CHESAGE ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Appellant, Moses Kipkemoi Biwott, was involved in a road traffic accident on the 10<sup>th</sup> May 2016, at Samoei Area along the Nandi Hills Mugundoi Road while aboard a motor cycle as a pillion passenger. The motor cycle was struck and/or knocked down by a motor vehicle Registration No. KAV 959 and in the process the Appellant suffered serious injuries to his left leg. He therefore instituted the present suit against the driver and owner of the said motor vehicle praying for special and general damages against them.
2. The first Respondent, James Githi Chege, was said to be the owner of the motor vehicle along with the Second Respondent, John Kipkosgei Chesage. The First Respondent/ Defendant having failed to enter appearance and/or file defence an interlocutory judgment was entered against him.  
The Second Respondent/ Defendant filed a statement of defence in which he disputed the Appellant/ Plaintiff's claim and prayed for its dismissal.
3. At the trial, the disputants entered a consent on liability to the extent that liability be apportioned at the ratio of 85% and 15% in favour of the Plaintiff/ Appellant against the Respondent/ Defendants.  
Accordingly, the trial proceeded with regard to quantum of damages only and on the 6<sup>th</sup> July 2022, the court rendered its judgment in favour of the Plaintiff/ Appellant n the total sum of Kshs. 1,697,018,778/- consideration being given to the Plaintiffs contributory negligence of 15%.



4. Being dissatisfied with the award, the Plaintiff preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 3<sup>rd</sup> August 2022, in which he contends that the trial court erred in both law and fact by applying wrong principles and failing to take into account relevant factors in arriving at the award of Khs. 1,200,000/- being general damages and the award of 480,871/68 being loss of earning.
5. The Plaintiff/Appellant further contends that the awards aforementioned were inordinately too low and prays for the entire judgment of the trial court to be set aside and/or be reviewed and be substituted with a judgment of this court.

The appeal was canvassed by way of written submissions which were filed on behalf of the Appellant by Fransisca & Chelagat Advocates and on behalf of the Second Respondent by Onyinkwa & Company Advocates.

The First Respondent did not participate in the entire matter right from the word “go”.

6. Having considered the appeal on the basis of the supporting grounds and the rival submissions this court re-visited the evidence with a view to arriving at its own conclusions bearing in mind that the trial court had the advantage of hearing and seeing the witness.
7. In that regard, it was notable that oral testimony was received from the Appellant (PW1) and a doctor (PW3) as well as the driver of the ill-fated motor vehicle (DW1).

Dr. Wellington Kiamba (PW3) produced the medical report dated 19<sup>th</sup> October 2021, while the second medical report by Mr. Z. Gaya, dated 18<sup>th</sup> February 2022 was produced by consent. These are the reports which at most informed the awards made by the trial court in favour of the Appellant.

8. The trial court considered both reports which were in agreement on the injuries suffered by the Appellant, to wit: -
  - i. Fracture of left humerus.
  - ii. Fracture of left Olecranon process
  - iii. Fracture of the left radius
  - iv. Fracture of the left tibial plateau
  - v. Degloving injuries to the left leg.

9. The point of departure in the reports was on the residual effects of the injury. Whereas Dr. Kiamba, indicated that the Appellant suffered total temporary disability of six (6) months and permanent disability of 45%, Dr. Gaya indicated a permanent disability of 30%.

In the amended plaint dated 30<sup>th</sup> November 2021, the Plaintiff/ Appellant prayed for special damages and general damages for pain, suffering and loss of amenities as well as damages for loss of earning and/or general damages for future diminished earning capacity and costs of future operation.

10. In its impugned judgment, the trial court took into consideration the nature of the injuries suffered by the Appellant and the resultant effects thereof on his wellbeing and earning capacity and further considered the parties final submissions along with the authorities cited by both sides and arrived at the conclusion that a sum of Kshs. 1.2 million was adequate compensation in terms of general damages for pain, suffering and loss of amenities and a sum of Kshs. 480,871/68ct sufficed as adequate compensation for loss of earning while a sum of Kshs. 200,000/- was reasonable compensation in terms of further medical expenses.



11. The court also concluded that the documentary evidence availed in the form of receipts did establish and prove that the Appellant was entitled to special damages in the sum of Kshs. 115,621/-.

In arriving at its conclusion, the trial court with particular regard to general damages for pain and suffering relied on the principle enunciated in the English Case of *West (H) and Sons Limited Shepherd* [1964] AC 326.

12. It was therein observed that: -

“money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be an endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation.

Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.”

13. With regard to loss of earning, the trial court took into consideration that the Appellant did not avail any documentary evidence to prove his actual earning from his occupation as a farmer and therefore it was desirable that the statutory minimum wage earning of Kshs. 12,522/07 be adopted as the multiplicand in the assessment of loss of earnings against a multiplier of eight (8) years considering that the Appellant was aged 50 years at the time of the accident, but for the accident he may have continued working upto the normal retirement age of approximately 60 years regard being given to uncertainties of life.

14. The trial court adopted a permanent disability of 40% as a middle ground for the divergent views taken by the two good doctors. The appeal is mainly centered on the awards made in respect of general damages (i.e. 1.2million) and loss of earning (i.e. Kshs. 480,871/-).

The complaint on special damages was unwarranted. In the first place interest is awarded at the discretion of the court, and secondly, the claim for interest on special damages was not particularized in terms of the applicable period and was therefore left to the discretion of the court in determining the period.

15. The appeal being solely on quantum of damages the applicable guidelines in determining the same were clearly laid out by the Court of Appeal in the case of *Kemfro Africa Limited t/a Meru Express Services v L.M. Lubia and Another* [1983 - 88] I KAR 777 as follows: -

“The principles to be observed by an Appellant Court in deciding whether it is justified in dismissing the quantum of damages awarded by a trial judge were held by the former court of Appeal for Eastern Africa to be that: -

It must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

16. Applying these principles to this appeal, this court must hold that the Appellant did not demonstrate both in fact and in law that the trial court in assessing the damages took into account irrelevant factors



or left out of account relevant factors or that the awards for pain and suffering as well as for loss of earnings are inordinately low in the circumstances of this case.

17. Consequently, this appeal is lacking in merit and is hereby dismissed with costs to the Respondent number two.

Ordered accordingly.

**DELIVERED AND DATED THIS 15TH DAY OF OCTOBER, 2024**

**J. R. KARANJAH,**

**JUDGE**

