



Board of Management Hiriga Secondary School v Mwangi (Suing as the Legal Representative and Administrator of the Estate of Gregory Gatimu Macharia) (Civil Appeal 57 of 2019) [2024] KEHC 16789 (KLR) (1 October 2024) (Judgment)

Neutral citation: [2024] KEHC 16789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 57 OF 2019
NIO ADAGI, J
OCTOBER 1, 2024**

BETWEEN

THE BOARD OF MANAGEMENT HIRIGA SECONDARY SCHOOL APPELLANT

AND

MARGARET WAKIURU MWANGI (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF GREGORY GATIMU MACHARIA) RESPONDENT

(Being an Appeal from the Judgment of Hon. P. Mutua (SRM) in Nyeri CMCC. No. E387 of 2015 delivered on 04/12/2015)

JUDGMENT

1. The Appellant in the Memorandum of appeal dated 11/10/2019 and filed herein has raised 3 grounds of appeal which basically challenge the judgment of the by Hon. P. Mutua, SRM delivered on the 4h day of December, 2018 in Nyeri CMCC 387 of 2015. The Respondent was the Plaintiff and the Appellant was the Defendant.
2. The Appellants' Memorandum of Appeal sets out 3 grounds that:
 - 1) The Learned trial Magistrate erred in law in awarding General damages for pain and suffering at KShs.800,000/- which amount is manifestly excessive and high considering the injuries sustained by the Respondent.
 - 2) The Learned trial Magistrate erred in law and fact in failing to consider the written submissions of the Appellant on record and the authorities annexed therein in support of the Appellant's case while arriving at the award in damages.



- 3) The judgment of the learned trial magistrate is against the law and weight of the evidence on record and against the doctrine of stare decisis.
3. The appeal seeks for the following prayers that: -
 - a) The Appeal be allowed and the judgment of the lower Court be set aside.
 - b) The costs of the Appeal be granted to the Appellant.
4. The Appeal was canvassed by way of written submissions.

Background

5. By a Complaint dated 11.12.2015, the Plaintiff (hereinafter the Respondent) sued the defendant (Appellant). The cause of the action was based on the tort of negligence, the Respondent having sustained injuries as a result of a road traffic accident involving him as a pillion passenger when the motor cycle, he was riding on was involved in a collision with the Appellant's motor vehicle.
6. The issue of liability was settled by consent as the court had earlier in a similar matter adjudged the Appellant 100% to blame for the accident. The issue in the appeal is exclusively one of quantum.
7. The injuries sustained by the Respondent were well documented in the list of documents including the medical-legal report as compiled by Dr. Muchai Mbugua dated 27.10.2015.
8. By the time the matter came up for hearing; the Respondent had passed on. The main highlights were that after the accident, the aged Respondent was admitted in hospital from the 27.3.2015 to 9.7.2015 having suffered a fracture of the tibia and extensive wounds over his right scapula. During his admission and even after the discharge, the Respondent was unable to walk as a result of his injuries. He became bed-ridden and had to rely on support from his children until his demise on 4.4.2016. It would be right to state that this accident totally changed his life and accelerated his demise at a ripe age of 94 years.
9. The Respondent's advocate submitted for an award Kshs.1,000,000/=. The Appellant's advocates submitted for an award of Kshs.500,000/. The trial court awarded Kshs.800,000/= in general damages.
10. As a first appellate court, this court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, drawing a conclusion from that analysis but bearing in mind the fact that this court did not have an opportunity to see and hear the witnesses first hand. This is captured by Section 78 of the Civil Procedure Act which espouses the role of a first appellate court which is to: '..... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.' This was buttressed by the Court of Appeal in the case of Peter M. Kariuki v Attorney General [2014] eKLR where it was held that:

“We have also, as we are duty bound to do, as a first appellate court, to reconsider the evidence adduced before the trial court and reevaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence. See Ngui V Republic, (1984) KLR 729 and Susan Munyi V Keshar Shiani, Civil Appeal No. 38 of 2002 (unreported).”
11. After going through the record, the written submissions as well as the authorities cited by both Parties and from my own considered view of the matter, the main issue for my determination is the quantum of damages awarded by the trial court.



12. The Court of Appeal in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, cited the case of *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v. A.m. Lubia and Olive Lubia* (1982 –88) 1 KAR 727 at p. 730 where Kneller J.A. said:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of 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. See *Ilango V. Manyoka* [1961] E.A. 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltd V. Kavoloto* [1970] E.A., 414, 418, 419. This Court follows the same principles.”

13. The Court further makes reference to the case of *Gicheru V Morton and Another* (2005) 2 KLR 333 where the Court stated:

“In order to justify reversing the trial judge on the question of the amount of damages, it was generally necessary that the Court of Appeal 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 small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the Appellant was entitled.”

14. On the basis of the above authorities, I now move to consider whether the trial court acted upon some wrong principle of law, or that the amount awarded was manifestly excessive and extremely high as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the Respondent was entitled.”

15. The accident herein occurred on 27/3/2015 in which the deceased Respondent suffered a) fracture of the right tibia b) extensive wounds on the right leg and c) wound over right scapula. The Deceased Respondent died on 4/4/2016. This was after about one year from the date of the accident. The deceased was unable to regain his mobility for all this time till his demise. He must have endured a lot of pain all through. He became bed-ridden and had to rely on support from his children until his demise. It would be right to state that this accident totally changed his life and accelerated his demise at a ripe age of 94 years.

16. I have considered the following decisions in comparison to injuries suffered by the Respondent in the instant case and taken into account the inflation rate and fluctuation of time:-

- a. *Dennis Matagaro v NKO (Minor suing through next friend and father WOO)* [2021] eKLR where the court upheld an award Kshs.700,000/- where it had been established that the plaintiff sustained a mild head injury, tenderness on the neck, dislocation of the left shoulder, tenderness on the back, deep lacerated cut wounds on the forearms and a fracture of the left tibia and fibula.
- b. *Godfrey Wamalwa Wamba & Another v Kyalo Wambua* [2018] eKLR in which the Plaintiff suffered injuries particularized as compound fracture of the right distal tibia/ fibula and cut wound on the scalp, chest and lower lip and was awarded Kshs.700,000/=.
- c. *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] eKLR the court awarded the respondent a sum of Kshs.600,000/= as compensation for a compound fracture of the



tibia/fibula bones on the right leg, deep cut wound on the right leg, head injury with cut wound on the nose, blunt chest injury.

- d. *Clement Gitau v GKK* [2016] eKLR, the appellant had a fracture of the tibia/fibula and bruises on the neck. An award of Kshs 600,000/= was upheld on appeal.
17. In conclusion, I find and hold that the trial court applied the correct principles and took into account relevant factors in awarding the sum of Kshs.800,000/- as general damages. The said sum was reasonable, sound and judicious in the circumstances and was commensurate to the injuries sustained by the Respondent and in considering the Respondent's pain and suffering in the extended period of morbidity until his demise.
18. I will not interfere with the award of Kshs.3,300/= in special damages as the same was not challenged in the appeal.
19. The upshot of the foregoing is that I find the appeal lacking in merit and is hereby dismissed with costs to the Respondent.

DATED, SIGNED & DELIVERED VIRTUALLY at MACHAKOS this 1st day of OCTOBER 2024

NOEL I. ADAGI

JUDGE

