



**Kariuki & another v Wanjiru (Civil Appeal E347 of 2021)
[2024] KEHC 12902 (KLR) (Civ) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12902 (KLR)

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

CIVIL

CIVIL APPEAL E347 OF 2021

JN NJAGI, J

OCTOBER 25, 2024

BETWEEN

JOH WAKIBI KARIUKI 1ST APPELLANT

JOHN GITHINJI NJENGA 2ND APPELLANT

AND

STELLA LILIAN WANJIRU RESPONDENT

(Being an appeal from the judgment and decree of Hon. Mrs. B.J Ofisi, Resident Magistrate, in Milimani SCCCOM 86 OF 2021 delivered on the 18/5 /2021)

JUDGMENT

1. The respondent herein brought suit against the appellants seeking to recover general and special damages after she was injured in a road traffic accident with a motor vehicle belonging to the appellants. The trial court awarded general damages to the sum of Ksh.250,000/=. The appellants were aggrieved by the award and lodged the instant appeal. The grounds of appeal are that:
 - a. That the learned trial magistrate erred in law in awarding general damages that are inordinately high and inconsistent with the injuries pleaded by the respondent;
 - b. That the learned trial magistrate erred in law in failing to put into consideration decided authorities which are relevant in regards as to the injuries suffered by the respondent herein thus arrived at an award that is manifestly high as to be erroneous;
 - c. That the learned trial magistrate erred in relying wrong principles of law and has occasioned a miscarriage of justice;



- d. That the learned trial magistrate erred in law and misdirected herself when she failed to consider the provisions set out in the Insurance (Motor Vehicle Third Party Risks) (Amendment) Act 2013, Cap 405;
 - e. That the learned trial magistrate erred in law in finding that the respondent was entitled to general damages of Kshs. 250,000/= which inordinately high and wholly erroneous estimate of the loss suffered by the respondent;
 - f. That the learned trial magistrate erred in awarding costs of the suit and interest to the respondent;
2. The appellant proposed that the judgment of the trial court be set aside; that this court reassess the award of general damages and reduces the same and award the costs of the appeal to the appellant.
 3. The court gave directions for the appeal to be disposed of by way of written submissions. Counsel for the respondent filed the same but the submissions filed by counsel for the appellant did not relate to the present appeal.
 4. The respondent submitted that this court can only interfere with the award if it is shown that the trial court in assessing the damages took into account an irrelevant factor, or left out a relevant factor or that the amount awarded is inordinately low or high that it must be a wholly erroneous estimate of the damage. Reliance was placed in *Kemfro Africa Limited T/A Meru Express Services v A.M Lubia & Olive Lubia (1982-88) 1 KAR 727* and *Alfaras Muli vs. Lucy M Lavuta & another Civil Appeal No. 47 of 1997*.
 5. The respondent supported the award of the trial court and relied on the awards made in the cases of *Devki Steel Mills Ltd vs. James Makau Kisilu (2012) eKLR* and *Martin M. Mugi vs. Attorney General (2000) eKLR*.

Analysis and determination.

6. This being a first appeal, the duty of the court is as was stated in the case of *Selle & Another v Associated Motor Boat Co Ltd & Others [1968] EA* that the appellate court was not bound by the findings of fact of the trial court but it has to re-consider and re-evaluate the evidence so as to draw its own conclusions and in the course of doing so it has always to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
7. In the case of *Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR* the Court of Appeal held that thus on the issue –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge 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 larger 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 judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie [1941] 1 All ER 297*. It was echoed with approval by this Court in *Butt v. Khan [1981] KLR 349* when it held as per Law, J.A that:

‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be



shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.” (Emphasis my own).

8. The issue for determination in this appeal is whether the award of general damages of Ksh.250,000.00/= is inordinately high as to persuade this court to interfere with it in light of the injuries suffered by the respondent. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated that;

“comparable injuries should attract comparable awards”.

9. I have considered the record of the trial court, the judgment and the submissions. It must be noted that one person’s injuries will never be fully comparable to another person’s injuries. What the court is obliged to do is to ensure that comparable injuries attract comparable awards.
10. The respondent pleaded that she sustained bruises on the left knee. The medical report of Dr. Mwaura indicated that she sustained soft tissue injuries. The prognosis was that the respondent experienced pain on the left knee on exertion.
11. The respondent supported the award of Kshs250,000/- and made reliance on the case of *Devki Steel Mills Ltd v James Makau Kisilu* (2012) eKLR where an award of Ksh.250,000/= was made for severe soft tissue injuries to the left side of the pelvis and severe blunt injury to the right shoulder and in the case of *Martin M. Mugi v Attorney General* (2000) eKLR where the plaintiff sustained a deep extensive cut on the face, mild concussion and generalized soft tissue injuries was awarded Ksh.350,000/= in general damages.
12. I have considered the authorities cited by the advocates for the parties. I have in addition considered the awards in the following cases:*Fred Barasa Matayo v Channan Agricultural Contractors* {2013} eKLR, where the court reviewed downwards an award of Ksh.250,000/= to Ksh.150,000/= for moderate soft tissue injuries that were expected to heal in eight months’ time.*Dickson Ndungu v Theresia Otieno & 4 Others* {2014} eKLR where the court reviewed the award of Ksh. 250,000/= to Ksh.127,500/= for soft tissue injuries which produced no complains.*Purity Wambui Muriithi v Highlands Mineral Water Company Ltd* {2015} eKLR, the award of Ksh. 700,000/= was reduced to Ksh. 150,000/= for injuries to the left elbow, pubic region, lower back and right ankle.
13. The respondent herein sustained bruises only on the left knee. In view of this fact, I am persuaded that the award made by the learned trial magistrate fell on the upper side in comparison to comparable awards, hence there is need for interference. I consider an award of Ksh.100,000= to be reasonable and adequate compensation for the injuries suffered by the respondent.
14. The upshot is that the award of the trial court is set aside and substituted with an award of Ksh. 100,000/=. Each party to bear its own costs to the appeal.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF OCTOBER 2024

J. N. NJAGI

JUDGE

In the presence of:

No appearance for Appellants

Miss Mumbi holding brief Mr. Waiganjo for Respondent



Court Assistant: Amina

30 days Right of Appeal.

