



**Menengai Refineries Limited v Ukwenya (Civil Appeal E004 of 2023)
[2024] KEHC 12470 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E004 OF 2023
RL KORIR, J
OCTOBER 17, 2024**

BETWEEN

MENENGAİ REFINERIES LIMITED APPELLANT

AND

PATRICK UKWENYA RESPONDENT

(Being an Appeal from the Judgment of Resident Magistrate, Wamae M. at the Magistrate’s Court at Bomet, Civil Suit Number 75 of 2021.)

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising out of a road traffic accident that occurred on 28th October 2018 along Silibwet-Kapkoros road.
2. The Respondent called two witnesses and thereafter closed its case and the Appellant closed its case without calling any witness or tendering any evidence.
3. In its Judgment delivered on 15th December 2022, the trial court awarded the Respondent the net total of Kshs 440,000/=.
4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 26th January 2023 appealing against the quantum and relied on the following grounds:-
 - I. That the learned trial Magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently coming to a wrong conclusion on the same.
 - II. That the learned trial Magistrate misdirected herself in ignoring the principles applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the Appellants.



- III. That the learned trial Magistrate proceeded on wrong principles when assessing the damages to be awarded to the Respondent (if any) and failed to apply precedents and tenets of law applicable.
 - IV. That the learned trial Magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis-à-vis the Respondent's claim.
 - V. That the learned trial Magistrate failed to apply herself judicially and to adequately evaluate the evidence and exhibits tendered on quantum and thereby arrived at a decision unsustainable in law.
5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. See *Selle vs Associated Motor Boat Company Ltd* (1968) E.A 123.

The Plaintiff's/Respondent's case.

6. Through his Complaint dated 3rd June 2021, the Respondent stated that on 28th October 2018, he was aboard motor vehicle registration number GKB 767G when he was involved in a road traffic accident motor vehicle registration number KBY 005A/ZE 1294 along Silibwet-Kapkoros road. It was the Respondent's case that the Appellant was the registered owner of motor vehicle registration number KBY 005A/ZE 1294.
7. It was the Respondent's case that the Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 6 of the Complaint.
8. The Respondent alleged that as a result of the accident, he suffered the following injuries:-
 - I. Multiple superficial injuries of the head.
 - II. Fracture of the anterior, maxillary spine with loss of both upper central incisors.
9. The Respondent prayed for Special and General Damages against the Appellant.

The Defendant's/Respondent's case

10. Through its Statement of Defence dated 11th August 2021, the Appellant denied the occurrence of the accident on 28th October 2018 and further denied that the Respondent was aboard motor vehicle registration number GKB 767G. The Appellant also denied being the registered owner of motor vehicle registration number KBY 005A/ZE 1294.
11. It was the Appellant's case that if the accident occurred then it was caused by the negligence and recklessness of the Respondent. The particulars of negligence were contained in paragraph 10 of the Defence.
12. The Appellant stated that if the accident occurred, then it was outside its scope or control and could not be held liable. It further denied that the Respondent suffered any injuries.
13. In the course of the trial, parties recorded a Consent on liability on 21st July 2022 to the ratio of 80:20 in favour of the Respondent. The Consent was then adopted as an order of the court.
14. As earlier stated, the court awarded Kshs 440,000/= which provoked the present Appeal.
15. On 10th June 2024, I directed that this Appeal be canvassed by way of written submissions.



The Appellant's submissions.

16. Through its submissions dated 19th June 2024, the Appellant submitted that the award of Kshs 440,000/= as general damages was inordinately high. That according to the Medical Report and Discharge Summary, the Respondent did not sustain any fracture injury but sustained soft tissue injuries on his head, right knee and lost his upper incisor teeth.
17. It was the Respondent's proposal that an award of Kshs 200,000/= would be a fair estimate. It relied on James Nganga Kimani & another vs Giachagi Njoroge & 2 others and Washington Mukunya Karanja & another vs Margaret Wambui Maina (2020) eKLR.

The Respondent's submissions

18. Through his submissions dated 9th July 2024, the Respondent submitted that the award of Kshs 550,000/= as general damages was fair. That at the trial court the Appellant relied on Civicon Limited vs Richard Njomo Omwancha & 2 others (2019) eKLR, Titus Mburu Chege & another vs JKN & another (2018) eKLR and Mwavita Jonathan vs Silivia Onunga (2017) eKLR where the courts awarded Kshs 500,000/=:, Kshs 500,000/= and Kshs 400,000/= respectively for similar injuries. That the Appellant was not proposing a different amount to the ones he relied on in the trial court.
19. I have gone through and carefully considered the Record of Appeal dated 18th October 2023, the Appellant's written submissions dated 19th June 2024 and the Respondent's written submissions dated 9th July 2024. The sole issue for my determination was whether the award on general damages was inordinately high.

Quantum

20. As per the Plaintiff, the Respondent suffered the following injuries:-
 - i. Multiple superficial injuries of the head.
 - ii. Fracture of the anterior, maxillary spine with loss of both upper central incisors.
21. The Respondent who testified as PW2 stated that he suffered injuries on the head and lost two teeth. He produced a Medical Report from Tenwek Hospital dated 28th November 2018 as P.Exh 3a, Discharge Summary from Tenwek Hospital dated 29th October 2018 as P.Exh 3b and Radiology Report from Tenwek Hospital dated 28th November 2018 as P.Exh 3c in support of his claim. I have looked at the exhibits above and they stated that the Respondent suffered soft tissue injuries on his head and knee and had lost two teeth. The Radiology Report (P. Exh 3c) was specific in stating that the Respondent did not suffer any fractures of the cervical spine, calvarium or skull base.
22. The Respondent's testimony was uncontroverted during cross examination as he reiterated the nature of the injuries he suffered. Based on the above, it is my finding that the Respondent suffered soft tissue injuries on his head and leg and further suffered the loss of two teeth.
23. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected herself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of her discretion and that as a result there has been a miscarriage of justice. See *Gitobu Imanyara & 2 others vs Attorney General* (2016) eKLR.
24. On the issue of general damages, the Appellant submitted that the award of Kshs 440,000/= was inordinately high and they proposed an award of Kshs 200,000/=. The Appellant relied on James



Nganga Kimani & another vs Giachagi Njoroge & 2 others (2019) eKLR in which the court awarded Kshs 200,000/= for a scar on the nasal bridge and lower limb, broken upper incisor tooth, missing lower incisor tooth and multiple dental carries. It further relied on Washington Mukunya Karanja & another vs Margaret Wambui Maina (2020) eKLR where the court awarded Kshs 300,000/= for swelling of the upper part of the mouth, alveolar fracture of both incisor teeth, soft tissue injuries on the right leg and a superficial wound.

25. On the other hand, the Respondent asked this court to uphold the award as it represented a fair award. He relied on Civicon Limited vs Richard Njomo Omwancha & 2 others (2019) eKLR where the court awarded Kshs 500,000/= for the fracture of four upper teeth, cut wound on the upper and lower lips, swollen and tender upper lips, bruises on the chin, right knee and fracture of the tibia; Tirus Mburu Chege & another vs JKN & another (2018) eKLR where the award of Kshs 800,000/= was reduced to Kshs 500,000/= for a fracture of the tibia and fibula on both legs, blunt injury on the forehead, broken upper right second front tooth, nose bleeding and loss of consciousness and Mwavita Jonathan vs Silvia Onunga (2017) eKLR where the court awarded Kshs 400,000/= for a left hip comminuted intertrochanteric fracture, blunt chest injury, dislocated knee joint, sprains at the cervical spine of the neck and lumbar-sacral spine of the back and a deep cut wound on the leg.
26. Alongside the authorities proposed by both parties, I have found the following cases quite helpful in terms of comparison:-
- i. In *ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021)* [2023] KEHC 23549 (KLR) (5 October 2023) (Judgment), the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth. The appellate court upheld the award of Kshs 250,000/=.
 - ii. In *Justine Nyamweya Ochoki & another vs Prudence Anna Mwambu* (2020) eKLR, the Respondent suffered loss of upper front incisor tooth, deep cut on the chin, cut on the lips, loosening of the upper teeth, injury to the right forearm and loss of consciousness. The appellate court reduced the award of Kshs 650,000/= to Kshs 300,000/=.
 - iii. In *Global Trucks Ltd vs Titus Osule Osoro* (2013) eKLR, the Court awarded Kshs.200,000/= for pain suffering and loss of amenities for loss of an incisor tooth, injuries to the left elbow and the abdomen with residual permanent disability.
27. I have considered the authorities above and the nature of the injuries suffered by the Respondent and I find that the net award of Kshs 440,000/= as general damages by the trial court was inordinately high and was not commensurate to the injuries sustained by the Respondent. I therefore substitute it with an award of Kshs 400,000/=.
28. In light of the foregoing, the amount awarded to the Respondent is as follows:-
- General damages Kshs 400,000/=
- Less 20% contribution Kshs 80,000/=
- Kshs 320,000/=
29. In the end, the Memorandum of Appeal dated 26th January 2023 succeeds only to the extent that the amount awarded to the Respondent is reduced from Kshs 440,000/= to Kshs 320,000/=.



30. Each party shall bear their own costs in the Appeal and the costs and interest in the original suit shall remain as awarded by the trial court.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 17TH DAY OF OCTOBER, 2024.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr Njoga for the Appellant, N/A for Mr Kadet for the Respondent and Siele (Court Assistant).

