



**Menengai Refineries Ltd v Sang (Civil Appeal E003 of 2023)
[2024] KEHC 12438 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E003 OF 2023
RL KORIR, J
OCTOBER 17, 2024**

BETWEEN

MENENGAI REFINERIES LTD APPELLANT

AND

RONALD SANG RESPONDENT

*(Being an Appeal from the Judgment of Resident Magistrate, Wamae
M. at the Magistrate's Court at Bomet, Civil Suit Number 76 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. In the course of the trial, parties entered a consent on liability. At the close of the trial, the court rendered its Judgment on 15th December 2022 and awarded the Respondent the net total of Kshs 480,000/=.
3. 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.
4. 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 *Abok James Odera t/a A.J Odera & Associates vs John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR.

The Plaintiff's/Respondent's case.

5. 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.
6. 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.
7. That as a result of the accident, the Respondent suffered the following injuries:-
 - i. Right superior and interior rami fracture and left inferior pelvic rami fracture.
 - ii. Left parietal scalp lacerations of 4cm.
8. The Respondent prayed for Special and General Damages against the Appellant.

The Defendant's/Respondent's case

9. 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 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.
10. 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.
11. 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.
12. However, it is salient to note that 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 and was given due effect in the Judgement.
13. On 10th June 2024, I directed that this Appeal be canvassed by way of written submissions.



The Appellant's submissions.

14. Through its submissions dated 19th June 2024, the Appellant submitted that the award of Kshs 600,000/= as general damages was inordinately high. That according to the Medical Report and Discharge Summary, the Respondent suffered a deep cut on his scalp and reported a severe headache, chest pain and pain on his right hip that limited some of his movement.
15. The Appellant submitted that the Respondent testified that he neither received a metal implant nor was he applied a plaster of paris. That the Respondent did not suffer any fracture and the same was corroborated by the second Medical Report (D.Exh 1) which Report concluded that the Respondent only suffered soft tissue injuries to his lower back and torso.
16. It was the Respondent's proposal that an award of Kshs 150,000/= would be a fair estimate. It relied on Richard Kieti Kathuu vs Musee Mutemi, Silphanus Kumbe Murondo vs Lamek Mbaka Motegi & another (2013) eKLR and Nyambati Nyaswabu vs Toyota Kenya Ltd & 2 others (2019) eKLR where the courts awarded Kshs 150,000, Kshs 220,000/= and Kshs 90,000/= respectively for soft tissue injuries.

The Respondent's submissions

17. Through his submissions dated 9th July 2024, the Respondent submitted that the award of Kshs 600,000/= as general damages was fair. That at the trial court the Appellant relied on Peter Gakere Ndiangu vs Sarah Wangari Maina (2021) eKLR, Eston Mwirigi Ndege & another vs Joseph Macharia Kawira (2019) eKLR and Civicon Limited vs Richard Njomo Omwancha & 2 others (2019) eKLR, where the courts awarded Kshs 500,000/=: Kshs 500,000/= and Kshs 500,000/= respectively for similar injuries. That the Appellant was now proposing a different amount to the ones he relied on in the trial court.
18. The Respondent relied on Joseph Njeru Luke & 4 others vs Stella Muki Kioko (2020) eKLR where the court issued an award of Kshs 750,000/= for comparable injuries.
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. Right superior and interior rami fracture and left inferior pelvic rami fracture.
 - ii. Left parietal scalp lacerations of 4cm.
21. The Respondent who testified as PW2 produced a Medical Report from Tenwek Hospital dated 10th January 2019 as P.Exh 2a, and a Discharge Summary from Tenwek Hospital as P.Exh 2b in support of his claim. On the other hand, the Appellant produced a Medical Report by Dr. Walter Adero as D. Exh 1.
22. The Appellant disputed the nature of injuries sustained by the Respondent and stated that the Respondent only suffered soft tissue injuries and not a fracture as pleaded by the Respondent.



23. I have carefully looked at the exhibits produced and I have noted that the Respondent was attended to at Tenwek Hospital on the material day (28th October 2018). According to the Discharge Summary (P.Exh 2b), the Respondent suffered a superior pubic rami fracture and soft tissue injuries.
24. Additionally, the Medical Report (P.Exh 2a) from the same hospital also captured that the Respondent had suffered a superior pubic rami fracture. The Medical Report further stated that the Respondent suffered deep cut wounds on his scalp, hip pains, chest pains and a left parietal scalp laceration. The Respondent also produced a P3 form as P.Exh 4 and it captured the same injuries captured in the Medical Report (P.Exh 2a).
25. The second Medical Report (D.Exh 1) by Dr. Walter Adero stated that the Respondent had been examined on 8th August 2022 which was approximately four years after the occurrence of the accident. This Report does not aid this court in determining the nature of injuries suffered by the Respondent because the Respondent is expected to have healed due to the lapse of time. It is not a surprise that the Report's conclusion was that the Respondent had fully healed and had suffered no permanent disability.
26. When the Respondent was cross examined, he stated that he underwent a pelvic x-ray scan but could not produce the x-ray scans as evidence. He further stated that he did not receive metal implants and was only given oral medicine.
27. Given the above analysis, it is my finding that the Respondent suffered the injuries as stated in the Plaintiff. The Medical Report (P.Exh 2a) listed the injuries in detail and I have no reason to doubt that the type of injuries suffered by the Respondent.
28. The principles that govern this court on whether or not this court can interfere with the trial court award were elucidated by the Court of Appeal in Fredrick Masaghe Mukasa vs Director of Public Prosecutions & 3 others (2019) eKLR, where it stated:-

“In doing so, we shall be guided by the well-established principles as set out in Mbogo & another -v- Shah (1968) EA 93, where the predecessor of this Court stated that an appellate Court will not interfere with the exercise of discretion by a trial court unless the discretion was exercised in a manner that is clearly wrong because the trial court misdirected itself or acted on matters which it should not have acted upon or failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.

In order for this appeal to succeed, the appellant must bring himself within the ambit of the principles set out in Mbogo Vs Shah (supra). He must demonstrate to the satisfaction of this Court that the trial court exercised its discretion wrongly in making the conclusions that it did.”

29. On the issue of general damages, the Appellant submitted that the award of Kshs 600,000/= was inordinately high and they proposed an award of Kshs 150,000/=. On the other hand, the Respondent asked this court to uphold the award as it represented a fair award. He relied on
30. Alongside the authorities proposed by both parties, I have found the following cases quite helpful in terms of comparison:-
 - i. In Peter Gakere Ndiangu vs Sarah Wangari Maina (2021) eKLR, the court reduced the award of Kshs 1,200,000/= to Kshs 500,000/= for the bilateral superior and inferior pubic rami fractures.



- ii. In *Eston Mwirigi Ndege & another vs Joseph Macharia Kawira (2019) eKLR*, the court awarded Kshs 500,000/= for the fracture of the right femur and right arm.
 - iii. In *Civicon Limited vs Richard Njomo Omwanicha & 2 others (2019) eKLR*, the court awarded Kshs 450,000/= for a deep cut wound on the left earlobe, a tender left lateral chest wall, swollen and tender left arm, bruises on the left hand, swollen and tender left elbow, bruises on the left elbow, cut wound on the left foreleg, fracture of the tibia and fibula and dislocation on the left hip joint.
31. I have considered the authorities above and the authorities submitted by counsel. I have also considered the nature of the injuries suffered by the Respondent and I find that the award of Kshs 600,000/= as general damages by the trial court was high and was not commensurate to the injuries sustained by the Respondent. I therefore substitute it with an award of Kshs 400,000/=.
32. 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/=
33. 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 480,000/= to Kshs 320,000/=.
34. 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.

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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).

