



REPUBLIC OF KENYA



KENYA LAW
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Makori v Gitau (Civil Appeal E517 of 2024)
[2024] KEHC 13120 (KLR) (Civ) (9 October 2024) (Judgment)

Neutral citation: [2024] KEHC 13120 (KLR)

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

CIVIL

CIVIL APPEAL E517 OF 2024

AM MUTETI, J

OCTOBER 9, 2024

BETWEEN

REUBEN MOCHAMA MAKORI APPELLANT

AND

GEORGE GITAU RESPONDENT

*(Being an appeal from the judgement of Honourable Lucy
Ambasi Chief Magistrate delivered on 19th March 2023)*

JUDGMENT

Introduction

1. The appellant was the successful party in the Lower Court. In his claim for personal injury whereof the learned Honourable magistrate awarded him the sum of Kshs. 500,00 in general damages for pain and suffering, a sum of Kshs. 80,000 for future medical expenses, special damages of Kshs. 3500 plus costs and interests.
2. It is the award for Kshs. 500,000 in general damages that the appellant is dissatisfied with and now seeks this Courts intervention for in his view the figure was inordinately low considering the nature of injuries suffered.
3. The appellant is basically asking the Court to review the figure upwards to an award that is comparable.

Analysis

4. The appeal does not go into the issues of liability the Respondent having been found 100% liable for the accident.



5. The Respondent has not cross appealed so this Court shall focus on quantum.
6. According to the evidence tendered, the plaintiff/ appellant suffered: A blunt and abrasion injuries on the head. Blunt soft tissue injuries on both limbs. Fracture of the left tibia and fibula. Fracture of the right femur. Deep cut wounds on the left heel.
7. It is these injuries that the appellant urges the court to find and hold that the learned Honourable Magistrate awarded an inordinately low sum owing to their seriousness.
8. The parties have file submissions in respect of their respective cases.
9. The learned Honourable Magistrate did not make any provision for diminished earning capacity which was one of the claims by the appellant.
10. The appellant in the Lower Court submitted for the sum of Kshs. 1 Million in general damages whereas the Respondent countered with a proposal of Kshs. 500,000.
11. In declining to make an award for diminished capacity to earn the Learned Honourable Magistrate relied on the evidence contained in Dr. WOKABI's medical report which showed that due to the relatively young age of the Appellant he was most likely to heal fully and resume normal life.
12. As a first appellate Court I have reevaluated the evidence presented before the lower court besides considering the submissions by counsel for both parties.
13. In my considered view the multiple fractures were serious injuries by any standard.
14. The Court appreciates that the assessment of quantum is a matter of judicial discretion and appellate Courts should not be quick to interfere unless it appears to the Court that the trial Court misdirected itself on the evidence available or failed to take into consideration relevant factors or simply did not apply the correct principles in arriving at the decision. Mbogo Vs SHAH 1968 EA 93 followed.
15. Whereas I agree with the Learned Honourable Magistrate that the medical evidence tendered revealed that the appellant had a realistic chance of full recovery due to the age, the injuries cumulatively were serious.
16. The fact that the appellant had an implant that was later to be removed should in my view have informed the learned Honourable Magistrate that pain still awaited the appellant during and after the removal of implant. The failure to take that into account cannot be ignored.
17. The sum of Kshs. 80,000 awarded for future expenses cannot be said to be sufficient compensation either. The figure would go to meeting the cost of treatment thus the appellant would not benefit in any way yet he would have to suffer pain for no fault of his own.
18. In the circumstances I am inclined to agree with the submissions by counsel for the appellant that the sum of Kshs. 500,000 in general damages was inordinately low in the circumstances and the learned Honourable Magistrate did not take into consideration precedents on awards in similar matters. Thus she misdirected herself on the principles of evaluation.
19. The appellant has placed reliance on the case of Real Tilak Enterprises Ltd Vs. Paul Mule Kilonzo [2019] eKLR where the Court awarded the sum of Kshs. 2,500,000 to the respondent who had suffered blunt injury on the right leg, fracture of the right tibia, fracture of the right femur, blunt injury on the right thigh and soft tissue injuries.
20. The respondent on the other hand cited the cases of Nguku Joseph & Another Vs. Gerald Kihui Maina [2020] eKLR and Daniel Otieno Owino & Another Vs. Elizabeth Atieno Owour [2020] eKLR.



21. I have considered all the decisions on the proposed figure in general damages. In view of the seriousness of the injuries sustained by the plaintiff, I am inclined to review the award of Kshs. 500,000 in general damages and substitute the same with a figure of Kshs. 800,000.
22. Turning back to the limb on diminished earning capacity, I am minded to make a provision for the same considering the nature of the injuries.
23. Dr. Wokabi in his report states :-

“He has suffered a lot of pain from the multiple major injuries that he sustained following a road accident. He also suffered pain after the surgeries that he underwent. At his young age expectation is for all the fractures to unite within a period of 6-8 months. During that period also both legs rehabilitate maximally.”
24. The doctor also mentions at the page 19 of the record :-

“He is not able to stand or walk. He sleeps or sits most of the time.”
25. In my view the learned Honourable magistrate did not take this aspect of medical report into consideration.
26. It is rather obvious that a man who cannot stand or walk and sleeps most of the time would have diminished capacity to earn. He might be young, yes but that cannot by itself be a guarantee of full functionality in the circumstances narrated by the doctor.
27. The period of 6-8 month is estimated as a period of unification of fractures. It is not in doubt the appellant would during that time be limited in whatever he does for a living.
28. In his evidence at page 50 of the record he stated;

“I don't work as of now. I was a motor cycle rider. I was earning Ksh. 45,000 per month. I don't have evidence.”
29. The appellant though he did not have evidence of the amount he earned all the evidence discloses is that he was indeed a rider at the time of the accident. He was operating in the city county as per his witness statement.
30. He claimed the sum of Kshs. 200,000 under the head of diminished capacity to earn. The magistrate declined to grant the same.
31. This Court is minded to interfere with that decision since in this court's view the failure to award a figure for diminished earning was a material misdirection on a fundamental aspect of the evidence.
32. The appellant shall be compensated in the sum of Kshs. 150,000 for diminished earning capacity.

Conclusion

33. In conclusion, therefore the Appellant's appeal succeeds and he is hereby awarded Kshs. 800,000 in general damages and Kshs. 150,000 as compensation for diminished capacity to earn, making a total of Ksh 950,000
34. The appellant shall also receive his Kshs. 3500 in special damages.
35. The appellant shall also receive have the costs of this appeal.



36. It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 9TH DAY OF OCTOBER 2024.

A. M. MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Momanyi for the Appellant

Ms Ngotho holding brief Njoroge for the Respondent

