



REPUBLIC OF KENYA



**Githambo Tea Factory Co Ltd v Kiene (Civil Appeal 29 of 2017)
[2023] KEHC 624 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 29 OF 2017
J WAKIAGA, J
FEBRUARY 8, 2023**

BETWEEN

GITHAMBO TEA FACTORY CO LTD APPELLANT

AND

FRANCIS MACHARIA KIENE RESPONDENT

(Being an appeal from the judgement of Hon. E. Wambo (Mr) delivered on the 14th day of June 2017 at the Chief Magistrate's Court at Murang'a in CMCCC No 182 of 2015.)

JUDGMENT

1. By a Plaint dated April 22, 2015, the Respondent sued the Appellant for general and special damages arising from a road traffic accident on the 11th May 2013 involving motor vehicle registration number KAS 061T owned by the Appellant and motor cycle registration number KMCL 544V as a result thereby occasioning severe injuries to the Respondent.
2. The Respondent pleaded that the said accident was caused by the negligence of the Appellant's servants, driver and or agent particulars of which were pleaded.
3. By a defence dated 15th June 2015, the Respondent admitted the occurrence of the said accident but denied that the same was caused by its servants or agents' negligence and in the alternative stayed that the same was wholly caused and or substantially contributed to by the Respondents own negligence.
4. By a consent thereon, liability was agreed on at 30%;70% in favour of the Respondents and the matter set down for assessment of damages by way of Written Submissions.
5. By a judgment thereon dated 1 June 4, 2017 the Court assessed general damages at the sum of Kenya shillings five hundred thousand (Kshs 500,000) for pain and suffering.



6. Being aggrieved by the said determination, the Appellant filed this appeal and raised the following summarized grounds of appeal:
 - (a) The learned Magistrate erred in law and fact in awarding exorbitant quantum not guided by prevailing range of comparable awards.
 - (b) The Court did not take into account the medical evidence and therefore the award was erroneous.
 - (c) The Court did not take into account the Appellant's submissions and authorities in support thereof while making an award.
7. Directions were issued that this appeal be determined by way of Written Submissions which were duly filed.
8. On behalf of the Appellant, it was submitted that the damages awarded was not commensurate with the nature of injuries suffered by the Respondent as there were no resultant permanent incapacitation indicated in the medical report. It was contended that an award of Kshs 250,000 would have been appropriate.
9. It was contended further that the trial Court only considered the authorities submitted by the Respondent and failed to justify the award and therefore the Court ought to interfere with the same as the Court failed to take into account relevant factors. In persuading the Court to reduce the award reliance was placed on the following cases:
 - (a) Naivasha HCCA No 96 of 2015 *Mohamed Younis Qureshi & another v Chris Maina Mathu* [2020] e KLR were the court assessed general damages at Kshs 400,000 in respect of more severe injuries
 - (b) Kisii HCCA No 74 of 2016 *Jitan Nagra v Abidnego Nysndusi Oigo* [2018] e KLR were damages were reduced to Kshs 450,000 from 1,000,000
 - (c) Meru HCCA No 145 of 2014 *Naomi Momanyi v G4S & another* [2018] eKLR where damages were reduced from Kshs 300,000 to Kshs 200,000.
10. On behalf of the Respondent, it was submitted that in reaching the award, the Court stated that it had considered the authorities cited and that should the court award Kshs 250,000 proposed by the Appellant, the Respondent would go home with nothing. The court was urged to reassess damages at Kshs 1,400,000.

Determination

11. The only issue for determination in this appeal is whether the Appellant has made up a case for the Court to interfere with the award by the trial Court?
12. This being a first appeal, the Court is under a duty to reassess the record of the proceedings before the trial Court and to come to its own determination thereon.
13. In this case, consent judgement was recorded on liability and the general damages were assessed on the basis of Written Submissions in which the Respondent submitted that the same sustained multiple fracture of the tibia and fibula bones and proposed a sum of Kshs 1,400,000. The Appellant on the other hand proposed Kshs 250,000 based on the cases of Nairobi HCCC No 335 of 2004 where Kshs 100,000 was awarded, Kisumu HCCA No 183 of 2010 where the award of Kshs 180,000 was given and Nakuru HCCA No 105 of 2008 where the award was reduced to Kshs 250,000.



14. In arriving at the award herein the trial Court stated that it had taken into account the inflation rate and the age of the authorities and would therefore find no fault with the decision rendered by the trial Court noting that comparable injuries must attract comparable award and that the appellate Court will only interfere unless its's so inordinately high or low as to represent an entirely erroneous estimate as was stated in *Bashir Ahmed Butt v Uwais Ahamed Khan* [1982-88] KAR 5.
15. In the final analysis I find no merit o the appeal herein which I hereby dismiss with cost to the respondent.

SIGNED DATED AND DELIVERED AT MURANGA THIS 8th DAY OF FEBRUARY, 2023.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Mwangi for Ms Muchemi for Appellant

N/A by the Respondent

Court Assistant: Carol Mutahi

