



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Adhiambo (Civil Appeal E130 of 2021)
[2023] KEHC 1485 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1485 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E130 OF 2021
JWW MONG'ARE, J
MARCH 2, 2023**

BETWEEN

STANLEY KIMANI APPELLANT

AND

NANCY ADHIAMBO RESPONDENT

*(Being an Appeal from the judgment and decree of Hon. B. Kiptoo
in Eldoret CMCC E117 of 2020 delivered on 28th September 2021)*

JUDGMENT

1. The appeal before this court arises from the judgment and decree in the trial court Eldoret CMCC E117 of 2020 delivered on September 28, 2021) where, by way of plaint dated October 30, 2020, the respondent instituted a suit against the appellant seeking damages for injuries sustained in a road traffic accident. The cause of action was as a result of an accident that occurred on October 2, 2020 while the respondent was walking along the Eldoret - Webuye Road when he was knocked down by a vehicle belonging to the appellant. He sustained several injuries and sought special damages, general damages and costs of the suit.
2. Parties entered a consent judgment on liability at 60/40 in favour of the respondent and the matter proceeded for trial on quantum of damages where upon hearing all the parties on the same the trial court entered judgment in favour of the respondent as follows;
 - a) Special damages – Kshs 20,931/-
 - b) General damages – Kshs 700,000/-
 - c) Future medical expenses – Kshs 75,000/-
 - d) Costs and Interest



3. This appeal is as a result of the appellant being dissatisfied with the assessed quantum of damages. In his memorandum of appeal dated October 13, 2021 he sought to canvass the appeal on the following grounds;

- 1) That the learned trial magistrate erred in law and in fact in adopting the wrong principles in making a determination as to the damages payable to the respondent thereby arriving at an erroneous decision.
- 2) That the learned trial magistrate erred in law and in fact in failing to consider the submissions by the appellant on the issue of quantum.
- 3) That the learned trial magistrate erred in law and in fact by failing to take into account relevant issues and/or factors in making a determination as to damages payable thereby arriving at an erroneous decision.
- 4) That the learned trial magistrate erred in law and in fact in failing to take into consideration and/or precedents with comparable injuries like the ones sustained by the respondent thereby arriving at an excessive amount payable for the general damages.

The parties filed submissions on the appeal.

Appellant's Case

4. The appellant submitted that the award were inordinately high as the injuries were soft tissue injuries and the medical documents did not support the opinion of dr Sokobe. Further that the 2nd medical report by dr Z Gaya indicated that the respondent sustained soft tissue injuries which he had recovered from. He maintained that the court took into account irrelevant factors by relying on the case of [G4511 Deluxe Ltd & 2 Others v Janet Atieno](#) [2021] eKLR to award the damages. He urged the court to re-evaluate the damages and consider the awards in the following cases; [Francis Omari Ogaro v JAO \(minor suing through next friend and father GOD\)](#) [2012] eKLR; [Peter Njuguna v Francis Njuguna Njoroge](#) [2015] eKLR and [Paul Kipsang Koech & Another v Titus Osuce](#) [2013] eKLR in determining the quantum.

Respondent's Case

5. The respondent opposed the appeal and submitted that the trial court noted that the respondent proved the injuries suffered both in the plaint and the medical report by dr Joseph Sokobe. Further, that the trial court considered the authorities cited and appreciated the discrepancies on the nature of the injuries against those in the present case. Learned counsel urged the court to consider the award in [Easy Coach limited v Emily Nyangasi](#) [2017] eKLR. Counsel urged that the appeal is unmerited and should be dismissed with costs.

Analysis And Determination

6. As the appeal is only against quantum, the only issue for determination is whether the award for damages was inordinately high.



7. In *Abok James Odera T/a J Odera & Associates v John Patrick Machira T/a & Co Advocates* [2013] eKLR the court stated that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.

Whether the award for damages was inordinately high

8. On deciding to interfere with damages, courts are guided by the case of *Butt v Khan* Civil Appeal No. 40 of 1997, where Law, JA pronounced himself 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 misrepresented the evidence in some material respect, and so arrives at figure which was either inordinately high or low.

9. It is trite law that the established methods of assessing damages is that comparable injuries should as far as possible be compensated by comparable awards. From the court record and the evidence adduced during the trial at the lower court, the respondent is alleged to have sustained the following injuries;

- a) Head injury with brief loss of consciousness for five hours
- b) Lacerations on the forehead
- c) Blunt injury to the left eye
- d) Lacerations on the nostrils and upper lip and chin
- e) Uprooting of the right upper first incisors and loss to other incisors
- f) Bruises and blunt injury to the chest
- g) Lacerations on both shoulders
- h) Lacerations on both hands posteriorly more on the right hand
- i) Deep cut wound on the left elbow posteriorly
- j) Degloving injury to the right knee
- k) Lacerations on the left knee

10. The record further reveal and it is not in dispute that the respondent sustained soft tissue injuries and that she will require future medical treatment. However, from the evidence adduced, I note that it may be difficult to compare the resultant future costs to any decided case and therefore any assessment herein is based on future estimated costs associated with future medical treatment. Further from the record available and further scrutiny of the medical evidence adduced, I would classify the injuries of the respondent as multiple soft tissue injuries and use the same in guiding my analysis of the quantum reached by the trial court. In doing so I am guided by the decision of the court in the case of *Monyoro Mong'are Shem & another v Rose Kebaki* [2021] eKLR where upon analysis of the evidence on record, the appellate court reduced the award of Kshs 1,500,000/- for general damages to Kshs 600,000/- for multiple soft tissue injuries.



11. I am further guided by the decision in In *Charles Mwanja & Another vs Batty Hassan And Another* HCCA No 106 of 2003 where the plaintiff sustained soft tissue injuries and fracture of right tibia and fibula and the court awarded Kshs 800,000/= as general damages for pain and suffering and a further Kshs 120,000/= for future medical care. The court in deciding whether to interfere with the award for future medical costs stated as follows;

“On when an appellate court may reduce the award of damages, as this court is being asked to do in the instant case, the Court of Appeal quoted from the judgment of Kneller JA at page 730 in the case of *Kenfro Africa Limited t/a Meru Express Service Gathogo Kanini v AM Lubia and Olive Lubia* [1982-88] 1 KAR 727 thus:-

“the principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages, took into account an irrelevant factor or left out of account a relevant one or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilango v Manyoka* [1961] EA 705, 709, 713 *Lukenya Ranching and Farming Co-operative Society Ltd v Kaloveko* [1970] EA 414, 418, 419. This court follows the same principles.”

12. The above are the same principles that this court must apply in determining this appeal.

13. Upon considering the facts of the case, the record of appeal and comparable awards for similar injuries, I am not convinced that the trial court’s award of general damages was excessive/inordinately high. In the premises, the appeal is dismissed with costs to the respondent.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2nd DAY OF MARCH 2023

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J.W.W.MONGARE

JUDGE

In the presence of;

1. Ms Nyabuto for the appellant

2. Ms. Okara for the respondent

3. Brian Kimathi- Court Assistant

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J.W.W.MONGARE

JUDGE

Further Orders

On the oral application of Counsel for the Appellant there is hereby granted a Stay of execution of the Judgement in Eldoret CMCC E117 of 2020 for a period of 30 days from the date herein.

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J.W.W.MONGARE

JUDGE

