



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njogu v Murumba (Civil Appeal E076 of 2021)  
[2023] KEHC 1808 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E076 OF 2021  
JWW MONG'ARE, J  
MARCH 2, 2023**

**BETWEEN**

**EPHANTUS MURITHI NJOGU ..... APPELLANT**

**AND**

**ZILPA NABWIRE MURUMBA ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. R. Onkoba  
delivered on 23rd June 2021 in Eldoret CMCC 271 of 2019)*

**JUDGMENT**

1. The appeal before this court is against the judgment and decree in Eldoret CMCC 271 of 2019 where the Respondent instituted the claim vide a plaint dated April 4, 2019 seeking general and special damages for a road traffic accident that occurred on January 15, 2019. The Respondent sustained injuries when the Appellant's motor vehicle registration No KBY 108A veered off the Nakuru-Eldoret road at Stabex area and knocked him down.
2. The matter proceeded for full hearing and upon considering the evidence before the court, the pleadings and submissions of the parties, the trial magistrate entered judgment against the Appellant as follows; Liability at 80/20 General damages Kshs 1,600,000/- Less 20% contribution Kshs 320,000/- Special damages Kshs 137,086/- Total Kshs 1,417,086/-
3. The Appellant being dissatisfied with the judgment and decree of the court, instituted the present appeal vide a Memorandum of appeal dated July 8, 2021 premised on the following grounds;
  1. That, the learned magistrate erred in law and fact in adopting the wrong principles on making a determination on the damages payable to the Respondent thereby arriving at an erroneous amount.



2. That the learned trial magistrate erred in law and fact in awarding general damages that were excessive in view of the injuries pleaded and proved.
3. That the learned trial magistrate erred in law and in fact in failing to take into account relevant factors therein thereby arriving at an excessive amount in damages in the circumstances.

Parties were directed to file submissions on the appeal.

### **Appellant's Case**

4. The Appellant submitted that before an award of quantum is disturbed by an appellate court it must be proved that the award by the trial court was irrelevant and manifestly excessive. He cited the case of *Butt v Khan* (1975) eKLR Civil Appeal No 40 of 1997 in support of this submission.
5. It is the Appellant's case that the trial magistrate erred in law in awarding Kshs 1,600,000/- considering the injuries sustained by the plaintiff. Further, that the trial magistrate failed to take into account relevant factors or comparable awards from previous decisions thus awarding the Respondent excessive general damages. He proposed an award of Kshs 500,000/- to Kshs 750,000/- and urged the court to be persuaded by the cases of *Catherine Gatwiri v Peter Mwenda Karaa* (2018) eKLR and *Peter Gakere Ndiangui v Sarah Wangari Maina* (2021) eKLR where the courts reduced the damages awarded to Kshs 500,000/- in both cases. He urged that the appeal be allowed with costs.

### **Respondent's Case**

6. Learned counsel for the respondent opposed the appeal and submitted that the medical reports by Dr Sokobe and Dr Gaya estimated future medical expenses at Kshs 100,000/- and Kshs 150,000/- respectively. He cited the cases of *Rural Electrification Authority v Shashon Ole Leuka* (2017) eKLR and *Duncan Kimathi Karagania v David Ngugi & 3 others* to buttress the submission that the trial court should have given a higher award. He urged the court to dismiss the appeal with costs to the respondent.

### **Analysis And Determination**

7. As an appellate court, it is my duty to re-evaluate and assess evidence on record. 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.

Upon considering the memorandum of appeal and the submissions on record, the appeal is entirely on quantum. Therefore, the following issue arises for determination; to wit;

Whether the trial court erred in its award of damages.

### **Whether the trial court erred in its award of damages**

8. In determining whether to interfere with a trial court's award on damages, appellate courts are guided by the case of *Butt v Khan* Civil Appeal No 40 of 1997, where Law, J.A 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. The established methods of assessing damages is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that

“comparable injuries should attract comparable awards.”

10. The Respondent sustained the following injuries;

- a. Head injury with brief loss of consciousness
- b. Lacerations on the left forehead
- c. Cut wound on the lateral left periodical region
- d. Blunt injury to lower jaw
- e. Fracture on the left clavicle
- f. Laceration in the left anterior abdominal wall
- g. Bruises and blunt injury to the left elbow
- h. Fracture pelvic and left sciatic nerve injuries

11. The trial court awarded Kshs 1,600,000/- as General damages which the Appellant contends is excessive in the circumstances. The closest authority in terms of similar injuries is *H.K.N v Kenafri Bakery Ltd & another* [2010] eKLR where the Court awarded general damages at Kshs 2,500, 000/- for the following injuries;

- a. Severe brain concussion leading to oedema and loss of consciousness
- b. Fracture of left mandible (chewing bone).
- c. Fracture of left fore-arm bones (ulna and radius) at distal third zone.
- d. Fracture of left collar bone (clavicle) between middle and outer third.
- e. Traction injury of left brachial plexus.
- f. Laceration wound on the left check.
- g. Severe contusion of right thigh quadriceps muscles (upper third).
- h. De-gloving injury of the skin that covered the right thigh muscle.
- i. Laceration of right saphenous and anterior cutaneous vein of the thigh compromising the venous return of lower limb.

12. Granted some of the injuries were more severe in the cited authority than in the instant case, it is my strong view that the trial court’s award for general damages was not inordinately high in the circumstances. I have also perused the record of appeal and the judgment of the trial court and I am convinced that the trial court took into consideration the authorities by both parties and the submissions tendered in arriving at its decision. I therefore find no reason to set aside the quantum awarded. The appeal is dismissed with costs to the respondent.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2<sup>ND</sup> DAY OF MARCH 2023.**



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**J.W.W.MONGARE**

**JUDGE**

**In the presence of:**

1. Ms Nyabuto for the Appellant
2. N/A 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, it is hereby granted a Stay of execution of the Judgment in Eldoret CMCC 271 of 2019 for a period of 30 days from the date herein.

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**J.W.W.MONGARE**

**JUDGE**

