



REPUBLIC OF KENYA



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**Wanjohi v M'Alaine (Civil Appeal E155 of 2021)  
[2023] KEHC 2496 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2496 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E155 OF 2021  
TW CHERERE, J  
MARCH 23, 2023**

**BETWEEN**

**DAVID MAINA WANJOHI ..... APPELLANT**

**AND**

**EUSEBIA KOOMU M'ALAINÉ ..... RESPONDENT**

*(Being an appeal from the Judgment in Maua CMCC No.  
E022 of 2020 by Hon. T. Gesora (CM) on 21st October, 2021)*

**JUDGMENT**

**Background**

- 1) On June 6, 2020, an accident involving motor vehicle appellant's M/V KCN 960R (accident motor vehicle) and motor cycle KMFC 068J (motor cycle) that respondent was riding on occurred along Laare-Antubetwe road as a result of which the Respondent suffered bodily injuries.
- 2) Respondent filed suit for damages against the appellant and at the conclusion of the trial, the learned trial magistrate found the accident motor vehicle was driven negligently. Appellant was found liable at 100% and judgment was entered for the respondent as follows:
  - 1) General damages KES. 1,500,000/-
  - 2) Special damages KES. 11,100/-
  - 3) Costs
  - 4) Interest

**The Appeal**

- 3) Appellant dissatisfied with the lower court's decision preferred this appeal only on quantum.



## Analysis and Determination

### Quantum

- 4) A medical report by Dr. Mwiti dated August 21, 2020 reveals that Respondent suffered the following injuries:
  - i. Fracture on left proximal tibia with multiple fragments
  - ii. Wound left knee
  - iii. Bruises left elbow
  - iv. Bruises left calf
  - v. Muscular pains
- 5) At the time of examination about 3 months after the accident, respondent was in walking on crutches and had scar and pain on left knee.
- 6) A medical report by Dr. Wambugu dated August 25, 2021 reveals that respondent suffered the following injuries:
  - i. Fracture left tibia
  - ii. Abrasion wound left shin
- 7) At the time of examination of the respondent about 15 months after the accident, the skeletal and soft tissue injuries had healed with scar on left shin and with no permanent incapacity.
- 8) At the hearing, respondent prayed for KES. 1,500,000 and cited *Mwaura Muiruri v Suera Flowers Limited & another* [2014] eKLR where the Court awarded general damages at KES. 1,450,000.00/- for multiple lacerations on the face, soft tissue injuries on the chest cage (mainly left submaxillary area), comminuted fractures of the right humerus upper and lower thirds of the tibia, compound double fractures of the right leg upper and lower 1/3rd tibia fibula. At the time of examination, the victim was unable to use the right arm and walk without support, had pain in the right upper arm, and on the right knee especially at night.
- 9) Appellant on the other hand offered KES. 400,000/- and cited the following authorities:
  - i. *Jitan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR where Kshs. 450,000/- was awarded for lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur.
  - ii. *Rayan Investments Limited v Jeremiah Mwakulegwa Kasha* [2017] eKLR where the sum of KES. 500,000/- was reduced on appeal to KES. 300,000/- was awarded for fracture of the upper 1/3 of the right fibula, severe blunt trauma on the right wrist, bruises on the posterior aspect of the right elbow and a blunt trauma on the right wrist.
  - iii. *DG (Minor Suing Through Her Next Friend MOR V Richard Otieno Onyisi* [2021] eKLR where the sum of KES. 350,000/- was on appeal enhanced to KES. 400,000/- for chest contusion, left tibia fracture, bruises on the left foot and bruises on the left leg.



- 10) After perusing the entire record, the only issue for my consideration is whether the quantum of damages was inordinately high. An appellate court will not disturb an award of damages unless it be shown that the trial court proceeded on wrong principles or that he misapprehended the evidence.
- 11) The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:  

Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (Emphasis added).
- 12) Looking at the cases cited before the trial court, I find that the one cited by respondent relates to more serious injuries than those suffered in this case. On the other hand, the ones cited by appellant relate to comparable injuries. The learned trial magistrate had a duty to consider awards in similar cases and for failing to do so fell into error.
- 13) From the foregoing, I find that this is a matter that warrants this court's interference. I therefore set aside the KES. 1,500,000/- awarded for general damages and considering the lapse of time substitute it with KES. 500,000/-.
- 14) The award for special damages remain as awarded by the learned trial magistrate. Appellant will have costs of the appeal.

**DATED AT MERU THIS 23<sup>RD</sup> DAY OF MARCH 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

For Appellant - Mrs. Muya for J.K. Kibicho & Co Advocates

For Respondent - Ms. Asuma for Mutembei & Kimathi & Co. Advocates

