



REPUBLIC OF KENYA



**Gladys Kwamboka t/a Kwelikweli Enterprises v HOK alias MI  
(Minor Suing thro' Next Friend and Mother BMK) (Civil Appeal  
E063 of 2021) [2023] KEHC 4144 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 4144 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E063 OF 2021**

**WA OKWANY, J**

**MAY 4, 2023**

**BETWEEN**

**GLADYS KWAMBOKA T/A KWELIKWELI ENTERPRISES ..... APPELLANT**

**AND**

**HOK ALIAS MI ..... RESPONDENT**

**MINOR SUING THRO' NEXT FRIEND AND MOTHER BMK**

*(Being an Appeal against the Judgment of Hon. W. C. Waswa (Mr.) – RM  
Nyamira dated and delivered at Nyamira on the 12th day of August 2021 in  
the original Nyamira Chief Magistrate's Court Civil Case No. E041 of 2020)*

**JUDGMENT**

1. The Respondent herein sued the Appellant before the Lower Court through the plaint dated 23<sup>rd</sup> November 2020 and amended on 12<sup>th</sup> January 2021 seeking the following orders: -
  - a. Special damages of Kshs. 474,945/=.
  - b. General damages to be assessed by this Honourable Court.
  - c. Costs of and incidentals to this suit.
  - d. Interest on (a) (b) and (c) above at court rates.
  - e. Such other or further relief that this Honourable Court may deem fit and just to grant.
2. The Respondent's case was that he was, on 12<sup>th</sup> February 2018, walking along Kebirigo – Nyagachi Road when near River Gucha, the Appellant's motor vehicle Registration No. KCL 057 knocked him over thereby causing him serious injuries. The Respondent attributed the accident to the negligence and recklessness of the Appellant's driver/agent.



3. The Respondent's case was that he suffered the following injuries: -
  - i. Multiple bruise and wound scars on the left parietal and temporal region of the head.
  - ii. Chest contusion.
  - iii. Scars on the upper limbs at the elbow joints bilaterally.
  - iv. Open fracture of the left foot leading to left equinovarus foot with chronic osteomyelitis.
  - v. Chronic talus deformity.
  - vi. Amputation of the left lower limb below the knee.
4. The trial court heard the case and delivered a judgment on 12<sup>th</sup> August 2021 in which it apportioned liability at 80%: 20% in favour of the Respondent who was also General Damages of Kshs. 2,000,000/= and special damages of Kshs. 474,945. The judgment precipitated the instant appeal in which the Appellant mainly challenges the trial court's award on general damages. Parties had, through a consent recorded on 22<sup>nd</sup> July 2021 agreed on liability at 80%: 20% in favour of the Respondent.
5. The appeal was canvassed by way of written submissions which I have considered.
6. The Appellant's case was that the award on general damages is inordinately high as the injuries that the Respondent sustained were minor and that he had healed fully.
7. The Appellant submitted that an award of Kshs. 800,000/= would have been sufficient to compensate the Respondent for his injuries. To buttress this argument, the Appellant cited the decision in *Isaac Mworira M'Nabea vs David Gikunda* [2017] eKLR where, he observed that, for more severe injuries, the plaintiff was awarded Kshs. 700,000/= general damages.
8. The Appellant faulted the trial court for proceeding on the wrong principles and misapprehending the evidence in some material respect when assessing the damages payable. It was submitted that there must be uniformity in awards in cases involving similar injuries.
9. The Respondent, on the other hand, submitted that the sum awarded to him was not inordinately high so as to warrant interference by this court. It was submitted that the Respondent's injuries were supported by the various treatment records that were produced as exhibits at the hearing. It was the Respondent's case that the trial court properly analyzed the evidence presented before it and the cited authorities before arriving at the award of Kshs. 2,000,000/= general damages. Reference was made to the decision in *Michael Wafula Malenya vs Matunda (Fruits) Bus Services Ltd* [2022] eKLR where, he noted, for similar injuries, the court made an award of Kshs. 3,000,000/=.
10. I have carefully considered the Record of Appeal, the parties' respective written submissions. The main issue for determination is whether this court should interfere with the Lower Court's decision on general damages.
11. The duty of the first appellate court is to re-evaluate and re-analyze the evidence presented before the trial court in order to come up with its own findings while bearing in mind that it neither saw nor heard the witnesses testify. In *Peters v. Sunday Post Limited* (1958) EA 424 it was held: -

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial court should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly



gone wrong, the appellate court will not hesitate so to decided. *Watt v. Thomas*, (1947) 1 All ER 582; [1947] AC 484, applied.”

12. I have perused the treatment records produced by the Respondent before the trial court and I note that they confirm that the Respondent sustained the injuries enumerated in the plaint. Dr. Ombati Timothy Mokuu, who examined the Respondent 2 ½ years after accident on 13<sup>th</sup> August 2020 noted that the fractures on the Respondent’s left foot led to an amputation. He further noted that the Respondent will require a prosthetic foot for a year at a cost of Kshs. 200,000/= and thereafter three (3) yearly replaceable prosthetic foot at the same cost of Kshs. 200,000/=. The said Doctor assessed permanent disability at 60%.
13. The Appellant produced the Medical Report of Dr. Adegu William KJ as Defence Exhibit 1. The said Doctor’s report confirms the Respondent’s injuries as stated in the plaint but is inconclusive on the degree/percentage of permanent disability. Dr. Adegu was of the view that he would require a radiography of the left leg before he can determine the level of amputation. This court is however at a loss as to what stopped the said Doctor from subjecting the Respondent to radiography to enable him make a conclusive report.
14. Be that as it may, I find that the evidence of the Respondent on the level of incapacity remained unchallenged by any other medical evidence. I find no reason to doubt the findings of Dr. Ombati who assessed the Respondent’s level of incapacity at 60%.
15. I have perused the judgment of the trial court and the findings on quantum. I note that the trial court took into account the seriousness of the injuries that the Respondent sustained in the accident, the medical evidence presented by both parties, the submissions and proposals made by the parties, similar authorities and the principles governing the assessment of general damages before arriving at its verdict on damages. The trial court rendered itself, in part, as follows: -

“Having considered the medical evidence on record, the injuries suffered by the plaintiff are not disputed. Save for the degree of permanent disability. The plaintiff herein did not testify but he attended court during the trial. This court noted that he was on crutches and his left lower leg had been amputated. Amputation is a permanent disability. It significantly affects the life of a person..... Having considered the nature of the injuries sustained by the plaintiff, the above referenced principles and the authorities cited by both parties this court awards the sum of Kshs. 2,000,000 as general damages.”
16. In *Kigaragari vs Aya* (1985) KLR 273 the Court of Appeal (Hancox, Nyarangi, JJA. and Platt, Ag. JA) held that: -

“In awarding damages for personal injury, the courts should consider that there is need to develop consistency in the awards and that the awards should be within the limits of decided cases and avoid the effect of making insurance cover and fees unaffordable for the public.”
17. I note that while the Appellant proposed an award of Kshs. 800,000/= general damages, the Respondent proposed Kshs. 3,500,000/=. The trial court awarded Kshs. 2,000,000/=. I find that the said award is reasonable and commensurate with the Respondent’s injuries. I am guided by the decision in *C M (a minor suing through mother and next friend M N) vs Joseph Mwangangi Maina* [2018] eKLR, where the court awarded Ksh. 2,000,000/- general damages for pain and suffering for a child aged 7 at the time of the accident for amputation of the right leg, in addition to damages for loss of



earning capacity of Ksh.900,000/-. The court rendered itself as follows when enhancing the award of Ksh.500,000/- to Ksh.900,000/- for damages for loss of earning capacity: -

“ 42. The minor was aged 7 years at the time of the accident, was able to attend school, but by the trial date, his condition had apparently been aggravated to the extent that, he was neither able to attend school nor lived independently of his mother. The trial magistrate observed in her judgment that the proposed global award of Shs. 1 million for loss of earning capacity was “on the higher side considering that the minor was epileptic”. That almost suggests, with respect, that the Appellant minor already had a severe disability. Epilepsy need not be necessarily a disabling condition when managed by treatment, as evidenced by the Appellant’s ability to attend school and get about by his own prior to the accident.

43. The Appellant minor faces a long future of severe disability resulting from the pre-existing condition as exacerbated by the amputation of the right leg. In the Mumias Sugar case, the Court of Appeal allowed general damages in the sum of Shs. 500,000/- for a relatively minor (15%) disability sustained by an older plaintiff.”

18. In the present case, the Respondent was a minor aged only about 9 years as at the time of the accident. I find that the award of Kshs. 2,000,000 general damages is reasonable and I find no reason to interfere with it. The award on special damages was not contested. In sum, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.

19. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS  
THIS 4<sup>TH</sup> DAY OF MAY 2023.**

**W. A. OKWANY**

**JUDGE**

