



REPUBLIC OF KENYA



**Mboga v Sasi (Civil Appeal E058 of 2021) [2023] KEHC 4071 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 4071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E058 OF 2021**

**WA OKWANY, J**

**MAY 4, 2023**

**BETWEEN**

**WILSON ONDICHO MBOGA ..... APPELLANT**

**AND**

**JEREMIAH OSINDI SASI ..... RESPONDENT**

*(Being an Appeal against the Judgment of Hon. W. C. Waswa (Mr.) – RM Nyamira dated and delivered at Nyamira on the 26th day of July 2021 in the original Nyamira Chief Magistrate’s Court Civil Case No. 151 of 2018)*

**JUDGMENT**

1. The Respondent/Cross Appellant herein, was the Plaintiff before the Lower Court where he sued the Appellant through the plaint dated August 9, 2018 seeking general and special damages arising out of injuries that he sustained in an accident. The cause of action was in respect to a road traffic accident that occurred on January 3, 2018 involving the Appellant’s motor vehicle Registration No KBC 935Y wherein the Respondent was a lawful passenger.
2. The Lower Court heard the case and rendered a judgment on July 26, 2021 in the following terms: -
  - a. Liability at 100% in favour of the Respondent.
  - b. General damages – Kshs 200,000/=.
  - c. Special damages – Kshs 6,500/=.
  - d. Costs and interest.
3. Both parties were aggrieved by the said judgment of the Lower Court and filed an appeal and cross appeal respectively wherein they mainly challenge the trial court’s assessment of damages/quantum.



4. While the Appellant argued that the award of damages was inordinately high and not in harmony with comparable awards for similar injuries, the Respondent maintained that the award was very low and not commensurate with the injuries that he suffered in the accident.
5. Parties canvassed the appeal and cross appeal by way of written submissions which I have considered.
6. As I have already stated in this judgement, both the appeal and cross-appeal are over the issue of quantum.
7. The Respondent pleaded that he sustained the following injuries in the accident in question: -
  - i. Deep cut wound on the frontal region of the forehead;
  - ii. Cut wound on the right proximal middle phalange;
  - iii. Cut wound on the right foot measuring 3x3cm.
8. The Respondent produced his Medical/Treatment records at the hearing, to wit, treatment notes, P3 Form and a Medical Report by Dr Ombati as exhibits before the trial court. The exhibits confirm that the Respondent sustained the injuries enumerated in the plaint.
9. Dr Ombati, in his oral testimony before the trial court, testified that the Respondent's injuries will leave him with permanent ugly scars. He assessed disability at 1%.
10. The Respondent urged this court to enhance the trial court's award on quantum while maintaining that the said award was inordinately low. He cited the following cases: -
  - a. [\*Blue Horizon Travel Co Ltd v Kenneth Njoroge \[2020\] eKLR\*](#) where the plaintiff sustained: bruises on the scalp; bruises on the neck; bruises on the abdomen; bruises on the lower back; cut wound on the left thumb; cut wound on the left palm; and subluxation of the left shoulder joint. The court awarded Kshs 400,000/= as general damages.
  - b. [\*Samuel Martin Njoroge Kamunyu v Mildred Okweya Barasa \[2020\] eKLR\*](#) the plaintiff sustained: two deep cut wounds on the forehead horizontally; bruises and lacerations on the right cheek; blunt injury to the shoulder and chest; blunt injury to the pelvis; deep cut wounds on the right and left legs. The High Court awarded of Kshs 300,000/= as general damages.
  - c. *Kenya Power & Lighting Co Ltd v Mary Akinyi*, HCCA No 72 of 2007 where Korir J (as he then was) upheld an award of Kshs 350,000/= as general damages for the following injuries: deep cut wound on the calf muscles of the left leg; laceration on the right knee and right shoulder; contusion on the chest.
11. The Appellant, on the other hand, argued that the award of Kshs 200,000/= was inordinately high as the Respondent's injuries were soft tissue in nature and had healed with no serious permanent disability. The Appellant was of the view that an award of Kshs 50,000/= would be sufficient to compensate the Respondent for the soft tissue injuries. He relied on the following decisions: -
  - i. HCA No 28 of 2012 (Eldoret) [\*George Kinyanjui t/a Climax Coaches v Equity Bank Ltd \(2016\) eKLR\*](#) (as quoted in [\*Patrick Mudava Kweyu v Pan Africa Chemical Ltd \[2016\] eKLR\*](#)), where the High Court reduced an award of Kshs 650,000/= for soft tissue injuries (including loss of two molars, but not related to the accident) to Kshs 120,000/= for multiple bruises, severe head injury and trauma to the neck limbo saxral spine, left shoulder and left knee.
  - ii. [\*Eldoret Steel Mills Ltd v Charles Owino\*](#) (Civil Appeal No 81 of 2005 (as quoted in [\*Patrick Mudava Kweyu v Pan Africa Chemical Ltd \[2016\] eKLR\*](#)), the Court awarded Kshs 80,000/



= as reasonable compensation as in *Kenya Tea Development Agency Limited v Josephine Kwamboka (2012) KLR* (In Kisii Civil Appeal No 307 of 2000) (as quoted in *Patrick Mudava Kweyu v Pan Africa Chemical Ltd [2016] eKLR*), where an award of Kshs 100,000/= was made. In both matters, the injuries sustained were soft tissue, cuts, bruises and blunt trauma injuries.

12. The principles governing the award of damages and the circumstances under which the trial court can interfere with such awards have been the subject of numerous court pronouncements. The said principles were laid down by the *Privy Council in Nance v British Columbia Electric Railway Co Ltd (1951) AC 601, 613* and applied in East Africa by Sir K O'Connor (with whom Sir Alastair Forbes, VP and Newbold, JA agreed) in *Henry H Ilanga v M Manyoka [1961] EA 705, 713* as follows:

“The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell, [1935] 1 KB*), approved by the *House of Lords in Davies v Powell Duffryn Associated Collieries Ltd [1942] AC 601*.”

13. In the oft cited case of *Kemfro Africa Ltd t/a Meru Express Service (1976) & Another v Lubia & Another (1987) KLR 30; (1982-88) 1 KAR 727* it was held: -

“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 that 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.

14. I have considered the nature of injuries suffered by the Respondent together with the authorities that both parties cited. I am of the view that the authorities cited by the Respondent depict awards that are way on the higher side for soft tissue injuries that have already healed with no major complication or permanent disability.
15. Similarly, the awards in the authorities cited by the Appellant are on the lower side and relate to older cases where the claimants' injuries were less serious than those suffered by the Respondent in this case.
16. It is my considered view that the award of Kshs 200,000/= was inordinately high for the kind of injuries sustained by the Respondent. I find that an award of Kshs 120,000/= will be adequate compensation for the Respondent.
17. Consequently, I dismiss the Respondent's cross appeal and allow the Appellant's appeal. I therefore set aside the Lower Court's award of Kshs 200,000/= general damages and substitute it with an award of Kshs 120,000/= general damages.
18. Since the appeal has succeeded and cross appeal is unsuccessful, I award the Appellant half the costs of the appeal.



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**

