



REPUBLIC OF KENYA



**Nyarangi v Nyakundi (Civil Appeal E057 of 2022)
[2023] KEHC 18611 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E057 OF 2022
WA OKWANY, J
JUNE 15, 2023**

BETWEEN

HARON NYABUTI NYARANGI APPELLANT

AND

AGNES NYANCHAMA NYAKUNDI RESPONDENT

*(Being an Appeal from the Judgment of the Hon. W. C. Waswa,
Resident Magistrate dated and delivered on the 26th day of July 2021
in the original Chief Magistrate's Court Civil Case No. 159 of 2019)*

JUDGMENT

Introduction

1. The Respondent herein, Agnes Nyanchama Nyakundi, sued the Appellant before the Lower Court claiming damages arising out of a road traffic accident that occurred on July 28, 2019.
2. The Respondent's case was that she was on the material day a pillion passenger riding on motor cycle Registration No KMES 386C when the Appellant's motor vehicle Registration No KBD 462D hit the said motor cycle thereby causing an accident that occasioned the Respondent bodily injuries. The Respondent attributed the accident to the negligence of the Appellant's driver/agent.
3. The Lower Court heard the case and at the end rendered a judgment in which it awarded the Respondent general damages of Kshs 300,000/= and special damages of Kshs 8,300/=.
4. Aggrieved by the said judgment, the Appellant filed the instant appeal in which he mainly challenges the award on quantum.
5. The appeal was canvassed by way of written submissions which I have considered.



6. A perusal of the Record of Appeal reveals that the Respondent pleaded that she sustained the following injuries in the accident: -Deep cut wound on the right upper limb.Deep cut wound on the left upper limb.Deep cut wound on the left leg.Deep cut wound on the right leg.Deep cut wound on the right thighs.Deep cut wound on the left thighs.Chest contusion.Blunt trauma to the lower back.
7. The Respondent's said injuries are the same as those enumerated in the Medical Report by Dr Morebu Peter Momanyi which was produced at the hearing as P Exhibit 6.
8. The trial court held as follows on the issue of quantum: -

“The injuries captured in the P3 form are also noted in Doctor Morebu's medical report dated September 26, 2019. Doctor Morebu opined that the injuries were healing well with large disfiguring permanent ugly scars.

The medical documents on record prove that the plaintiff sustained multiple soft tissue injuries which were healing well.

The plaintiff submitted for an award of Kshs 350,000.00 while the defendant prayed for a sum of Kshs. 90,000.00 as adequate compensation. This court has considered the authorities cited by both parties.

The principles to consider in assessing general damages were set out by Nambuye J in the case of *Boniface Waiti & Another v Michael Kariuki Kamau* [2007] eKLR as follows: -

- a. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- b. The award should be commensurate to the injuries suffered;
- c. Awards in decided cases are mere guides and each case should be treated on its facts and merit;
- d. Where awards in decided cases are to be taken into consideration then the issue of an element of inflation has to be taken into consideration; and
- e. Awards should not be inordinately high or too low.

Having considered the nature of the injuries sustained by the plaintiff, the above referenced principles and authorities cited by rival parties herein, this court awards the plaintiff the sum of Kshs 300,000.00 as general damages. This court relies on the following cases.”

9. The Appellant urged this court to disturb the award of Kshs 300,000/= for general damages while arguing that the same is high as be an erroneous estimate because the Respondent sustained soft tissue injuries.
10. The Appellant cited the decision in *Godwin Ireri vs Frankline Gitonga* [2018] eKLR where for similar injuries an award of Kshs 300,000/= was reduced to Kshs 90,000/=.
11. The Respondent, on the other hand, argued that the soft tissue injuries were multiple and severe in nature and that award of general damages was commensurate with the said injuries. sReference was made to the decision in *David Kimathi Kaburu vs Dionisius Itiari* [2017] eKLR where Kshs 630,000/= was awarded for similar injuries.
12. The issue for determination is whether this court should disturb the Lower Court's award on damages.



13. On an appeal against assessment of damages, an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another vs Lubia & Another (No 2)* Civil Appeal No 21 of 1984 [1985] eKLR 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.”

14. Having considered the Record of Appeal and the parties' respective written submissions, I am not persuaded that the Appellant has made out a case for this court's interference with the award of the trial court. I note that the trial court considered the injuries that the Respondent sustained in the accident and the comparable previous awards before arriving at the award of Kshs 300,000/= general damages.

15. For the above reasons, I find that the appeal is not merited and I therefore dismiss it with costs to the Respondent which I hereby assess at Kshs 30,000/=.

16. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS
THIS 15TH DAY OF JUNE 2023.**

W A OKWANY

JUDGE

