



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Onchoka v Mwangi (Civil Appeal E556 of 2021)  
[2023] KEHC 18505 (KLR) (Civ) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18505 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E556 OF 2021**

**AN ONGERI, J**

**JUNE 15, 2023**

**BETWEEN**

**HASSAN OREDO ONCHOKA ..... APPELLANT**

**AND**

**EUNICE WAITHIRA MWANGI ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. A. M. ABURA  
(CM) in Milimani CMC no. 4051 of 2015 delivered on 20/8/2021)*

**JUDGMENT**

1. The respondent in this appeal Eunice Waithira Mwangi sued the appellant in Milimani CMCC No E556 of 2021 seeking general damages and special damages for personal injuries she sustained on August 19, 2014 in a road traffic accident along Haile Selasie Avenue next to Neno Evangelism Center, Nairobi.
2. The respondent was standing at a bus stop when motor vehicle registration No KBB 451F driven by the appellant veered off the road upon losing control and violently hit the respondent who sustained personal injuries.
3. The respondent gave evidence during the hearing of the case and she called two witnesses, a doctor and a police officer. The appellant did not call any witnesses.
4. The trial court found that the appellant was entirely to blame for the accident and held him 100% liable. The trial court also awarded damages as follows;
  - i. Special damages Kshs 4,200
  - ii. General damages Kshs350,000



Total Kshs354,200

5. The appellant has appealed against the judgment and decree on the following grounds
  - a. The learned trial magistrate's judgment was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
  - b. The learned trial magistrate erred in law and in fact in awarding under the head general damages Kshs 350,000 the same based on the wrong principles of law as the same was excessively high and unjust in view of conventional awards in relation to similar claims.
  - c. The trial magistrate erred in fact and in law in finding the entire defence unconvincing and failing to consider the appellant's submissions and their cited authorities therein.
  - d. The learned judge erred in awarding an excessive sum for the nature of the matter in the face of the evidence adduced.
6. The parties filed written submissions as follows; the appellant submitted that according to the plaint dated July 3, 2015 the respondent sustained the following injuries
  - a. Soft tissue to the chest
  - b. Soft tissue injuries to the back
  - c. Soft tissue injuries to the abdomen
  - d. Pain and swelling to the right ankle
7. The appellant argued that the appellant sustained soft tissue injuries and therefore Kshs 350,000 as general damages was inordinately high and that the sum of Kshs 80,000 would be reasonable and sufficient compensation for the injuries sustained by the respondent. In support they cited the case of *Nyambati Nyaswabu Erick v. Toyota Kenya Limited & 2 others* [2019] eKLR where Majanja J set aside an award of Kshs 55,000 for a deep cut on the scalp extending to the maxillary area, blunt injury to the left side of the chest, contusion on the back and contusion on both legs and substituted it with one of Kshs 90,000.
8. The respondent in contrast submitted that the award of Kshs 350,000 as general damages was in order in comparison to the injuries that she suffered. In support of her argument, she cited *Catherine Wanjiru Kingori & 3 Others v. Gibson Theuri Gichubi* [2005] eKLR where the 3<sup>rd</sup> plaintiff suffered multiple soft tissue injuries, injury on the left elbow joint, and injuries on both ankles. She was awarded Kshs 350,000 as general damages.
9. Also, in *Francis Ochieng & Another v. Alice Kajimba* [2015] eKLR where in respect of multiple soft tissue injuries sustained in January 2012, where the trial court's judgement was rendered in February 2014. The High Court reduced the award from Kshs 500,000 to Kshs 350,000 for multiple soft tissue injuries.
10. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at my own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses. In *Selle v Associated Motor Boat Co* [1968] EA 123 in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of



particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

11. The issues for determination in this appeal are as follows;
  - i. Whether the trial court was right in finding the appellant 100% liable.
  - ii. Whether the award of damages was excessive.
  - iii. Who pays the costs of the appeal?
12. On the issue as to whether the trial court was right on its findings on liability, the appellant merely denied the respondent's claim in its defence but failed to call witnesses.
13. The trial court relied on the evidence of the respondent which was not controverted by the appellant. The respondent adopted her statement as her evidence in chief. In the said statement she said she was standing of the road when motor vehicle registration No KBB 451F which was over speeding lost control. Veered off the road and violently knocked her.
14. I find that the trial court was right in its finding on liability.
15. On the issue as to whether the award of damages was excessive, I find that there is undisputed evidence that the respondent sustained the following injuries  
Trunk  
Multiple soft tissue injuries on the chest back and abdomen  
Right leg  
Swelling on the right ankle  
Pain on the right ankle
16. I have considered the following authorities; In *Kenya Power & Lighting Co Ltd v Mary Akinyi*, HCCA No 72 of 2007, Korir J upheld the award of Kshs 350,000/- as general damages for the following injuries: -
  - a. Deep cut wound on the calf muscles of the left leg;
  - b. Laceration on the right knee and right shoulder;
  - c. Contusion on the chest.
17. I also rely on the case of *Poa Link Services Co Ltd & Another v Sindano Boaz Bonzemo*, HCCA No 17 of 2019, Riechi J upheld the general damages of Kshs 350,000/- for the plaintiff, who had sustained



the following injuries: - Blunt injury to the chest; bruises to lower abdomen; bruises of the right hip joint; bruises of the thigh; and bruises on the knee.

18. I find no reason to interfere with the award by the trial court. The Court of Appeal in Butt v. Khan [1982-88] KAR 5 held that as follows;

“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 misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”

19. I find that the appeal herein lacks in merit and I accordingly dismiss it and uphold the finding of the trial court.

20. On the issue of costs, I direct that the appellant pays the costs of appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 15<sup>TH</sup> DAY OF JUNE, 2023.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

.....for the Appellant

.....for the Respondent

