



**Pride Kings Security v Odero (Civil Appeal E007 of 2022)
[2023] KEHC 20287 (KLR) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E007 OF 2022
WM MUSYOKA, J
JULY 17, 2023**

BETWEEN

PRIDE KINGS SECURITY APPELLANT

AND

SAMUEL ODERO RESPONDENT

(An appeal arising from the judgment and decree of Hon. Mrs. Lucy Ambasi, Chief Magistrate, CM, delivered on 8th March 2022, in Busia CMCCC No. 58 of 2020)

JUDGMENT

1. The suit at the primary court was initiated by the respondent against the appellant, for compensation, on account of personal injury, arising from a road traffic accident. The respondent prayed for general damages, special damages, costs and interests. He was riding a motorcycle along the Busia-Mumias road, when he was involved in a collision with motor-vehicle KCN 587V, alleged to have belonged to the appellant, and he was injured. The appellant filed a defence, in which it denied liability. It averred, in the alternative, that the respondent contributed to the accident by his own negligence, or that of the rider of the motorcycle or that the accident was beyond the control of the driver of the vehicle belonging to the appellant.
2. A trial was conducted, in which the respondent and a traffic police officer testified. A consent order was recorded on liability, on 8th February 2022, at 70:30 for the respondent against the appellant. Judgment was delivered on 8th March 2022. A total of Ksh 307, 700.00, being Ksh 300,000.00 for general damages and Kshs.7, 700.00 special damages, less contribution, was awarded.
3. The appellant was aggrieved, hence the instant appeal. The memorandum of appeal, dated 6th March 2022, lists 6 grounds, revolving around the award of damages, on the basis that the same are inordinately high and excessive, and on liability.



4. The appeal was canvassed by way of written submissions, going by directions given on 17th April 2023. Both sides have filed written submissions.
5. It is submitted that the award made of general damages, at Ksh 300, 000.00, was on the higher side, and *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR (J. Ngugi, J), *George Mugo & another v AKM* (minor suing through next friend and mother AMK) [2018] eKLR (D. Kemei, J) and *Caroline M. Kabae & another v Nancy Muthoni Njoora & another* [2010] eKLR (Sergon, J) are cited to support the appellant's proposition that an award of Ksh 100, 000.00 would have sufficed. On liability, it is submitted that the same had been settled by consent on 8th February 2022.
6. On general damages, the injuries pleaded in the plaint, and set out in the medico-legal report by Dr. JC Sokobe, were deep bruises on the lower left back and upper right back, lacerations on the right elbow, and multiple bruises on the lower limbs. In his written submissions, before the trial court, the respondent cited *Samuel Martin Njoroge Kamunyu v Mildred Okweya Barasa* [2020] eKLR (Githinji, J), where the plaintiff had sustained 2 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, and deep cut wounds to the right and left legs, and the High Court awarded Ksh 300, 000.00 for pain and suffering, down from the Ksh 450, 000.00 that the trial court had awarded. The appellant cited *Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 others* [2019] eKLR (Majanja, J), where an award of Ksh 90, 000.00 was made, for a deep cut on the scalp extending to the maxillary area, blunt injury to the left side of the chest, contusions to the back and both legs. The trial court did not review case law, to guide it in arriving at an appropriate compensation for pain and suffering, and the figure of Ksh 300, 000.00 appears to have been plucked from the air.
7. The injuries sustained by the respondent were of a soft tissue nature. The soft tissue injuries sustained in *Samuel Martin Njoroge Kamunyu v Mildred Okweya Barasa* [2020] eKLR (Githinji, J) were far more extensive and serious, compared with those in the instant case. There were no cuts or wounds in the instant case, for the respondent suffered bruises and lacerations. The injuries in *Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 others* [2019] eKLR (Majanja, J) are comparable to those sustained in the instant case. The trial court should have awarded nothing more than Ksh 100, 000.00 therefor.
8. On liability, the record reflects that the same was settled on 8th February 2022, when the parties recorded a consent, resolving liability at 70:30 for the respondent and against the appellant. There is nothing on record, to suggest that the said consent was set aside thereafter. The importance of an order by consent of the parties cannot be ignored, and, unless set aside or varied by the parties themselves, the same remains a valid court order. See *Geoffrey M. Asanyo & 3 others v Attorney General* [2018] eKLR. The issue of liability was, therefore, not open for determination, by the trial court, in its final judgment. The assessment of liability, in the final judgement, at 80: 20, was erroneous, and the trial court was wrong in principle in contradicting or overriding the consent order on record.
9. In view of everything, I shall allow the appeal on the following terms:
 - a. General damages are hereby reduced to Ksh 100, 000.00;
 - b. The assessment of liability at 80:20 is set aside; and
 - c. Each party to bear their own costs.
10. It is so ordered.



**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 17TH DAY OF JULY
2023**

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Menezes, instructed by LG Menezes & Company, Advocates for the appellant.

Mr. Mukisu, instructed by Mukisu & Company, Advocates for the respondent.

