



REPUBLIC OF KENYA



**Peleah Stores Limited & another v Muia (Civil Appeal E026 of 2021)
[2023] KEHC 19868 (KLR) (Civ) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19868 (KLR)

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

CIVIL

CIVIL APPEAL E026 OF 2021

AN ONGERI, J

JULY 6, 2023

BETWEEN

PELEAH STORES LIMITED 1ST APPELLANT

STANLEY KARIBU 2ND APPELLANT

AND

KYALO MUIA RESPONDENT

*(Being an appeal from the judgment and decree of Hon. A. N. Makau
(PM) in Milimani CMCC no. 4604 of 2019 delivered on 4/12/2020)*

JUDGMENT

1. The appellant was sued by the respondent in CMCC no. 4604 of 2019 seeking general damages special damages of kshs.6,050 with costs and interest for injuries the respondent sustained on 5/2/2019 along Commercial street Nairobi .
2. The respondent was walking along the road when the door of motor vehicle registration no. KCH 977X swung open and knocked the respondent who was lawfully and carefully walking off the road occasioning him severe bodily injuries.
3. The respondent sustained the following injuries
 1. Blunt head injury
 2. Blunt injury to the right
 3. Blunt injury to the vassal bridge
 4. Blunt injury to the right jaw



5. Blunt injury to the right shoulder
 6. Blunt injury to the limbs
 7. Poor hearing on the right ear and recurrent pains on the right shoulder.
4. The appellants filed a defence denying the plaintiffs claim. The parties entered into a consent on liability apportioning 80:20 in favour of the respondent against the appellants.
 5. The court assessed general damages at kshs.350,000 less 20% liability = 280,000/=. The court also granted special damages of kshs.6050 less 20% liability = 4840/= together with cost and interest at court rates.
 6. The trial court entered judgment in favour of the respondent in the sum of kshs.284,840 together with costs and interest.
 7. The appellant is aggrieved by the award of damages and has appealed to this court on the following grounds;
 - a. The learned trial Magistrate misdirected herself and erred in law and in fact by awarding general damages for pain and suffering that are so manifestly excessive as to be erroneous.
 - b. The learned trial magistrate misdirected herself and erred in law and in fact in failing to consider the medical report of record and hence arrived at an award that was not supported by the doctor's findings and hence arrived at an erroneous award that is so manifestly excessive as to be erroneous.
 - c. The learned trial magistrate misdirected herself and erred both in law and in fact by not properly considering the severity of the respondent's injuries and hence arrived at a wrong assessment of damages that are so manifestly excessive as to be erroneous.
 - d. The learned trial magistrate misdirected herself erred both in law and in fact by awarding general damages for pain and suffering that are so manifestly excessive as to be erroneous vis a vis the injuries sustained by the respondent
 - e. That the learned trial magistrate misdirected herself and erred in law and in fact by totally failing to consider the defendants' submissions on record thus arrived at an erroneous finding on quantum.
 8. The parties filed written submissions as follows; the appellant submitted that the general damages awarded by the trial magistrate was excessive considering the respondent's treatment notes, medical report and P3 form produced as evidence in support of the injuries sustained. The respondent sustained blunt injuries to the head, right ear, nasal bridge, right jaw, right shoulder and limbs. No permanent incapacity was assessed by the respondent's own doctor, there was no indication of any hearing loss as enumerated in the pleadings nor are there any records to show whether the same was ever tested or treatment sought.
 9. The appellant submitted that an award for Kshs. 140,000 would be sufficient and in support cited the following cases;
 - a. *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR where the court reduced the award for almost similar injuries from kshs 300,000/- to kshs 100,000/-
 - b. *Justine Nyamweya Ocboki & another v Jumaa Karisa Kipingwa* [2020] eKLR the court reduced the award for almost similar injuries from kshs 300,000/- to kshs 150,000/-



- c. *Ogembo & another v Arika* (Civil Appeal 29 of 2021) [2022] KEHC 12219 (KLR) (28 July 2022) (Judgment) the court reduced the award for almost similar injuries from kshs 500,000/- to kshs 150,000/-
10. The respondent on the other hand submitted that from the injuries that the respondent suffered it was clear that they were not the usual soft tissue injuries. As a result of the blunt injuries sustained on the head and right ear the Respondent developed Poor hearing of the right ear. The Respondent suffered several blunt injuries to very sensitive parties of the body including blunt head injury, blunt injury to the right ear, blunt injury to the nasal bridge, right jaw, right shoulder and blunt injury to the limbs.
11. The respondent indicated therefore that the award of Kshs 350,000 was sufficient as general damages and in support cited the following cases;
- a. *Joseph Wambura v Joseph Mwangi Obai* [2018] eKLR Civil Case 9 of 2017. Where the claimant suffered; a cut wound on the left orbit side, deep laceration on the left gluteal area, multiple laceration left elbow, deep laceration on the left hand, cut wound on the right-hand palm, multiple cut wounds on both knees with stitches in place, deep cut on the left leg, deep cut wound on the ankle left and cut on the right toe. The High court upheld an award of Kshs 300,000.
- b. *Hauliers Limited V Emmanuel Soita Simiyu* [2013] eKLR Civil Appeal 107 OF 2010, where the plaintiff was awarded Kshs.200,000 where the claimant suffered; Painful shoulders, Bruises on right forearm and left upper arms, Bruises on the knee and the high court awarded Kshs. 200,000/=. Your Ladyship this authority is almost 9 years old and inflationary trend need be taken in account.
- c. *G4s Security Services Ltd v Oyugi Obiria* [2018] eKLR, Civil Appeal 19 of 2016, where the claimant suffered; blunt trauma to the neck, blunt injury to the back, tenderness to the right ear, blunt injury to anterior chest wall and swollen right hand The High court upheld an award of Kshs. 180,000/=.
12. This being a first appeal the duty of the 1st appellate court is to re-evaluate the evidence before the trial court and to arrive at its own conclusion whether or not to support the findings of the trial court bearing in mind that the trial court had the advantage of seeing the witnesses. In *Selle –vs- Associated Motor Boat Co.* [1968] EA 123 it was held that: -

“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 demeanor 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.”



13. The sole issue for determination is whether the assessment of damages was excessive.
14. I have considered the authorities relied on by the parties and the submissions by both parties.
15. I find that the respondent suffered soft tissue injuries and an award of 350,000 is excessive. I reduce the same to ksh.200,000 less 20% contribution – 160,000/= . The award of special damages of ksh.4840 is upheld.
16. I set aside the award of kshs.284,840 and I substitute it with kshs.164,840/= together with costs and interest from the date of initial court’s judgment until payment in full.
17. Since the appeal succeeds partially, each party to bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 6TH DAY OF JULY, 2023.

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A. N. ONGERI

JUDGE

In the presence of:

..... for the 1st Appellant

..... for the 2nd Appellant

..... for the Respondent

