



**Shadrack and Sons Limited v Obwogi (Civil Appeal 55  
(E001) of 2020) [2023] KEHC 19894 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19894 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL 55 (E001) OF 2020  
PN GICHOHI, J  
JULY 6, 2023**

**BETWEEN**

**SHADRACK AND SONS LIMITED ..... APPELLANT**

**AND**

**EVANS OBWOGI ..... RESPONDENT**

*(An Appeal from the Judgement of Hon. S.K. ONJORO (SRM)  
dated 28th August 2020, in Kisii CMCC No. 688 of 2018)*

**JUDGMENT**

1. This appeal arises from judgment in Kisii CMCC No. 688 of 2018 where the respondent, Evans Obwogi had sued the appellant ( Shadrack and Sons Limited) *vide* a plaint dated November 12, 2018 claiming general and special damages for the injuries he sustained when he was hit by motor vehicle registration number KCC 046 F. The Appellant entered appearance and filed its defence dated 14<sup>th</sup> January 2019 denying the claim. The suit proceeded for hearing with the Respondent testifying as PW1.
2. The parties however filed a consent dated 8<sup>th</sup> July 2020 where the 2<sup>nd</sup> Medical report by Dr. James Obondi Otieno dated 17<sup>th</sup> March 2020 as marked as Defence Exhibit 1 and liability at 85%:15% in favour of the Respondent . Further the defence case was marked as closed as per the consent.
3. The trial court rendered its judgement on 28<sup>th</sup> August 2020 and awarded the Respondent Kshs. 1, 400,000/= as general damages and Kshs. 82,707/= as special damages together with costs of the suit and interest.
4. Being dissatisfied with the judgement, the Appellant preferred the instant appeal raising seven (7) grounds of appeal but which can be condensed into the four (4) that is;



- a. The trial magistrate erred in law and in fact in relying on extraneous evidence and thereby arriving at an erroneous conclusion condemning the defendant to general damages of Kshs. 1,400,000/= which was manifestly excessive in the circumstances;
  - b. That the trial magistrate erred in law and in fact in failing to appreciate the impeccable defence of the defendant and thereby arriving at a wrong and erroneous conclusion condemning the defendant to special damages of Kshs. 82, 707/= without concrete evidence;
  - c. That the trial magistrate erred in law and in fact in failing to appreciate that the plaintiff's pleadings and the evidence rendered in support thereof was incapable of sustaining the excessive award of damages.
  - d. That the trial magistrate erred in law and in fact in failing to appreciate the principle of stare decisis thus bringing law into confusion thus arriving at the erroneous conclusion on damages.
5. The Appellant therefore prayed that the appeal be allowed and the judgment of the lower court be set aside. He also sought costs both in the lower court and the appeal.
  6. In compliance with directions given by the Court. The Appellant and the Respondent filed their submissions dated 3<sup>rd</sup> April 2022 and 19<sup>th</sup> July 2022 respectively as a way of canvassing this appeal.
  7. On the issue of quantum on the general damages for pain and suffering, the counsel for the Appellant submitted that the award on general damages was inordinately high as the Respondent had healed well with no permanent disability envisaged. He cited three cases where he submitted that injuries were less severe than those sustained by the Respondent in this case, that is; Jitan Nagra vs Abedinego Nyandusi Oigo [2018] eKLR where the plaintiff was awarded Kshs. 450,000/= ; Civicon Limited vs Richard Njomo Omwancha & 2 Others [2019] eKLR where the High Court substituted an award of Kshs. 1,000,000/= with that of Kshs. 450,000/=. He also relied on the case of Philip Kipkirui Koskei vs Philip Kiprono (2020) eKLR arguing that the injuries were more comparable to those in the present case and High Court awarded Kshs. 400,000/=. On special damages, counsel urged this court to award only the amount proved by production of relevant receipts.
  8. Counsel for the Respondent urged this court to uphold the findings of the trial court and submitted that the injuries sustained in Jitan Nagra (supra) and Civicon Limited (supra) cannot be compared with those sustained by the Respondent herein.
  9. Counsel relied on the case of James Gathirwa Ngugi vs Mombasa Multiple Hauliers (EA) Limited & Another [2015] eKLR where the plaintiff was awarded Kshs. 1,500,000/= and Hellen Atieno Oduor vs C.C. Metha & Sons Ltd & Another [2015] eKLR where the plaintiff was awarded Kshs. 3,000,000/=. Counsel therefore submitted that the trial court noted the variance on the authorities cited by both parties, took into account the severity of the injuries sustained by the Respondent and concluded that Kshs. 1,400,000/= was adequate compensation as general damages. On the special damages, Counsel submitted that he particularized and produced the receipts in support of his claim.
  10. This being the first appeal, the court has a duty to re-evaluate and analyse all the evidence tendered in the lower court and arrive at its own conclusion but bearing in mind that it neither saw nor heard the witnesses testify. It has to establish whether the decision of the lower court was well founded. See the decision in Selle & Another vs Associated Motor Boat Co. Ltd (1968) EA 123.
  11. It is also settled that an appellate court will not ordinarily interfere with the findings of fact made by the trial Court unless those findings were not based on evidence at all, or on a misapprehension of it or on demonstrably wrong principles not supported by evidence or on wrong principles of the law.



12. Guided by the above principles, I have considered the appeal, the proceedings in the trial court and the submissions by both parties. The issues for determination are on the assessment of the general damages and the award of special damages.
13. The medical report by Dr. Morebu Peter Momanyi dated 9<sup>th</sup> March 2018 shows that Respondent sustained; Head injury with loss of consciousness. Deep cut wound on the frontal region. Chest contusion. Dislocation of the right shoulder. Deep cut wound on the right leg. Left femur fracture. Pelvic fracture.
14. The doctor opined that the Respondent suffered grievous harm and he would be required to undergo another operation to remove the metal implants at a cost of approximately Kshs. 200,000/= . That the head injury may complicate with post traumatic epilepsy. The P3 Form, medical reports from the Kisii Teaching and Referral Hospital confirm the said injuries and these are what the Respondent pleaded in the plaint.
15. The second medical report by Dr. James Obondi Otieno dated 17<sup>th</sup> March 2020 confirmed the injuries sustained by the Respondent. Dr. James opined that although the Respondent suffered severe pain, he has healed with no permanent disability.
16. Based on these injuries the trial magistrate found that the injuries sustained by the plaintiffs in the authorities relied on by the Respondent were much more serious than those sustained by the Respondent in this case. Those relied on by the Appellant were found to contain slightly less degree of injuries than those suffered by the Respondent. He therefore awarded the sum of Ksh. 1,400,000/= as general damages.
17. The award of damages is discretionally and it is now settled law that 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.
18. In Civicon Limited (supra) the 1<sup>st</sup> Respondent Richard Njomo Omwancha sustained pelvic fracture and soft tissue injuries and had healed without limitation and with no permanent disability. High Court substituted the award of Ksh. 1,000,000/= by the lower court with Ksh. 450,000/=. Likewise, the 2<sup>nd</sup> Respondent Gladys Nyakerario Omwacha who sustained cut wound on the left ear lobe, tender left lateral chest wall, swollen and tender left arm , bruises on the left hand , swollen and tender left elbow , cut wound on the left foreleg, fracture of the left tibia and fibula and dislocation of the left hip joint with a permanent disability of 30 % had high Court substitute the lower court's award of Ksh. 1,000,000/= to Ksh. 450,000/=. The 3<sup>rd</sup> Respondent Rebecca Nyaboke Machogu had sustained fracture of the four upper teeth, cut wound on the upper and lower lip, bruises on the chin, dislocation on the left shoulder , bruises on right knee , fracture of the right tibia and fibula and permanent disability of 30 %. Again , High Court substituted the award of Ksh. 1,300,000/= by the lower court with an award of Ksh. 500,000/=.
19. In Philip Kipkirui Koskei (supra), the Appellant sustained blunt injury to the chest, right open ankle fracture, left tibia/fibula fracture and dislocation of the left knee joint. High Court set aside the award of Kshs. 180,000/= by the lower court with an award of Ksh. 400,000/=.
20. In James Gathirwa Ngugi (supra ) the plaintiff sustained fracture of the left radius , fracture of the left ulna, fracture of the right tibia and fracture of the right fibular and High Court awarded him Kshs. 1,500,000/=.
21. In the case of Hellen Atieno Oduor (supra) the plaintiff suffered fracture of the right tibia and fibula, multiple fractures of the right ribs on the right side, chest injuries, abdominal trauma and fracture



of the right scapula which are severe compared to the injuries herein. High Court awarded her Ksh. 1,500,000/=. In the case of Daneva Heavy Trucks & another v Chrispine Otieno [2022] eKLR, the Respondent sustained fracture of the pelvis, left tibia and fibula and was awarded Kshs. 800,000/=. These injuries are less severe than those sustained by Respondent herein.

22. Guided by all these authorities, I am persuaded that the award of Kshs. 1,400,000/= by the trial magistrate is inordinately high. I find an award of Ksh. 1,000,000/= reasonable award as general damages.
23. As regards special damages, the Respondent specifically pleaded and proved by way of receipts Kshs. 6,500/= for medical report, Kshs. 500/= for copy of records, Kshs. 33,707/= and Kshs. 12,000/= from the Kisii Teaching and Referral Hospital, Kshs. 30,000/= from the Nefris Company Limited making a total of Kshs. 82,707/=. The award therefore remains undisturbed.
24. The appeal therefore partly succeeds in that:
  1. The award of Kshs. 1,400,000/= is set aside and substituted with an award of Kshs. 1,000,000/= as general damages.
  2. Interest on general damages shall run from the date of judgment of the lower court.
  3. The award of Special Damages of Kshs. 82,707/= is upheld.
  4. The Appellant awarded half of the costs of appeal.

**DATED, SIGNED AND DELIVERED AT KISII THIS 6<sup>TH</sup> DAY OF JULY 2023.**

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

Mr. Orucho for Appellant

Mr. Maronga for Mr. Anga'sa for Respondent

Kevin Isindu, Court Assistant

