



**Kibe & another v Kariuki (Civil Appeal E063 of 2021)
[2023] KEHC 23886 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E063 OF 2021
PM MULWA, J
OCTOBER 19, 2023**

BETWEEN

LYDIA MUTHONI KIBE 1ST APPELLANT

DAVID NGANGA 2ND APPELLANT

AND

JAMES MWANGI KARIUKI RESPONDENT

JUDGMENT

1. The appellant, having been dissatisfied with the decision of the trial court in Thika Chief Magistrate Court CMCC No. 412 of 2018 lodged this appeal dated 13th April 2021 seeking inter alia that the appeal herein be allowed with costs and that the trial court's decision on future medical costs be set aside and assessed afresh based on the following grounds: -
 - i. That the learned trial magistrate erred in law and misdirected herself when she failed to consider the Appellant's submissions on both points of law and facts.
 - ii. That the learned trial magistrate's decision 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.
 - iii. That the learned trial magistrate grossly misdirected herself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented filed by the appellants;
 - iv. That the learned trial magistrate proceeded on wrong principles when assessing damages to be awarded to the Respondent if any and failed to apply precedents and tenets of the law applicable thereby occasioning a miscarriage of justice.



- v. That the learned trial magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law and erred in awarding Kshs. 300,000/- to the Respondent as Future Medical Expenses.
 - vi. That the learned trial magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
 - vii. The Appellant prayed that the Appeal be allowed and the court do set aside the Judgment of Kshs. 300,000/= being costs of future medical expenses and the same be assessed afresh and costs of this appeal be awarded to the Appellant.
2. During the hearing, directions were then given that the Appeal be canvassed by way of written submissions. Accordingly, parties complied and filed their respective submissions. The Appellants filed submissions on the 13th February 2023 while the Respondent filed his on 20th September 2022. Parties relied on their written submissions in their entirety.
 3. This being the first Appeal, this Court has the duty to re-evaluate and analyze the evidence in detail and come up with its own conclusions bearing in mind that it neither saw the witness nor heard the evidence when the parties were testifying to see their demeanor. (See the case of *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123)
 4. The Appellants submitted that the damages for future medical expenses were not properly awarded and that the award was manifestly excessive and that the Trial Court did not take into account the principle that similar injuries attract similar damages.
 5. The Respondent submitted that the appellants did not prove that the award of the cost of future treatment was wrong.
 6. The law on future medical expenses is well settled as was held by the Court of Appeal in the case of *Tracom Limited & Another vs Hasssan Mohamed Adan* [2009] eKLR: -

“...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v Gituma* (2004) 1 EA 91, this Court, stated: -

‘And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.’

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require...”



7. That being the position in law, the question then is whether the claim for future medical expenses was pleaded in the case before the trial court for it to make an award on it.
8. I have perused the record of appeal and found that the respondent in his plaint at paragraph 8 (c) pleaded for future medical expenses. I find that the need for future medical expenses was also supported by medical evidence.
9. Having found that the issue of future medical expenses was specifically pleaded to be Kshs. 300,000/=-, the next question is whether it was proved.
10. To this end, I note that two medical reports were produced. However, the same were not consistent. In light of the state of the pleadings, the factual findings of the cost of future medical expenses cannot be disturbed since the Learned Trial Magistrate was at liberty to rely on any of the medical reports presented before her. In my view, this is not a case where the court arrived at a finding without evidence but where the court relied on the evidence on record as it was perfectly entitled to so do.
11. In the case of *Gitobu Imanyara & 2 others vs Attorney General* [2016] eKLR, the Court of Appeal stated as follows:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”
12. It is therefore my humble finding that the claim on future medical expenses was pleaded and proved in evidence. Having so found, the award of Kshs. 300,000/= was proper and I see no reason to tamper with the same.
13. The upshot is that the appeal lacks merit and is dismissed with costs. The Judgment of the Learned Trial Magistrate is upheld and the award of Kshs. 300,000/= for future medical expenses maintained. Costs to the Respondent.

JUDGMENT DELIVERED VIRTUALLY, SIGNED AND DATED AT KIAMBU THIS 19TH DAY OF OCTOBER 2023

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P. MULWA

JUDGE

In the presence of:

Duale – court assistant

Ms. Ongwenyi h/b for Mr. Njuguna - for the appellant

Mr. Mwangi - for the respondent

