



REPUBLIC OF KENYA



KENYA LAW
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**Marete & another v Wang'odu (Civil Appeal E479 of 2021)
[2023] KEHC 23673 (KLR) (Civ) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23673 (KLR)

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

CIVIL

CIVIL APPEAL E479 OF 2021

AN ONGERI, J

OCTOBER 19, 2023

BETWEEN

GEORGE CHEGE MARETE 1ST APPELLANT

SUNBIRD SERVICES LTD 2ND APPELLANT

AND

ALFRED MBUTHIA WANG'ONDU RESPONDENT

*(Being an appeal from the judgment and decree of Hon. P. Muboli
(PM) in Milimani CMCC No. 3713 of 2019 delivered on 9/6/2021)*

JUDGMENT

1. Judgment was entered in favour of the respondent against the appellants on the material day as follows;

Liability 100%

General damages ksh 950,000

Special damages ksh 45,410

Police officers attendance ksh 5,000

Doctors attendance ksh 10,000

Total ksh1,010,410

2. The appellants who were the defendants in the primary suit have appealed on the following grounds;

a. The learned magistrate erred in fact and in law in making an inordinate award of ksh 950,000 as general damages which was excessively high.



- b. The learned magistrate erred and misdirected himself when he failed to consider the applicants submissions on both points of law and facts.
 - c. That the learned 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.
 - d. That the learned trial magistrate erred in law and fact by failing to judiciously analyze the evidence on record and the appellant's submissions and authorities thereby arriving at a finding on quantum that was manifestly high, erroneous, untenable, unfair and unjust to the appellants.
 - e. The learned trial magistrate failed to consider conventional awards made in respect of cases of similar injuries thereby arriving at an excessive award.
 - f. The learned magistrate erred in fact and in law in failing to appreciate the nature of injuries sustained by the respondent and in so doing arrived at an erroneous assessment of damages.
3. The parties filed written submissions as follows; the appellants in their submissions argued that the award of ksh 950,000 is too high in the circumstances and proposed an award ranging from ksh 300,000 to ksh 500,000. In support cited the following cases among others;
- a. *Duncan Mwenda & 2 others v Silas Kinyua Kithela* [2018] eKLR [as quoted in *Mugo Sylvester v George Kariungi* [2019] eKLR whereby the respondent sustained the following injuries; severe blunt head injury with intracerebral hematoma, damage to the extensor tendon of the left middle finger and soft tissue injuries on the chest wall. In the matter, the Court on Appeal set aside an award of ksh 600,000 and gave ksh 350,000 as general damages. Upon examination, the medical doctor noted that the respondent suffered recurrent headaches as a result of the head injury. He concluded that the injuries were treated well and healed well without permanent incapacity.
 - b. In the case of *Edward G. Nyaga v Mombasa Liners* HCCC no 197 of 1999 [as quoted in *Nickson Kazungu Karisa & another v Isaac Solfa Muye* [2020] eKLR, the Court therein awarded the plaintiff who was unconscious for several days, hospitalized for one month and who suffered a fracture of the skull, jaws, and left leg and as a result of the head injury he suffered headaches, double vision, likelihood of suffering epilepsy a sum of ksh 400,000.00 for pain and suffering and loss of amenities.
 - c. In *Jitan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR Majanja J set aside the lower court award of ksh 1,000,000.00 for general damages for lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur and substituted with ksh 450,000.00.
4. The respondent submitted that the trial court in making its award considered the injuries sustained by the respondent and arrived at the correct award. In support he cited *Dominic Mutie Katoo v Jacob Muigai Karanja & another* [2020] eKLR an award for ksh 1,000,000 was awarded for dislocation of the left knee joint/sprain of ligaments torn lateral/medial meniscus left knee joint, fracture of femur, and fracture of tibia and fibula.



5. This being a first appeal, the role 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.
6. The issues for determination in this appeal are as follows
 - i. Whether the trial court was right in finding that the appellant was 100% liable.
 - ii. Whether the award of damages was inordinately high.
7. On the issue as to whether the trial court was right in its finding that the appellants were 100% liable in negligence, I find that the respondent testified that he was hit and thrown on the road.
8. There is evidence that the 1st appellant was crossing the road driving motor vehicle registration no KBV XXXT belonging to the 2nd appellant when he hit the respondent who was riding motor cycle registration no KXXC along the road.
9. The 1st appellant did not adduce evidence to controvert the respondent's testimony.
10. I find that the trial court was right in finding the appellant 100% liable in negligence.
11. On the issue as to whether the quantum of damages was inordinately high, the respondent sustained the following injuries
 - i. Major injuries on the left knee (fracture of knee joint and fibula)
 - ii. Various components torn.
 - iii. Blunt soft injuries to the head.
12. I have considered the authorities relied on by both parties.
13. I have also considered the following authorities which are comparable
 - a. *Alphonse Muli Nzuki v Brian Charles Ochuodho* [2014] eKLR in which the Plaintiff was awarded ksh800,000 for compound commuted fracture of the right tibia and fibula as well as degloving injury medial aspect of right leg and foot.
 - b. *SBI International Holdings (Ag) Kenya v William Ambuga Onger* [2018] eKLR that awarded the Plaintiff ksh800,000 for chronic dislocation of the left hip, fracture of the femoral head, and bruises on the right thigh. On the other hand, the Appellant proposed an award of ksh500,000.
14. I find the award of 950,000 reasonable in the circumstances of this case.
15. I find no reason to interfere with the finding of the trial court.
16. The only circumstances when the appellate court can interfere with an award is when it is inordinately high or low as to warrant the same. In the case of *Butt v Khan* (1977) 1 KAR, the court set the test as follows:-

“An Appellate court will not disturb an award for damages unless it is 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.”
17. The other ground is whether the trial court applied wrong principles of law and arrived at an erroneous conclusion.



18. I find that the appeal herein lacks in merit and I dismiss it with costs to the respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
19TH DAY OF OCTOBER, 2023.**

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

