



REPUBLIC OF KENYA



KENYA LAW
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**Murungi v Kadogo (Civil Appeal E214 of 2023)
[2024] KEHC 14654 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E214 OF 2023
CJ KENDAGOR, J
NOVEMBER 20, 2024**

BETWEEN

DOUGLAS MURITHI MURUNGI APPELLANT

AND

SILVIA KADOGO RESPONDENT

*(Being an appeal from the Judgment/decree of Hon. R. Ongira, SRM,
delivered on 18th May, 2021 in Tigania CMCC E088 OF 2022)*

JUDGMENT

Introduction

1. The Respondent was involved in a road accident on 16th May, 2022 along Meru-Maua Road. She was aboard the Appellant's motor vehicle as a fare paying passenger when the vehicle had a self-involving accident as a result of which she sustained injuries. She blamed the Appellant for the accident and sued him for general damages for pain, suffering, and loss of amenities, and special damages of Kshs.10,000/= . In the Plaintiff, she stated that she had suffered the following injuries; Lacerations on the left supra orbital region, Soft tissue injuries on the frontal region of head, lower back pains, and soft tissue injuries on the left leg.
2. The Appellant filed a defense in which he denied liability for the accident, and accused the Respondent for causing or contributing to the occurrence. The Court delivered a judgment on 9th June 2023 in favor of the Respondents in the following terms: On liability, it found the Appellant 100% liable for the misfortunes that befell the Respondent. On Quantum, it awarded the Respondent a sum of Kshs.200,000/= for the injuries sustained. It also awarded her special damages at Kshs.10,000/=.
3. The Appellant was dissatisfied with the judgment and appealed to this Court vide a Memorandum of Appeal dated 17th November 2023. He listed 4 Grounds of Appeal which were;



1. 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.
2. The Learned Trial Magistrate erred in fact and in law in findings that the Respondent was entitled to Kshs.200,000/= as general damages for [Lacerations on the left supra orbital region, Soft tissue injuries on the frontal region of head, lower back pains, and soft tissue injuries on the left leg].
3. The Learned Magistrate erred in law and in fact in unduly disregarding the judicial authorities cited by the Appellant which are related to the injuries and the evidence adduced in trial.
4. The Learned Trial Magistrate erred in fact and in law in finding that the Respondent were entitled to Kshs. [10,000/=] as special damages which were not specifically pleaded and proven.
4. He asked the Court to allow the appeal and set aside the judgment delivered on 9th June 2023 by Hon. R. Ongera. He also asked the Court to re-assess the damages.
5. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

6. The Appellant's appeal is on the issue of the quantum of damages. He submitted that the award of Kshs.200,000/= as general damages was inordinately high considering that the injuries sustained by the Respondent were mere soft tissue injuries. He argued that the reasonable and sufficient compensation for the injuries should be between Kshs.50,000/= and Kshs.100,000/=. He relied on the case of *Ndungu Dennis v Ann Wangari Ndirangu & Another* [2018] eKLR, and the case of *Eva Karemi & 5 others v Koskei Kieng & Another* [2020] eKLR.

Respondent's Written Submissions

7. The Respondent submitted that the trial Court did not err in awarding general damages. She argued that the trial court correctly reached the estimate upon considering comparable authorities. She also urged the Court to uphold the award for special damages. She submitted that the trial Court did not err in holding that she had successfully pleaded and proved the special damages.

Issues for Determination

8. I have considered the grounds of appeal and submissions by both counsels for the parties and I am of the view that the issues for determination are;
 - a. Whether the award of Kshs.200,000/= for General Damages was a reasonable estimate
 - b. Whether the 10,000/= awarded as Special damages was Pled and Proved
9. It is trite law that the first appellate Court has to re-evaluate the evidence in the subordinate Court both on points of law and facts and come up with its findings and conclusions. As the Court is re-evaluating the evidence, it must bear in mind that it had neither seen nor heard the witnesses. This principle was set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...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 ...”

SUBDIVISION - Whether the award of Kshs.200,000/= for General Damages was a reasonable estimate

10. It is a well-established principle in our legal system that an appellate Court should exercise caution and restraint when it has been called upon to review the trial Court’s award of damages. This principle was restated by the Court of Appeal in Catholic Diocese of Kisumu vs Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55, where it stated:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

11. The principle underscores that the interference of the trial Court’s award of damages should occur in very exceptional circumstances, especially where the trial Court acted on the wrong principle of law, misapprehended the facts, or made a wholly erroneous estimate of the damage suffered. This rule was succinctly said by the Court of Appeal in Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47, where the court said:

“In effect, the Court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate Court is to interfere, whether on the ground of excess or insufficiency.”

12. The Appellant does not suggest that the trial Court misapprehended the facts on the injuries sustained by the Respondent. In the judgment, the trial Court held that “the Respondent had sustained soft tissue injuries to wit a laceration on left supra-orbital region, Soft tissues injuries on frontal region of the head, lower back pains, and soft tissue injuries on the left leg.”

13. The Appellant does not question this finding in this Appeal. In any way, the Appellant did not file any second medical report at the trial Court to refute the Respondent’s evidence that she had suffered the said injuries. I thus hold that the trial Court did not err in finding that the Respondent sustained the said injuries.

14. An appellate Court can rightly interfere with an award for damages if it finds that the award was a wholly erroneous estimate of the damage suffered. Courts have established parameters that should help an appellate Court determine whether a particular award of damages is an erroneous estimate of the damage suffered. In Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another [2017] eKLR, the court held:



1. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
 2. The award should be commensurable with the injuries sustained.
 3. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
 4. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
15. Similarly, in the case of *Penina Waithira Kaburu v LP* [2019] eKLR, the Court outlined factors that should guide a Court in arriving at the correct estimate of quantum of damages. It held:
- “While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the trial court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award, must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar.”
16. The above authorities underscore the principle that, generally, the Courts should make similar awards for persons who have suffered similar injuries. They also mandate the appellate Court to conduct a comparative analysis of injuries sustained and the extent of the awards made for similar injuries in previous decisions. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR summarized this principle in the following terms; “comparable injuries should attract comparable awards”
17. As I have discussed and held above, the Respondent sustained soft tissue injuries, namely, a laceration on the left supra-orbital region, soft tissue injuries on the frontal region of the head, lower back pains, and soft tissue injuries on the left leg. She did not suffer permanent disability. In her oral testimony in court, she stated that, although the physical injuries had healed, she still experienced headaches and back pains. The trial court assessed these facts and awarded her Kshs.200,000/= for the injuries.
18. In *Luisa Marigu Mugo v Nguyo Joseph Kingori & another* [2019] eKLR, the High Court awarded Kshs.120,000/= to a party who had sustained a swollen forehead, painful lower back, laceration on dorsum of left hand, and chest pain. By the time of the judgment, the swelling had healed, the laceration had healed leaving up scars, and he had recovered reasonably well save for the pains. I note that the case was decided 5 years ago.
19. In *Muigai & another v Kiiru (Civil Appeal E080 of 2021)* [2023] KEHC 26223 (KLR), the High Court awarded 180,000/= to a person who had sustained a laceration to the right eye and soft tissue injuries to the leg and nose. The only difference between the two cases is that, the complainant in Muigai’s case did not suffer back pains, while the Respondent in this case suffered lower back pains.
20. In the case of *Kiprop v Akinyi (Civil Appeal E173 of 2022)* [2023] KEHC 24947 (KLR), the High Court awarded Kshs.200,000/= to a party who had sustained Blunt injuries on the scalp, chest, lower back, left knee joint, left leg, and bruises on the wrist joint moderately.



21. I have also considered the authorities relied on in submissions proposing various sums as general damages. However, based on the above analysis, I take the view that the trial court's assessment for the award of damages was within the range of comparable awards made in other similar cases. The award of the said sum by the trial court was quite proper, and I see no reason to disturb it.

Whether the 10,000/= awarded as Special damages was Pleaded and Proved

22. I have relooked at the typed proceedings and exhibits produced before the trial court to ascertain whether the Kshs.10,000/= awarded as Special damages was pleaded and proved as required by law. In her Plea, the Respondent indicated that she sought 10,000/= as special damages for monies incurred to obtain the medical report. She also produced a receipt by Dr. Kimani Kioga dated 4th August, 2022 as an exhibit. The receipt for 10,000/= was also among the Respondent's list of documents filed in court on 31st August, 2022. I have seen the said document and it appears authentic. The Appellant did not object to the production of the said document (receipt).
23. I thus find that the claim for Kshs.10,000/= as special damages was pleaded and adequately proven. I therefore uphold the same.

Disposition

24. In the result, it is my finding that the Appellant's appeal lacks merit. The same is dismissed with costs.
25. The costs of the appeal are assessed at Kshs 30,000/=
26. The respondent will have the costs of the suit in the trial court.
27. Interest on the awarded sum will be paid from the date of judgment in the trial court to payment in full.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 20TH DAY OF NOVEMBER, 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant; Beryl

Mr. Kabita Advocate for Appellant

