



**Murungi v Kailunga (Civil Appeal E216 of 2023)
[2024] KEHC 14660 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E216 OF 2023
CJ KENDAGOR, J
NOVEMBER 20, 2024**

BETWEEN

DOUGLAS MURITHI MURUNGI APPELLANT

AND

CECILIA ACECE KAILUNGA RESPONDENT

(Being an appeal from the Judgment delivered by Hon. R. Ongira, SRM, on 9th June, 2023 in Tigania Principal Magistrates Court Civil Suit No. E065 of 2022)

JUDGMENT

Introduction

1. The Respondent was involved in a road accident on 16th March, 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.6,000/= . In the Plaintiff, she stated that she had suffered the following injuries; deep laceration occipital region of the scalp and tenderness on the lateral neck region.
2. The Appellant filed a defence in which he denied liability for the accident and accused the Respondent of causing or contributing to the occurrence. The court delivered a judgment on 9th June, 2023 in favor of the Respondent 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/= as General damages for the injuries sustained. It also awarded her special damages at Kshs.6,000/=.
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 finding that the Respondent was entitled to Kshs.200,000/= as general damages for deep laceration of the occipital region of the scalp and tenderness of the lateral neck region.
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.6,000/= 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 argued that the trial Court correctly awarded the general damages. She argued that the trial Court properly reached the estimate by 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 6,000/= awarded as Special damages was Pled and Proved
9. It is trite law that the duty of the first appellate Court is 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 is required to 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 ...”

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 where it has been called upon to review the trial Court’s award of damages. This principle was restated 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.”

11. The principle underscores that the interference of the trial Court’s award of damages should occur at very exceptional circumstances, especially where the trial Court acted on wrong principle of law, or misapprehended the facts, or made a wholly erroneous estimate of the damage suffered. This rule was succinctly said 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.”

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 cut on the back of the head and she had a tender neck on the right side.” 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.

13. 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.
14. 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.”
15. 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”
 16. As I have discussed and held above, the Respondent sustained soft tissue injuries, namely, a cut on the back of the head and a tender neck on the right side. She did not suffer permanent disability. In her oral testimony in Court, she stated that she still experiences pain in the neck, although she did not produce a payment note to that effect. The sustained soft tissue injuries were managed and had healed save for trauma pains that were yet to resolve. The trial Court assessed these facts and awarded her Kshs.200,000/= for the injuries.
 17. In *Jyoti Structures Limited & another v Truphena Chepkoech Too & another* [2020] eKLR, the High Court awarded Kshs.125,000/= to a person who had sustained blunt injuries to the head, neck, chest, back, and both thighs. It also made a similar award for a second person who had sustained bruises on the parietal scalp, blunt injury to the chest, and deep cut wounds on the right forearm and right hand. I note that the case was decided 4 years ago. But I also note that the 2 complainants in that case suffered more injuries than the respondent in this case.
 18. In *Ogaro & another v Olang'* (Civil Appeal 122 of 2019) [2022] KEHC 15465 (KLR), the High Court awarded 150,000/= to a party who had sustained tenderness to the head, neck, thorax, and abdomen as well as swelling in the upper and lower limbs. Also, in *Ochola v Owuor* (Civil Appeal E039 of 2022) [2024] KEHC 7689 (KLR), the High Court awarded Kshs.150,000/= to a party who had sustained soft tissue injuries of the right shoulder joint and both knee joints and blunt injuries to the anterior chest wall, the neck, and the back leading to soft tissue injuries.
 19. I note that although the above two cases are more recent, they are to some extent different from the current case. In the two cases, it is clear the complainants suffered more injuries than the respondent in this case. While the complainants in the 2 cases suffered multiple soft tissue injuries on the head, neck, thorax, and back, the respondent in this case only suffered soft tissue injuries on the head and the neck.
 20. Lastly, in *Adembesa & another v Gweno (Civil Appeal E192 of 2023)* [2024] KEHC 5379 (KLR), the High Court awarded 120,000/= to a person who had sustained soft tissue injuries to the head, back,



chest, shoulders, elbow joints and knees. The Respondent in the current case suffered similar soft tissue injuries, only that for her, she did not suffer such injuries on the back, chest, shoulders, elbow joints and knees.

21. Guided by the comparable cases above, my finding is that the award of Kshs. 200,000/= for the injuries sustained by the respondent was high. It is my further finding that an award of Kshs.120,000/= was sufficient and just. I set aside the award of Kshs 200,000/= and substitute, therefore, an award of Kshs 120,000/=.

Whether the 6,000/= 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.6,000/= awarded as Special damages was pleaded and proved as required by law. The Respondent indicated in the Plaint that she sought Kshs.6,000/= as special damages for monies she incurred to obtain the medical report. She produced a receipt by Dr. John K. Macharia dated 14th January, 2023 as an exhibit. The Appellant did not object to the production of the said receipt, and it was among the Respondent’s list of documents filed in Court. I have seen the document, and it appears authentic.
23. I thus find that the claim for Kshs.6,000/= as special damages was specifically pleaded and proved. I see no reason to vacate the trial Court’s decision to award the Respondent the said award for special damages.

Disposition

24. In the final calculation, the summation of the General and Special Damages awarded is Kshs.126,000/=.
25. In the end, the Appeal succeeds as the Damages awarded to the respondent are reduced from Kshs.206,000/= to Kshs.126,000/=.
26. Each party shall bear their costs in this Appeal while the costs of the suit remain as awarded by the trial court.
27. Orders accordingly.

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 holding brief for Nanjira Advocate for the Appellant

No attendance by the Respondent

