



**Manasseh Distributors & Wholesalers Ltd v Oburu (Civil Appeal
E046 of 2022) [2024] KEHC 14091 (KLR) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E046 OF 2022
AC MRIMA, J
NOVEMBER 13, 2024**

BETWEEN

MANASSEH DISTRIBUTORS & WHOLESALERS LTD APPELLANT

AND

NATHAN MAGETO OBURU RESPONDENT

*(Being an appeal on the quantum arising out of the judgment and decree
of Hon. K. Akida (Resident Magistrate) in Kitale Chief Magistrate's
Court Civil Case No. E288 of 2021 delivered on 19th December, 2022)*

JUDGMENT

1. The appeal subject of this judgment is only against the quantum of damages. It arose from the judgment and decree in Kitale Chief Magistrate's Court Civil Case No. E288 of 2022 Nathan Mageto Oburu vs. Manasseh Distributors & Wholesalers Ltd (hereinafter referred to as 'the suit') which was delivered on 19th December, 2022. The subject of the suit was an accident that occurred on 25th September 2020 along the Kitale – Kapenguria road involving the Respondent herein and Motor vehicle registration number KCG 360Y make Isuzu D/Max owned by the Appellant.
2. The suit was heard. Various exhibits were admitted by the consent of the parties. The Respondent testified and called a witness whereas the Appellant testified through the driver of the subject motor vehicle. Parties then filed written submissions and the Court rendered the judgment which was partly contested in this appeal.
3. The trial Court made the following findings: -
 - a. The Appellant was wholly to blame for the accident.
 - b. General damages are awarded at Kshs. 300, 000/=;



- c. Special damages awarded at Kshs. 78, 180/=
- c. The Plaintiff has the cost of the suit and interest at court rates.
4. Being dissatisfied with the decision, the Appellant herein preferred an appeal vide a Memorandum of Appeal filed on 22nd December 2022 and filed on 28th December, 2022. That is the appeal subject of this judgment.
5. On the directions of this Court, the appeal was heard by way of written submissions and both parties filed their respective submissions.
6. The Appellant contended that the trial Court erred in adopting wrong principles and failing to consider the evidence adduced thereby arriving at a grossly excessive award in general damages. The Appellant prayed that this Court sets aside the award on general damages and to re-assess the damages downwards and in any event between the sum of Kshs. 80,000/= to Kshs. 90,000/=. It also sought for the costs of the appeal.
7. The Appellant urged this Court to be guided by the various decisions it cited in proposing a reduction of award on quantum.
8. The Respondent filed his submissions in opposition to the appeal. He urged this Court to uphold the trial Court's findings and relied on various decisions as well to justify that the award was reasonable.
9. As the appeal is on quantum of damages, this Court reiterates that assessment of damages is generally a difficult task. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion. (See *Butler vs. Butler* (1982) KLR 277.)
10. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
11. This position was restated by the Court of Appeal in *Arrow Car Limited -vs- Bimomo & 2 others* (2004) 2 KLR 101 and also in *Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd* (2013) eKLR.
12. This Court has carefully read and understood the gist of the appeal, the pleadings, the proceedings, the impugned judgment, the submissions and the judicial authorities referred to by the parties.
13. The main and only issue for consideration in this appeal is whether the award of Kshs. 300,000/= as general damages were reasonable going by the injuries sustained by the Respondent.
14. The injuries sustained by the Respondent were substantially agreed upon in the two medical reports, each produced by the parties, as well as in the treatment notes. The injuries were as follows: -



- a. Head injury with loss of consciousness.
 - b. Blunt injury to the neck.
 - c. Deep cut wound on the left parietal scalp.
 - d. Blunt injury to the back.
 - e. Lacerations on the left hip joint area.
 - f. Blunt injury to the left knee.
15. It is also not in issue that the Respondent fully recovered from the above injuries with no permanent disability.
16. This Court has considered the authorities referred to by the parties in support of their rival submissions both at the trial Court and before this Court. It has also considered the manner in which the trial Court dealt with the issue of assessment of damages and the decisions it referred to.
17. Deriving from the foregoing and going by the nature and extent of injuries suffered by the Respondent, this Court finds that the award of Kshs. 300,000/= made by the trial Court cannot be regarded as excessive. The award was fair and reasonable in the circumstances of this matter.
18. Having found as such, the appeal is rendered unsuccessful and the following final orders do hereby issue: -
- a. The appeal is hereby dismissed.
 - b. The Appellant shall bear the costs of the appeal.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 13TH DAY OF NOVEMBER, 2024.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

No appearance for Miss. Mweresia, Learned Counsel for the Appellant.

Mr. Oburu, Learned Counsel for the Respondent.

Chemosop/Duke - Court Assistants.

