



Mungatia v JM & another (Suing on Behalf of JM – Minor) (Civil Appeal E184 of 2024) [2024] KEHC 14255 (KLR) (13 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E184 OF 2024
CJ KENDAGOR, J
NOVEMBER 13, 2024**

BETWEEN

JUSTO MUNGATIA APPELLANT

AND

JM 1ST RESPONDENT

AT 2ND RESPONDENT

SUING ON BEHALF OF JM – MINOR

(Being an appeal from the Judgment of Hon. Tito Gesora, Chief Magistrate, delivered on 5/10/2023 in Maua Law Courts Civil Case No. E210 of 2022)

JUDGMENT

Background

1. On 3rd April 2022, JM (a minor) was knocked down by the Appellant’s motor vehicle No KBQ 998U Isuzu FSR, as a result of which the minor sustained grievous bodily injuries. The Respondents, who are the parents of the minor, sued the Appellant on his behalf in CMCC No E210 of 2022, wherein they prayed for payment of special damages of Kshs.200,500/= and General damages. In the plaint, the Respondents claimed that the minor suffered the following injuries: Loss of consciousness due to severe head injury, Left epidermal hematoma, reduced vision of the left eye, Scalp bruises, and Left iliac fossa bruises.
2. Before the hearing could commence, the parties recorded consent on 13th July, 2023 in the following terms; “By consent, liability is apportioned at 90:10 % in favor of the Plaintiff. The documents filed, and statements do form part of the record without calling witnesses. Parties to file submissions on quantum.” The parties filed their respective submissions, and a judgment was delivered in favor of



the Respondents on 5th October 2023. The Court awarded the Respondents General damages of Kshs.1,800,000/= (less 10% contribution) and special damages of Kshs.200,500/=.

3. The Appellant was dissatisfied with the judgment and appealed to this Court vide a Memorandum of Appeal dated 30th October, 2023. He listed four grounds of Appeal, which are as follows;
 - i. That the learned trial magistrate erred in fact and in law by awarding inordinately high general damages of Kshs.1,800,000/= to the Respondents constituting a miscarriage of justice in the circumstances of the case.
 - ii. That the learned trial magistrate erred in fact and in law by failing to consider the Appellant's submissions and authorities on quantum hence arriving at an erroneous decision.
 - iii. That the learned trial magistrate erred in fact and in law by failing to consider that the Minor had fully recuperated of the injuries sustained in the Road Traffic Accident.
 - iv. That the learned trial magistrate's judgment was wholly not supported in law by evidence (especially the medical reports) tendered in court by the parties.
4. The Appellant requested the Court to allow the appeal and set aside the judgment of the lower Court, the resultant decree, and consequential orders. He also asked the Court to proceed and assess the quantum of general damages to be awarded to the Respondents in line with trending authorities case law.
5. The Appeal was canvassed by way of written submissions. The Respondents filed their written submissions but the Appellants did not file, despite being given the opportunity to file.

Issues for Determination

6. I have studied the Appellant's Grounds of Appeal and the Respondents' submissions and I find that there is only one issue for determination;

a. Whether the trial court's assessment of quantum of damages was excessive in the circumstances.

7. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower Court and satisfy itself that the decision was well-founded. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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..."

Whether the trial court's assessment of quantum of damages was excessive in the circumstance

8. The Parties agree on the nature of the injuries sustained by the Minor. In the plaint dated 29th August, 2022, the Respondents claimed that the minor suffered the following injuries;
 - i. Loss of consciousness due to severe head injury,
 - ii. Left epidermal hematoma,
 - iii. Reduced vision of the left eye,



- iv. Scalp bruises and
 - v. Left iliac fossa bruises.
9. All these injuries were contained in a medical report written by Dr. Mwiti dated 23rd May, 2022 and filed to Court on 5th September, 2022. In the report, the doctor also indicated that the Minor was treated in the Intensive Care Unit for 4 days and that he underwent surgery to remove the hematoma. The doctor described the impact as grievous harm—severe head injury. The medical report was adopted in Court by virtue of the consent. The second medical report is not in the lower court file, and the record of appeal on page 40 only contains a notice stating that the defendant’s documents would be submitted before the hearing.
10. In arriving at my decision on whether I should review or interfere with the quantum of damages, I am guided by the Court of Appeal’s decision in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55. In the case, the court held that an Appellate Court should exercise caution and restraint where it has been called upon to review the trial court’s award of damages. 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. Similarly, this Court appreciates the observations of the Court of Appeal in *Jane Chelagat Bor vs. Andrew Otieno Onduu* [1988-92] 2 KAR 288; [1990-1994] EA 47, where the court outlined the exceptional circumstances on which an appellate court can interfere with the award of damages. 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. Based on the above authorities, this Court, as an appellate Court, can interfere with an award of damages if the same is a wholly erroneous estimate of the damage suffered by being so inordinately high or low.
13. Courts have established parameters that should help a 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.
5. 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.”
14. Based on the above authorities, one principle runs across; the principle that generally, the Courts should make similar awards for persons who have suffered similar injuries. The principle calls upon the 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”
15. The Minor suffered the following injuries; Loss of consciousness due to severe head injury, left epidermal hematoma, reduced vision of the left eye, scalp bruises, and left iliac fossa bruises. The doctor described the injuries as severe head injury.
16. I have looked at how previous Courts assessed damages in cases where the complainant suffered similar injuries to those sustained by the Respondent. This case bears similarities with the case of *Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N* [2018] eKLR, where the Court awarded the complainant Kshs.500,000/= for general damages. The case involved a minor, and the issue of liability was resolved by a consent apportioning liability at 85:15 in favor of the minor.
17. In addition, the minors in the two cases sustained almost similar injuries. In *Telkom Orange Kenya Limited*, the child sustained primarily a head injury. At the time of examining the child, the doctor noted that the child had occasional blurring of vision with an occipital headache. The doctor concluded that the child sustained serious head injuries, which put him at risk of developing seizures as a long-term complication, together with disfigurement resulting from the scalp and leg scars. I also note that the award was made in 2018, more than 5 years ago, and thus, I am alive to the inflation factor.
18. I have also considered the case of *GA (Minor suing thro’ her father and next friend BZ) v Paul Muthiku* [2020] eKLR, where the Court awarded a minor Kshs.500,000/=. In the case, the minor did not suffer permanent incapacity and liability had been settled by consent at 85:15 in favor of the minor. The minor had suffered multiple scalp fractures, and the doctor had concluded that the Appellant would satisfactorily recover since she was of tender age. These facts are similar to the facts in this case. The complainants in both cases were minors, and the liability apportionment was almost the same. I also note that the award was issued 4 years ago.
19. The trial Court relied on the case of *Ouru Super Stores Limited v Jackson Keragori Obure* [2018] eKLR, where Kshs.1,000,000/= was awarded for injuries particularized as follows: injury on the



right temporal-occipital, c-shaped and stitched, loss of hair on the occipital area, multiple irregular depressions on the head, baldness on the right temporal region, deformed right upper limb with contractures and right side extradural hematoma (acute).

20. In my view, the facts in Ouru Super Stores Limited are significantly different from the facts of this case. In Ouru Super Stores Limited, the complainant suffered permanent disability of between 20% and 50%, as assessed by 2 medical doctors. In contrast, there was no finding of permanent disability in the present case.
21. The minor was admitted to intensive care for 4 days and admitted for a cumulative 15 days. He underwent surgery (craniotomy) to remove the epidermal hematoma and, after that, received inpatient care at the general ward. The injuries have been outlined in this judgment. As per the medical report, the current review was only the scar on the left temporal scalp region, and no permanent disability was noted (this was close to two months from the date of the accident). The Respondents claimed that the accident had other negative impacts on the minor's life; however, they did not produce medical documents to confirm these post-accident effects on the minor. Without prior reports for comparison and medical validation, the academic report lacked insights into the post-accident effects.
22. In light of the above, it is evident that the trial Court's award of Kshs.1,800,000/= as general damages was excessive. This is considering the injuries sustained and the relevant precedents.
23. In the premises, this Court allows this appeal by setting aside the award of Kshs.1,800,000/= as general damages. In its place, the Respondents are hereby awarded Kshs.750,000/= as general damages. The awards shall be subject to the agreed contribution and shall accrue interest from the date of judgment before the trial Court.
24. The Appellant has raised no issue with the special damages award, so the same is upheld.
25. The Respondent shall pay the costs of the appeal, which I assess at Kshs.50,000/= all-inclusive.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 13TH DAY OF NOVEMBER, 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

