



REPUBLIC OF KENYA



**Nyaga v Kamau & 2 others (Civil Appeal E233 of 2023)
[2024] KEHC 13638 (KLR) (Civ) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13638 (KLR)

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

CIVIL

CIVIL APPEAL E233 OF 2023

H NAMISI, J

NOVEMBER 7, 2024

BETWEEN

DENNIS GIKONYO NYAGA APPELLANT

AND

JOHN KAMIRI KAMAU 1ST RESPONDENT

JANE WANGARI KAMAU 2ND RESPONDENT

PAUL MWAURA 3RD RESPONDENT

*(Being an Appeal against the Judgement of Hon. M. Mutua
delivered on 20 February 2023 in SCCC No. E663 of 2023)*

JUDGMENT

1. This appeal arises from a suit in the Small Claims Court filed by the Appellant, seeking the following reliefs:
 - i. General damages for pain, suffering and loss of amenities;
 - ii. Special damages of the sum of Kshs 5,500/=;
 - iii. Interest on (i) and (ii) at court rates;
 - iv. Cost and incidentals to the suit and any other relief that the Honourable Court may deem fit to grant
2. The suit was in respect of a road traffic accident that occurred on 1 August 2021 along Kangundo Road, involving the Appellant's motor vehicle registration number KBL 691Q and motor vehicle registration number KBB 167X which belonged to the 1st & 2nd Respondents and driven by the 3rd



- Respondent. As a result of the accident, the Appellant sustained injuries. In his witness statement, the Appellant stated that he sustained injuries to the shoulders, wrists and back. Occasionally, he would experience recurrent shoulder and chest pain, as well as backaches.
3. The Appellant produced Treatment Notes from Mama Lucy Hospital indicating that he was treated for soft tissue injuries to the shoulders, wrists and back. The same was confirmed by the Medical Examination Report (P3 Form) as well as the Medical Report by Dr. Cyprianus O. Okere dated 27 September 2021.
 4. The Respondents entered appearance and filed their response to the Statement of Claim. Parties filed their submissions in respect to the claim.
 5. The Appellant submitted that an award of Kshs 430,000/= for general damages would be reasonable and fair. He relied on the cases of *Francis Ndungu Wambui & Others v Benson Maina Gatia* [2017] and *Michael Okello v Priscilla Atieno* [2019]. In the former case, the Plaintiff sustained soft tissue injuries to the shoulder and right hip as well as mild head injury. The court awarded Kshs 300,000/- for pain and suffering. In the latter case, the plaintiff sustained injuries to the shoulder, chest and back, and the court awarded Kshs 250,000/- for pain and suffering.
 6. On their part, the Respondents submitted that an award of Kshs 60,000/- would be adequate compensation as general damages. They relied on the case of *HB (minor suing through mother and next friend DKM) v Jasper Nchonga Magari & another* [2021] eKLR, in which the court awarded Kshs 60,000/- for soft tissue injuries.
 7. The trial court entered judgement in favor of the Appellant as follows:
 - Liability - 100%
 - General Damages - Kshs 60,000/=
 - Special Damages - Kshs 5,500/=
 - Total - Kshs 65,500/=
 8. Being aggrieved by the judgment of the trial court, the Appellant lodged an appeal on the following grounds:
 - i. That the learned Magistrate erred in law and in fact in finding that the Claimant was entitled to general damages of Kshs 60,000/= which was too much on the lower side in view of the injuries suffered by the Claimant that it presented a miscarriage of justice;
 - ii. That the learned Magistrate erred in law and in fact by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum;
 - iii. That the learned Magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain, suffering and loss of amenities which is very low;
 - iv. That the Learned Magistrate erred in law and in fact when making his award by failing to consider the passage of time and incidence of inflation;
 - v. That the learned Magistrate wholly erred in law and in fact by arriving at the said judgement
 9. Parties were directed to file written submissions. The Appellant filed submissions dated 24 May 2024. The Respondent did not file any submissions.



Analysis & Determination

10. Section 38 of the [Small Claims Court Act](#) provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.
11. In the case of [Otieno, Ragot & Company Advocates v National Bank Kenya Ltd](#) [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another v Bernard Munene Ithiga* (2016) eKLR).”
12. Similarly in the case of [Mwita v Woodventure \(K\) Limited & another](#) (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”
13. The duty of this Court in this instance is similar to that stated herein above, which is essentially limited to points of law. In the case of [JN & 5 Others v Board of Management, St. G School Nairobi & Another](#) [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”
14. Turning to the grounds of appeal, the Appellant argued that the trial court in failing to consider the principle that comparable injuries should attract comparable awards awarded a sum in respect of damages that was inordinately low.



15. I have looked at some comparable cases with a view to determining the comparable awards. In *George Mugo & John Ndungu v A K M (Minor suing through next friend and mother of A M K)* (Civil Appeal 198 of 2013) [2018] KEHC 5871 (KLR) (11 June 2018), the plaintiff sustained blunt injury to shoulder, blunt chest injury interior, bruises of left wrist region and blunt injury left arm. The Court reduced the award of Kshs 300,000/- for general damages to Kshs 90,000/=.
16. In *Devki Steel Mills Ltd v James Makau* [2012] eKLR, the injuries sustained were severe soft tissue injuries to the left side of the pelvis and severe soft tissue injury to the right shoulder joint. The court awarded Kshs 250,000/-.
17. In *Channan Agricultural Contractors Ltd v Fred Barasa Mutayi* Civil Appeal No. 29 of 2012, the injuries sustained were blunt injury to the chest, cut wound to the head and cut wounds to the left leg. The court awarded Kshs 150,000/-.
18. In *Joseph Njoroge Kariuki v Dennis Kiatu Malombe* Civil Appeal 59 of 2009, the injuries sustained were blunt injuries to the neck, chest, back and right knee. The court awarded Kshs 150,000/=.
19. In *Longonot Horticulture Ltd v Isaac Oluoch Kichama* Civil Appeal No. 39 of 2005, the injuries sustained were soft tissue injuries to the hip and chest, sprain of the wrist joint and cut wound on the right leg. The court awarded Kshs 150,000/=.
20. In *Ndung'u Dennis -vs- Ann Wangari Ndirangu & Anor* (2018) eKLR, the claimant sustained injuries on the right lower leg and bruises on the back. An award of Kshs.300,000/= was reduced to Kshs.100,000/= on appeal.
21. In view of the foregoing, I am persuaded that the award by the learned trial magistrate fell on the lower side in comparison to comparable awards. However, I am not persuaded that the sum proposed by the Appellant is reasonable and fair, in light of the injuries suffered.
22. Upon considering the damages awarded in the authorities I have just cited, and their age, I find that an award of Kshs 200,000/= to be reasonable and adequate to compensate for the injuries suffered in this case.
23. Accordingly, I allow the appeal and set aside the award of Kshs 60,000/- by substituting it with Kshs 200,000/-. Each party shall bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2024.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Muithiraniah..... for the Appellant

Wanjohi h/b Mrs. Randa for the Respondents

