



**Ratemo v Ogaro (Civil Appeal E098 of 2021)
[2024] KEHC 14539 (KLR) (18 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E098 OF 2021
TA ODERA, J
NOVEMBER 18, 2024**

BETWEEN

DOUGLAS NYAKWARA RATEMO APPELLANT

AND

WILFRED OGARO RESPONDENT

JUDGMENT

Introduction

1. Appellant filed this appeal against the respondent on quantum and special damages only. Liability was agreed on in the lower court at 80: 20 in favour of the respondent against the appellant.
2. It is not disputed that the respondent sustained the following injuries; -
 - a. Cut wound on the scalp.
 - b. Contusion on the chest
 - c. Blunt trauma on the back.
 - d. Dislocation of the left shoulder
 - e. Bruises on the left knee,
3. The appellant submitted that the award of Kshs 500,000/= as general damages was excessive. Appellant cited the case of *Maseno University v Elizabeth Kerubo Mokaya Kisii*. (2021) eKLR where the respondent sustained several soft tissue injuries and dislocation of the right ankle and the lower court awarded him general damages in the sum of Kshs 600,000/= which was reduced to Kshs 200,000/= on appeal Counsel. Also *Lamu Bus Services Limited v Caren Adhiambo Okello* (2018) eKLR where the respondent sustained dislocation of the shoulder joint, a deep cut wound on the chin, a deep cut wound on the left thigh and an award of Kshs 200,000/= was reduced to Kshs 130,000/= on appeal.



The case of *Entertainer Trucks Company Limited v George Karanja* where the respondent sustained mild head injury deep cut wound, left ear lobe, dislocation of right shoulder joint. He was awarded Kshs 750,000/= in the lower court and this was reduced to Kshs. 200,000/= on appeal. Appellant submitted that general damages in the sum of Kshs 200,000/= would be adequate herein.

4. Respondent on his part submitted that in the case of *Kennedy Kipkoech Kosgey v Kormoto General Agencies* HCCA no. 36 /2011 the plaintiff sustained blunt trauma to the chest, fracture of the interior ribs and dislocation of the shoulder and general damages in the sum of Kshs 400,000/= was awarded in 2015.
5. Also the case of *Veronica Mkanjala Mnyapara v Patrick Nyasinga Amenya* (2021) eKLR where respondent sustained contusion to the head chest contusion, bruises on both hands, dislocation on the left hip joint and bruises on both left and general damages of Kshs 300,000/= was awarded on appeal. Respondent further cited the case of *Agility Logistics v John Wambua Musau & Another* where respondent had sustained bruises on the face, tenderness on the chest and left shoulder. Respondent submitted that general damages in the sum of Kshs 500,000/= was adequate.
6. On special damages the appellant submitted that the same was not proved as required by law. The respondent on their part submitted that special damages were pleaded at Kshs 14000/= and proved as required by law.

Analysis and Determination

7. This is a first appellate court whose duty is to re-evaluate the record of the lower court and come to its own conclusions bearing in mind that it neither saw nor heard the witnesses during their testimony in court.
8. The issues arising for determination are as follows; -
 - a. Whether the learned magistrate erred in law and in fact by awarding the Appellant 500,000 as general damages for pain and suffering.
 - b. Whether the appellant has made out a case to warrant to this court to disturb the discretion of the trial magistrate award.
 - c. Whether special damages in the sum of Kshs 14,000/= was proved.
13. I have considered the submission by both parties nature of injuries sustained by the respondent, the inflation factor, the recent comparable awards for similar injuries and all the necessary factors. The cited cases are all from High Courts which are courts of concurrent jurisdiction. Their decisions are thus not binding on this court but are persuasive. I find that the recent awards for similar injuries as per the 4 cited cases range between Kshs. 200,000-300,000/=.
14. On whether this court should interfere with the discretion of the trial magistrate in this case, it is trite law that award of damages is at the discretion of a trial court. The conditions under which an appellate court can interfere with an award of damages made by a trial court were set out by the court of Appeal in the case of *Kemfro Africa Limited T/A Meru Express Services [1976] and another v Lubia and another* (No.2) [1985] eKLR, in which the Court (Kneller, Nyarangi, JJA and Chesoni, Ag JA) stated as follows:

“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 that 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. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.”

15. Equally in the case of *Shabani v City Council of Nairobi* [1985] KLR 516 at page 518, Hancox, JA stated as follows:

“The test as to when an appellate court may interfere with an award of damages was stated by Law JA in *Butt v Khan*, Civil Appeal No. 40 of 1997 (a case referred to in another context by the learned Judge), as follows:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that, he misapprehended the evidence in some material respect, and so arrived at a figure which was so inordinately high or low.’

This discretion has since been followed frequently by this Court.”

16. The award of general damages at Kshs. 500,000/= for the injuries sustained by the respondent herein was thus on the higher side and thus warrants interference by this court and I proceed to reduce the general damages to Kshs 300,000/=.
17. On special damages, it is trite law the same must be specifically pleaded and strictly proved. As per the plaint special damages were pleaded at Kshs. 14,000/=and the same were proved by way of receipts as required by law. The magistrate thus did not err in awarding the special damages as pleaded.

Conclusion

18. The appeal partially succeeds and I proceed to enter judgment for the respondent in sum of Kshs. 300,000/= special damages Kshs. 14,000/= Total Kshs 314,000/= plus interest.
19. On the issue of costs, the appeal has partially succeeded. I order that each party will bear its own costs.

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Kamau for appellant

N/A for Respondent

Court Assistant - Oigo

Kamau: I seek 30 days stay of execution.

Order: 30 days stay of execution is granted.

T.A ODERA

JUDGE

18.11.24

