



**Too v Kamau (Civil Appeal E004 of 2020)
[2024] KEHC 14302 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E004 OF 2020
RN NYAKUNDI, J
NOVEMBER 15, 2024**

BETWEEN

WILLY TOO APPELLANT

AND

GEOFFREY KARANJA KAMAU RESPONDENT

JUDGMENT

1. The appeal only on quantum as evidence from the Memorandum of Appeal dated 17th January, 2020. In the trial Court the Respondent had sued the Appellant claiming general damages, special damages plus costs and interest of the suit arising from road accident that occurred on 8th July, 2017 when it is alleged that the Plaintiff was lawfully being carried as a pillion passenger on motorcycle registration no. KMDB 465 F Eldoret-Elgon-view Hospital road when the appellant and or his driver, servant, agent and or employee negligently drove, managed and or controlled motor vehicle registration No. KCH 383 K that he caused the aforesaid motor vehicle to knock down the motorcycle KMDB 465 F and as a result of which the Respondent sustained severe injuries.
2. In a response to the Plaint dated 24/07/2017, the Appellant blamed the Respondent for contributing to the accident. The Appellant denied that the respondent suffered injuries and incurred expenses as pleaded.
3. After trial Judgment was delivered on 6/08/2019 and the Appellant was found 100% liable and damages assessed as hereunder: -
 - a. General Damages Kshs. 400,000/=
 - b. Special Damages Kshs. 6,000/=
 - c. Total Kshs. 406,000/=
 - d. Plus, costs and interests



4. The Appellant is aggrieved by the decision of the trial Magistrate and has preferred the present appeal on (4) grounds: -
 - a. That the Honourable learned magistrate erred in law and in fact in awarding general damages to the Respondent amounting to Kshs. 400,000/=
 - b. That the quantum of damages is excessive and an erroneous estimate of the damages that may be awarded to the Respondent and the subordinate court did not pay due regard to precedents of similar circumstances.
 - c. That the Honourable learned magistrate erred in law and facts in relying on extraneous evidence in arriving at the decision on the general damages
5. The court directed the parties to canvass the appeal by way of written submissions. I however have not had sight of the appellant's submissions. The Respondent's submissions are summarised as follows:

The Respondent's Submissions

6. The Respondent through learned Counsel Mr. Mwinamo started by reminding this court of its role as a first appellate court. On this, he cited the decision in *Selle versus Associated Motor Boat Company Ltd (1968) E.A 123*.
7. On liability, learned counsel submitted that the evidence of the Respondent was corroborated by that of the police officer who stated that motor vehicle registration KC 383K turned right into a shell petrol station and knocked down the motorcycle registration KMDB 465K. he pointed out that her motor vehicle KCH 383K not ventured into the lane of motorcycle registration KMDB 465K the accident would not have occurred.
8. It was further submitted for the Respondent that the version on the occurrence of the accident by the Respondent was corroborated by the appellant's witness statement specifically that the accident occurred when motor vehicle registration KCH 383K wanted to enter a police station. Counsel therefore concluded that the trial court was right in finding the appellant and or his driver, agent, servant and or employee 100% liable for the accident. He urged the court to uphold the subordinate court's finding on liability as against the Appellant.
9. On quantum of damages, learned counsel submitted that the trial court's finding is not inordinately too low or so high so as to amount to a wholly erroneous estimate and the appellate court should not therefore disturb this award. That the trial magistrate followed the proper principals in making the award considering the injuries suffered by the Respondent. He cited the following authorities in support of the award of Kshs. 400,000/=.
10. In *Catherine W. Kingori & 3 others V Gibson T. Gichubi (Nyeri HCC NO. 320 of 1998)*, the 1st Plaintiff sustained injury on the left ankle, injuries on the legs and injuries on the chest. The General damages were assessed at Kshs. 300,000/=
11. In *Martin M. Mugi v. Attorney General (Nairobi HCCA No. 791 of 1999)* the Plaintiff sustained a deep extensive cut on the face mild concussion and generalized soft tissue injuries. General damages were assessed at Kshs. 300,000/=
12. The Respondent also cited the decision in *Jyoti Structures Limited & Anor versus Charles Ogada Ochola (Eldoret HCCA No. 32 of 2017)* in which the respondent sustained blunt injury to the neck, head, chest and right shoulder. The High court upheld an award of Kshs. 300,000 as general damages.



13. Similarly, in *Emily Otieno & Anor v. Wilberforce Mwanga* (Eldoret HCCA No. E090 of 2022) the respondent sustained blunt injury to the head, blunt injury to the chest, Abdomen, left wrist joint and blunt to the right ankle. The High court upheld an award of Kshs. 300,000/=
14. Finally, counsel cited the decision in *Great Rift Shuttle v. Charles Mwangi (Eldoret HCCA No. E086 of 2022)* in which the respondent sustained blunt injury to the face, blunt injury to the neck, bruises and blunt injury to the left hand bruises and blunt to both legs. The high court upheld an award of Kshs. 300,000 as general damages.
15. On special damages, learned counsel submitted that the award on special damages of Kshs. 8,000/= was specifically pleaded and proved by way of receipts.

Analysis & Determination

16. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and facts and come up with its own findings and conclusions. (See Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424). The appropriate standard of review established in cases of appeal can be stated in three complementary principles:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
17. I have indicated elsewhere in this judgment on quantum. I shall then proceed to address the question of damages and special damages. In arriving at the appropriate compensation, it is important to highlight the injuries suffered by the Respondent. According to the medical report, the Respondent suffered the following injuries:
 - a. Blunt trauma to the chest
 - b. Deep cut wound on the right hand between the thumb & the index finger.
 - c. Bruises on the left elbow posteriorly
 - d. Blunt injury & bruises to the left knee.
18. As regards quantum, in *Woodruff vs. Dupont* [1964] EA 404 it was held by the East African court of appeal that:

“The question as to quantum of damage is one of fact for the trial Judge and the principles of law enunciated in the decided case are only guides. When those rules or principles are applied, however, it is essential to remember that in the end what has to be decided is a question of fact. Circumstances are so infinitely various that, however carefully general rules are framed, they must be construed with some liberality and too rigidly applied. The court must be careful to see that the principles laid down are never so narrowly interpreted as to



prevent a judge of fact from doing justice between the parties. So to use them would be to misuse them...The quantum of damages being a question of fact for the trial Judge the sole question for determination in this appeal is not whether he followed any particular rules or the orthodox method in computing the damage claimed by the plaintiff, but whether the damages awarded are “such as may fairly and reasonable be considered as a rising according to the usual course of things, from the breach of the contract itself.” The plaintiff is not entitled to be compensated to such an extent as to place him in a better position than that in which he would have found himself had the contract been performed by the defendant.”

19. The Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

“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.”

20. I am to determine whether the award of general damages of Kshs. 400,000/= in light of the injuries stated above is inordinately high to persuade this court to interfere with it. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”.

21. It has long been held that an appellate Court should not interfere with exercise of discretion by a trial court unless it acted on a wrong principle, took into account irrelevant factors or failed to take into account relevant factors.

22. In *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.m. Lubia and Olive Lubia* [1985] Kneller. J.A, stated:

“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 *Ilango V. Manyoka* [1961] E.a. 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltd V. Kavoloto* [1970] E.A., 414, 418, 419. This Court follows the same principles.”

23. The question is whether this court should interfere with the damages awarded by the trial Court. As stated above, the discretion in assessing general damages payable will only be disturbed if the trial court took into account an irrelevant fact or failed to take into account a relevant factor or that the award is so inordinately high that it must be wholly erroneous estimate of the damages or that it was inordinately low.



24. The issue for determination in this appeal is whether taking into account the nature of the injuries sustained by the respondent, comparable awards and inflation or passage of time the award of the trial magistrate was inordinately excessive as to warrant this court to interfere.
25. In *Derrick Munroe v Gordon Robertson* {2015} JMCA CIV 38 it was held: -
- “There are established principles and a process to be employed in arriving at awards in personal injury matters. In determining quantum Judges are not entitled to simply phial a figure from the air. Regard must therefore be had to comparable cases in which complainants have suffered similar injuries.” (See *Denshire Mutei v KPLC Ltd* {2013} eKLR) (see also *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR).”
26. In *Justine Nyamweya Ochoki & another v Prudence Anna Mwambu* [2020] eKLR, the High Court at Malindi reduced an award of Kshs 650,000/= in damages to Kshs 300,000/= where the claimant had sustained loss of upper front incisor tooth, deep cut on the chin, cut on the lips, loosening of the upper teeth, blunt trauma, injury to the right forearm and loss of consciousness.
27. In *Matunda (Fruits) Bus Services Ltd v Agnes Chemngeno Tuiya* [2021] eKLR, the High Court at Nakuru reduced an award of Kshs 390,000/= in general damages to a sum of Kshs 250,000/=. The claimant in that case had sustained the following injuries: deep cut wound on the scalp, cut wound on the right temporal region of the scalp, deep cut wound on the right shin, blunt injuries to the neck, loose two upper incisor teeth, loose two lower incisor teeth and cut wound on the lower lip.
28. In the above cited cases, the claimants who suffered soft tissue injuries similar to the injuries suffered by the Respondent got awards ranging from Kshs 250,000/= to 300,000/=. In considering the circumstances in the present case, I find an award of Kshs. 280,000/= appropriate. The award of Kshs. 400,000/= is therefore substituted with an award of damages of Kshs. 280,000/=.
29. On special damages, the trial court awarded Kshs. 6,000/= and not Kshs. 8,000/= as captured by the Respondent in their submissions. I note that the Respondent specifically pleaded and proved the same at the hearing. I therefore uphold the same.
30. In the end, the appeal is allowed with the Respondent being awarded a sum of Kshs. 280,000/= and special damages of Kshs. 6,000/=.
31. Each party shall bear its costs.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 15TH DAY OF NOVEMBER 2024.

In the Presence of:

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R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Matekwa, Advocate for the Respondent

Mr. Ontegi, Advocate for the Appellant

