



**Thiaka v Warui & another (Civil Appeal 15 of 2014)  
[2024] KEHC 13847 (KLR) (5 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13847 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL 15 OF 2014  
RM MWONGO, J  
NOVEMBER 5, 2024**

**BETWEEN**

**JAZON CHOMBA THIAKA ..... APPELLANT**

**AND**

**SAMUEL MAINA WARUI ..... 1<sup>ST</sup> RESPONDENT**

**MANTRAX KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgment of Hon. J.A Kasam (SRM) in Kerugoya  
SPM'S Court Civil Case No. 290 of 2012 delivered on the 15th May 2014)*

**JUDGMENT**

**Background and facts**

1. This appeal challenges only the quantum for damages awarded in the lower court. The memorandum of appeal dated 19<sup>th</sup> May, 2014 raises the following grounds:
  1. The learned trial magistrate grossly misdirected herself in treating the evidence and submissions on quantum superficially and consequently coming to a wrong conclusion on the same.
  2. The learned trial magistrate misdirected herself into not taking into consideration the nature of the appellant injuries at the time of assessing the damages and thus arriving at a figure that was too low in view of the injuries suffered.
2. The appellant filed a suit against the Respondents in the Senior Resident Magistrate court at Kerugoya being Case No. 290 of 2012 seeking general damages for pain, suffering and loss of amenities, special damages and costs of the suit. This emanated from a road traffic accident that occurred on 7<sup>th</sup> July 2012. The accident involved the Appellant who was hit from behind by motor vehicle registration number KBR 957Z Toyota Matatu. The Appellant blamed the Respondents for the occurrence of



the accident. Parties recorded a consent on liability and the trial court in its judgment delivered on 15<sup>th</sup> May, 2014 awarded the appellant Kshs. 120,000 in general damages for pain, suffering and loss of amenities. precipitating the present appeal.

3. Dissatisfied, the appellant filed the present appeal.
4. Parties filed written submissions as directed by the court.

### **Appellant's Submissions**

5. The appellant submits that the general law is that money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. By common consent, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible that comparable injuries should be compensated by comparable awards.
6. The appellant cited the case of Sheikh Mustaq Hassan vs Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 45Z where the court held that:
  - “The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate, or the party asking for an increase must show that in reaching that inordinately low figure the Judge:
    - a. proceeded on a wrong principle; or
    - b. misapprehended the evidence in some material respect...”
7. The appellant submits that it is trite that the essence of awarding general damages is to compensate the victim for the injury suffered and try as much as possible to restore them to the position they were in before suffering the injury. The nature and extent of the injuries sustained by the appellant is not in dispute. From the medical evidence before the trial court, it was proved that he sustained the following injuries:
  - a. A cut on the left eye.
  - b. Bruises on the left forehead.
  - c. Fracture of the left shoulder.
  - d. Abrasions on the left elbow and knee.
8. It is submitted that that from the evidence presented at trial. The above injuries were severe and grievous as a result of which the appellant was incapacitated. The degree of permanent incapacitation was assessed by Dr. Maina for the appellant was assessed at 7%, and by Dr. Yusuf for the Respondent assessed the degree of permanent incapacity at 5%.
9. In light of the above, the respondent submit that the damages awarded to the appellant in the sum of Kshs. 120,000 was inordinately low compared to the severity of the injuries sustained as well as comparable awards made by various courts within our jurisdiction for comparable injuries. The authorities referred to include:
  - a. Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Adano Isacko [2019] eKLR where an award of Kshs. 700,000 was upheld on appeal for fracture of the clavicle.



- b. Geoffrey Otieno Riro v Rachuonyo Elmard [2020] eKLR where an award of Kshs. 750,000 was upheld on appeal for a fracture of the clavicle.
  - c. Jane Wambui Kamau & 4 Others 1999 eKLR where general damages were assessed at Kshs. 300,000/=in the year 1999 for a fracture of the right collar.
  - d. H. Young & Company E.A Ltd v Edward Yumatsi (2016) eKLR where the trial Court award of Ksh.500,000 as general damages for comparable injuries was upheld by the High Court on appeal.
10. Ultimately, the appellant urges this Court to allow this appeal with costs to the Appellant, set aside the judgment on quantum of damages for Kshs. 120,000 and substitute with an award commensurate with the injuries herein of Kshs. 800,000 as proposed in the submissions in the lower Court and further supported by the cited authorities herein.

### **Respondent's submissions**

11. The respondent submitted that the Trial Court, in its assessment of the quantum of damages relied on the nature and extent of injuries that the appellant sustained. The found that the injuries and abrasions were minor and there was no visible deformity that would have affected the victim's quality of life. Thus, the court rightly awarded the sum of Kshs. 120,000/-
12. The Respondents rely on the case of Hantex Garments (Epz) Ltd v Haron Mwasala Mwakawa [2017] eKLR where the Appellate Court upheld an award of Kshs.100,000/=in a case where the Respondent had sustained bruises, blunt trauma, swelling and tenderness on the right leg.
13. Further, the Respondents also relies on another comparable award in Lilian Anyango Otieno v Philip Mugoya Ogila [2022] eKLR where the High Court awarded Kshs.150,000/- for head injury with dislocation of cervical spine of the neck, chest injury with damage of the rib cage and blunt abdominal injury, tissue injuries of both upper limbs with dislocated wrist and elbow joint and dislocated pelvic frame involving both hip joints and damage of the right lower limb with dislocation at the ankle joint.
14. It is the Respondents' submission that the award of Kshs. 120,000/= in General Damages was not inordinately low, taking into account the nature, gravity and seriousness of the injuries pleaded before the trial court, and the authorities cited above, it is the Respondents' submission that the award of Kshs. 120,000/=in General Damages was not inordinately low.

### **Issues for Determination**

15. The only issue for determination is whether the quantum of damages should be interfered with.

### **Analysis and Determination**

16. The appellant is challenging only the quantum of damages awarded by the trial court. There is no dispute concerning the injuries sustained. From the medical evidence before the trial court, it was proved that he sustained the following injures:
  - a. A cut on the left eye.
  - b. Bruises on the left forehead.
  - c. Fracture of the left shoulder.
  - d. Abrasions on the left elbow and knee.



17. In its judgment delivered on 15<sup>th</sup> May, 2014, the trial court awarded the appellant Kshs. 120,000 in general damages for pain, suffering and loss of amenities precipitating the present appeal.
18. It was submitted by the appellant that from the evidence presented at trial, the injuries were severe and grievous as a result of which the appellant was incapacitated. In the medical report dated 17<sup>th</sup> August, 2012 the degree of permanent incapacitation by Dr. Maina for the appellant was assessed at 7%. This was confirmed by Dr. Yusuf for the Respondent who assessed the degree of permanent incapacity at 5%.
19. The appellant asserts that the commensurate quantum of damages that ought to be awarded is Kshs 800,000/=; based on the following authorities; Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Adano Isacko [2019] eKLR where an award of Kshs.700,000 was upheld on appeal for fracture of the clavicle. The injuries in this case were: Deep cut wound on the head, bruises on the knee, cerebral concussion, fracture of the right clavicle bone and deep cut wound on the left elbow. Geoffrey Otieno Riro v Rachuonyo Elmard [2020] eKLR where an award of Kshs. 750,000 was upheld on appeal for a fracture of the clavicle.
20. These authorities are distinguishable on the ground that the injuries there were more severe than those suffered by the appellant. In addition, these cases are 2019 and 2020 case over five years later than the present case. Thus, these authorities cannot be relied on this case
21. The Respondents rely on the case of Hantex Garments (Epz) Ltd v Haron Mwasala Mwakawa (2017) eKLR where the Appellant Court upheld an award of Kshs.100,000/=in a case where the Respondent had sustained bruises, blunt trauma, swelling and tenderness on the right leg.
22. In the present case, the trial court held that the injuries and abrasions are minor wounds and the fracture has healed, there is no visible deformity and other minor injuries have left nothing significant behind. The injuries are those not extensive and serious.
23. Without setting out any judgment referred to, the trial court notes the injuries stating:

“The wound on the left eyebrow was stitched, X-ray confirmed a fracture of the left collar bone for which he was given a bandage and sling.....He attended the same hospital at fortnightly intervals about four times.....He has been off work for six months.”
24. In the case of Lynn Kambua Enterprises v Edith Vaati Simon Kasika [2021] eKLR the appellate court upheld an award of Ksh. 350,000/= for injuries similar to those in the present case, stating:

“According to the plaint, the Respondent sustained blunt trauma to the neck, blunt trauma to the chest, blunt soft tissue injuries to the left shoulder, fracture of the left clavicle and blunt soft tissue injuries to the right lower rib. As regards the quantum, she awarded Kshs 350,000/= as general damages with costs and interests.”
25. Of the authorities cited herein, that of *H. Young & Company E.A Ltd v Edward Yumatsi (2016) eKLR (Civil Appeal No. 121 of 2014* Kisii) discloses injuries most similar to the injuries in the present case herein. There, the victim suffered injuries on the right shoulder (clavicle) fracture and deep cut wound on the elbow joint, wrist, pain in the head and chest, injury to the right knee. The injuries heralded leaving scars but no permanent disability. There the High Court in Kisii upheld the award of Kshs.500,000/= in 2016.



## **Disposition**

26. In my view, the trial court's award in 2014 of Kshs.120,000/= is rather on the lower side and was not premised on any specific comparable authority.
27. I would therefore set aside the lower court's award of general damages, and substitute it with an award of Kshs.400,000/=.
28. The appellant shall have the costs of the appeal.
29. Orders accordingly.

**DATED AT KERUGOYA THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

1. No representation - Wachira for Appellant
2. Murimi for 1<sup>st</sup> and 2<sup>nd</sup> Respondents
3. Court Assistant - Murage

