



**Diocese of Meru – Registered Trustee v Wambui (Civil Appeal  
E023 of 2024) [2024] KEHC 15173 (KLR) (2 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15173 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E023 OF 2024  
CJ KENDAGOR, J  
DECEMBER 2, 2024**

**BETWEEN**

**DIOCESE OF MERU – REGISTERED TRUSTEE ..... APPELLANT**

**AND**

**WINNIE WAMBUI ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. JW (the Minor) got involved in a road traffic accident on July 15, 2023. He was a passenger in the Appellant’s Motor Vehicle when the vehicle got involved in an accident, as a result of which he sustained injuries. The Respondent, the Minor’s next of Kin, blamed the Appellant for the accident and sued for payment of special and general damages. She claimed the minor suffered the following injuries: Olecranon fossa fragment fractures, left elbow swelling and pain with a cut wound, and swollen and painful left forearm. The Appellant filed a response to the Claim, which denied liability.
2. However, the parties consented to liability at 90:10 in favour of the Respondent and were to file submissions on quantum. They also proceed under Section 30 of the Small Claims Act, which allows parties to adopt without calling the witnesses. The trial Court entered judgment in favor of the Respondents on 16<sup>th</sup> January, 2024 in the following terms; it entered liability at a ratio of 90% against the [Appellant]. It also awarded the Respondent General damages at Kshs.600,000/= and Special damages at Kshs.15,500/=. Upon deducting the 10% contribution, the court awarded the Respondent Kshs.553,950/=.
3. The Appellant was dissatisfied with the Judgment and appealed to this Court vide a Memorandum of Appeal dated 15<sup>th</sup> February 2024. It listed the following Grounds of Appeal;
  1. The Learned Resident Magistrate erred in law and in fact in awarding the Respondent general damages which were manifestly and grossly excessive.



2. The Learned Resident Magistrate erred in law and in fact in awarding the Respondent general damages which was not commensurate with the nature of the injuries sustained by the Respondent.
  3. The Learned Resident Magistrate erred in law and in fact in departing from the principle that comparable injuries should as far as possible be compensated by comparable award.
  4. The learned Resident Magistrate erred in law and in failing to warn himself that the award must be reasonable and ought to be assessed with moderation.
  5. The Learned Resident Magistrate acted on the wrong principles in arriving at an award of Kshs.600,000/= as general damages for pain and suffering.
  6. The Learned Resident Magistrate erred in law and in fact in taking into consideration matters she ought not to have considered and/or in not taking consideration matters she ought to have considered as a result arrived at a wrong decision on quantum (general damages for pain and suffering).
  7. The judgment was against the weight of evidence.
4. The Appellant asked the Court to allow the appeal and reduce the award for general damages for pain and suffering.
  5. The Appeal was canvassed by way of written submissions.

#### **The Appellant's Written Submissions**

6. The Appellant submitted that the award of Kshs.600,000/= was manifestly and grossly excessive. It argued that the injuries sustained by the minor did not warrant the award because they were very severe injuries. It argued that an award of Kshs.250,000/= for the injuries would be reasonable and a fair and reasonable compensation for the Minor's pain and suffering. It relied on a series of authorities like Gladys Alyaka Mwombe vs Francis Namatsi & 2 Others [2019] eKLR, Wakim Sodas Limited vs Sammy Aritos [2019] eKLR, Michel Okello vs Priscilla Atieno [2021] eKLR, and Patrisia Adhiambo Omolo v Emily Mandala [2020] eKLR.

#### **The Respondent's Written Submissions**

7. The Respondent submitted that the award of Kshs.600,000/= was reasonable in the circumstances and asked this Court to uphold the same. She submitted that the injuries sustained by the minor have had a significant impact on the minor's quality of life. She relied on the cases of Joseph Njuguna Gachie v Jacinta Kavuu Kyengo [2019] eKLR and Francis Nzivo Munguti & Another v Jotham Wanyonyi & Another [2020] eKLR.

#### **Issues for Determination**

8. I have considered the grounds of appeal and submissions by counsel for the parties. The issue for determination is;
  - a. Whether the award of Kshs.600,000/= for General Damages was a reasonable estimate

#### **The Duty of the Court**

9. It is trite law that the first appellate Court has to re-evaluate the evidence in the subordinate court on points of law and facts and come up with its findings and conclusions. As the court re-evaluates the



evidence, it must bear in mind that it had neither seen nor heard the witnesses. This principle was set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...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. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”

### **Whether the award of Kshs.600,000/= for General Damages was a reasonable estimate**

10. It is a well-established principle in our legal system that an appellate Court should exercise caution and restraint where it has been called upon to review the trial court’s award of damages. The principle provides that an appellant Court should only review an award for damages where the trial Court acted on the wrong principle of law, misapprehended the facts, or made a wholly erroneous estimate of the damage suffered. This principle was restated by the Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55, where 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. The trial Court restated the two medical reports produced by the parties. It held as follows:

“The [Minor’s] injuries as assessed were assessed by the [Respondent’s] Report (CEX1) as swollen elbow and forearm and olecranon fossa fragment fractures resulting in grievous hard while the [Appellant’s] report (REX1) assessed the injuries as fractures on the elbow and soft tissue injuries.”

The Court did not comment or form an opinion on the two medical reports or make a factual finding on the nature of the injuries.

12. I have relooked at the two medical reports to ascertain the nature of the injuries sustained by the minor. Dr Mwititi prepared the first medical report on 21<sup>st</sup> August, 2023, approximately five (5) weeks after the accident. The doctor outlined the injuries as Olecranon fossa fragment fractures, left elbow swelling and pain with a cut wound, and swollen and painful left forearm. At the time of the report, he indicated that the minor was experiencing pain and swelling on the left forearm, and that he had a scar on the left elbow.
13. I have also seen the 2<sup>nd</sup> Medical report prepared by Dr. John Macharia dated 17<sup>th</sup> December, 2023, which is approximately 20 weeks or 5 months after the accident. The medical report confirmed the injuries detailed in the first report by Dr. Mwititi. The report also indicated that the injuries were managed and had healed with residual scars. He also stated that there was clinical evidence of healing of the fractures. He also indicated that, at the time of the examination, the movements of the left elbow



were of normal ranges but slightly painful. Lastly, the doctor stated that the post-trauma pains were bound to abate with time.

14. From the two medical reports, one can infer that the injuries sustained were:
  - a. Tender, laceration, and bruising of the left elbow.
  - b. Fragmental fractures of the left olecranon
15. Having ascertained the nature of injuries sustained, the next issue for determination is whether the damages awarded are commensurate with the said injuries. 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 the 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.”
16. Similarly, in *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another* [2017] eKLR, the Court established parameters that should help determine the appropriateness of an award of damages and held as follows:
  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.”
17. The Respondent relied on the case of *Joseph Njuguna Gachie v Jacinta Kavuu Kyengo* [2019] eKLR. In my view, this case is not comparable to the current case because the complainant in *Joseph Njuguna Gachie* had suffered more serious injuries than the injuries sustained by the minor in this current case.
18. I have considered the injuries sustained as well as the authorities relied upon. In *Nickson Kazungu Karisa & another v Edward Tsuma Mbaru* [2020] eKLR, the complainant suffered very similar injuries, namely, compound fracture of the right ulna at the olecranon process, a deep cut wound on the right elbow, and several lacerations on the right upper arm. The Court awarded the complainant Kshs.450,000/=.
19. Although the injuries are similar, the injuries in *Nickson Kazungu* were slightly different in that he had foreign bodies in the right elbow, as a result of which he was operated on and underwent skin grafting. In addition, the claimant in *Nickson Kazungu* suffered permanent disability of 8% while the claimant in this instant case did not suffer any permanent disability. I also note that the above case was decided 4 years ago.



20. In my view, the most relevant authority regarding the award of damages is the decision in Thuo & another v Nanzala [2024] KEHC 2978 eKLR. The court awarded the claimant Kshs.400,000/=. The claimant had suffered a dislocation of the right elbow joint but had fully healed with no permanent disability. He had also suffered a blunt injury to the anterior chest wall, leading to soft tissue injuries.
21. Based on these authorities, I find that an award of Kshs.400,000/= is a reasonable estimate of the injuries sustained by the claimant. The award for special damages is hereby upheld.

### **Disposition**

22. The Appeal succeeds, and below is the court's tabulated award:
- General damages at Kshs.400,000/=
- Special damages at Kshs.15,500/=.
- Less 10% contribution = Kshs.41, 550/=
- Final Award = Kshs.373,950/=
23. The Appellant shall have the costs of the Appeal assessed at 30,000/=.
24. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON THIS 2<sup>ND</sup> DAY OF DECEMBER, 2024.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

No attendance by parties

