



**Langat v Omizera & another (Civil Appeal E406 of 2022)
[2024] KEHC 16079 (KLR) (Civ) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16079 (KLR)

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

CIVIL

CIVIL APPEAL E406 OF 2022

REA OUGO, J

DECEMBER 13, 2024

BETWEEN

PETER KIPRONO LANGAT APPELLANT

AND

VICTOR KIBOGA OMIZERA 1ST RESPONDENT

**NEW SENGERA 2011 SELF HELP GROUP ERICK NJENGA MAKORI
OMAMBIA OBIERO WALTER COSMAS MOSOTI ONYANCHA (SUED IN
THEIR CAPACITY AS OFFICIALS) 2ND RESPONDENT**

(Being an appeal against the judgment of Honourable S.A Opande (PM) issued on 17th May in the Chief Magistrate Court at Milimani Commercial Courts in CMCC No E3474 of 2020)

JUDGMENT

1. The appellant filed a suit at the lower court seeking special and general damages from the respondent following a road traffic accident. It was averred that the 1st respondent was the driver of the 2nd respondent, the owner of vehicle registration number KBL 043L. On 14 June 2018, the appellant was travelling as a passenger in the said vehicle. When they were along Haile Selassie Avenue near Neno Evangelism, the 1st respondent controlled the vehicle negligently, therefore causing an accident.
2. The appellant sustained a compound (open) fracture of the tibia, fracture of the left 4th metatarsal bone, and blunt and laceration injuries to the face.
3. The respondent filed no defence and therefore the trial magistrate apportioned liability at 100% as against the respondent. The trial court made the following award in favor of the appellant:
 - a. Special damages Kshs 103,750/-



- b. General damages Kshs 350,000/-
 - c. Cost of the suit and interest from the filing of the suit till payment is made in full.
4. The appellant is dissatisfied with the trial magistrate's award on general damages and has filed this instant appeal on the following grounds:
1. That the learned trial magistrate erred in law and fact in making a finding and arriving at an award of damages which was inordinately low so as to represent an erroneous estimate of damages payable in view of the injuries sustained by the appellant.
 2. That the learned trial magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 3. That the learned trial magistrate grossly misdirected himself in treating the evidence and submissions on general damages before him and consequently coming to a wrong conclusion on the same.
 4. That the learned trial magistrate erred in law and fact in not taking into account entirely the submissions of the appellant.
 5. That the learned trial magistrate erred in law and fact in failing to uphold and apply the doctrine of stare decisis thereby arriving at a wrong conclusion of law.
5. The appellant submits that the Kshs 350,000 awarded as general damages does not reflect the trend of previous, recent, and comparable awards. He cited the case of Patrick Kinyanjui Njama v Evans Juma Mukwenyi (2017) eKLR where the respondent sustained a segmental fracture of the right femur, mid-shaft segmental fracture of the right tibia (open), fracture of the right fibula and fracture of the left 3rd metatarsal bone with disability assessed at 30% and was awarded Kshs 1,500,000/-. The court in Civil Appeal No 1 of 2020 George William Awour v Beryl Awuor Ochieng, awarded Kshs 1,200,000/-.

Analysis And Dertermination

6. The only issue raised in this appeal is whether the trial magistrate erred in awarding Kshs 350,000/- as general damages. The parameters under which an appellate court will interfere with an award in general damages were stated by the Court of Appeal in Bashir Ahmed Butt vs Uwais Ahmed Khan (1982-88) KAR as follows:
- ‘An appellate court will not disturb an award for general 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 either inordinately high or low.’
7. The injuries sustained by the appellant were not contested. According to the medical report by Dr. Wokabi he was treated after sustaining a compound (open) fracture of the right tibia, fracture of the left 4th metatarsal bone, and blunt and laceration injuries to his face. He assessed disability at 18%.
 8. In this case, the trial magistrate made an award of Kshs 350,000/- However, recent authorities where plaintiffs have sustained a single fracture of the metatarsal bone and soft tissue injuries and the courts have made awards between Kshs 350,000/- to Kshs 450,000/-. In John Mwangi Kiiru v Salome Njeri Mwangi [2019] eKLR the respondent sustained two fractures of the metatarsal bones and was awarded Kshs 450,000/- while in Anyango Oyugi & another v Dorothy Adhiambo Ogana [2022] eKLR the respondent sustained a fracture of right 3rd metatarsal bone and was awarded Kshs 350,000/-. The



award of the trial magistrate does not reflect an award in which the appellant sustained two fractures with 18% permanent disability.

9. On the other hand, the cases cited by the appellant were of plaintiffs with severe injuries compared to those he sustained herein.
10. In *Hussein Sambur Hussein v Shariff A Abdulla Hussein & 2 others* [2022] eKLR the plaintiff before the lower courts sustained fractures of the right tibia and fibula leg bones (lower 1/3 bimalleolar ankle fracture), dislocation of the right ankle, bruise on the right leg and he complained of pain in the injured areas and a permanent incapacity of 18%. The court maintained the award of Kshs 700,000/-. In *Moses Kirimi & another v GKJ (suing as the next friend of JK minor)* [2019] eKLR where the respondent sustained bruises and fracture right upper 1/3 tibia and fibula and disability assessed at 5%, the court awarded Kshs 800,000/-.
11. In this case the appellant sustained a compound (open) fracture of the right tibia, fracture of the left 4th metatarsal bone and blunt and laceration injuries to his face. He assessed disability at 18%. Therefore, I find that the award of Kshs 350,000/- in the circumstances was on the lower side.
12. Consequently, I set aside the award of general damages of Kshs 350,000/- and substitute the same with an award of Kshs 800,000/-. The appellant shall have the cost of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 13TH DAY OF DECEMBER 2024

R.E. OUGO

JUDGE

In the presence of:

Miss Oginda h/b Miss -Nyabuto For the Appellant

Respondent - Absent

Kizito - C/A

