



**Macharia v Kamande & another (Civil Appeal E022 of 2022)  
[2024] KEHC 16314 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E022 OF 2022  
HM NYAGA, J  
DECEMBER 16, 2024**

**BETWEEN**

**CHARLES GITAHU MACHARIA ..... APPELLANT**

**AND**

**LABAN ITUTHU KAMANDE ..... 1<sup>ST</sup> RESPONDENT**

**MOSES NDUNG’U ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. A.MUKENGA  
(SRM) delivered 16th February, 2022 in Molo CMCC No. 31 of 2020)*

**JUDGMENT**

1. This judgment determines the appellant’s appeal filed on 18<sup>th</sup> February, 2022 vide Memorandum of Appeal dated 18<sup>th</sup> February, 2022.
2. The Appellant who was the plaintiff before the trial court pleaded that he was injured following a road traffic accident that occurred on 23<sup>rd</sup> November, 2019. The accident occurred while he was riding his motor cycle registration No. KMEE 976 S along Mau- Narok to Mwisho wa Lami. According to the Appellant, the accident was caused by the 2<sup>nd</sup> Respondent’s motor vehicle registration No. KCR 144 J which was being driven in negligent manner by the 1<sup>st</sup> Respondent thus encroaching on his lane as a result of which an accident occurred. The Appellant claimed that he sustained severe injuries as a result of the accident.
3. The issue of liability was settled by consent in the ratio 85:15 in favour of the Appellant. After conducting a hearing, the trial magistrate entered judgement for the Appellant against the Respondents jointly and severally as follows: -
  - a. General Damages for pain and suffering- Ksh. 1,200,000/=



- b. Special Damages – Ksh. 107,950/=
- Total- Ksh. 1,307,950/=
- Less 15% Contributory Negligence- Ksh. 196,192.50
- Net Award- Ksh. 1,111,757.50

### **The Appeal**

- 4. It is that judgment that gave rise to this appeal where the appellant complains that;
  - a. That the Learned trial Magistrate erred in Law in awarding general damages which were inordinately low and not commensurate to the injuries sustained and does not accord to the principle for award of damages and decided authorities.
  - b. That the Learned trial Magistrate erred in Law and fact in failing or ignoring to consider the submissions of the Appellant.
  - c. That the Learned trial Magistrate erred in Law and fact in failing to appreciate the respondent’s injuries thereby awarding general damages that were inordinately low.
  - d. That the Learned trial Magistrate’s Judgement on quantum is unreasonable and untenable in Law.
- 5. The Appellant thus prayed that:
  - i. The finding of the trial magistrate on quantum be set aside, reviewed and or revised and or substituted with the judgement of this Honourable Court.
  - ii. This Honourable Court do make such further orders as it may deem fit.
  - iii. This Appeal be allowed with costs to the Appellant.
- 6. The Appeal was canvassed by way of written submissions. Both parties filed their respective submissions.

### **Appellant’s Submissions**

- 7. The Appellant referred this court to the injuries he sustained as captured in the Medical Report by DR. Kiambaa dated 17<sup>th</sup> January,2020 and his evidence that following the accident he is unable to run and sit or stand for long, that he walks with the assistance of a walking stick and that he is also unable to farm and cater for basic needs of his family in terms of food, shelter, clothing and educational needs of his children.
- 8. He argued that his injuries were uncontroverted and prayed that an award of Ksh. 5,000,000/= would suffice as general damages.
- 9. In buttressing his submissions, he relied on *Peace Kemuma Nyangera V Michael Thuo & Waiganjo Janet* [2014] e KLR where the plaintiff sustained multiple fractures of the sacrum bone, right superior pubic ramus and right ischium inferior bone with multiple soft tissue injuries, she was awarded kshs 2,500,000 general damages for pain, suffering and loss of amenities and *Florence Hare Mkaha V Tawakal Mini Coach & Mohammed Athman* [2012] e KLR where the court awarded Kshs 2,500,000/= for fractures of the iliac crest, fracture of the acetabulum roof and superior ramus on the left pubic and other soft tissue injuries.



10. The Appellant submitted that considering he sustained more serious injuries compared to the claimants in the above authorities and taking into account the passage of time and rate of inflation, the proposed award of Kshs 5,000,000/- general damages was reasonable.
11. On costs, the Appellant relied on Section 27 of the *Civil Procedure Act* and the case of Republic vs Rosemary Wairimu Munene (ex parte applicant) Ihururu Dairy Farmers Cooperative Society Ltd (2014) eKLR for the proposition that costs are discretionary and they follow events, and prayed that he be awarded costs of this appeal.

### **Respondents' Submissions**

12. In reply, respondents submitted that the award of the trial court was commensurate with the judicial trends. The Respondents cited the cases of Patrick Kinyanjui Njama v Evans Juma Mukweyi [2017] eKLR where the respondent suffered segmental fracture of the right femur mid shaft; segmental fracture of the right tibia shaft (open); fracture of the right fibula; and, fracture of the left 3<sup>rd</sup> metatarsal bone with recovery was expected in one and a half years and further surgery estimated at Kshs 50,000 to remove the metal plates leading the doctor to access disability at 30%, injuries which in my mind were far serious than those suffered by the respondent herein, the court upheld the award of Kshs. 1,500,000 for general damages & George William Awuor v Beryl Awuor Ochieng [2020] eKLR where the respondent suffered fractures of the right femur and left tibia fibula, and the doctor noted that the tibia fibula fractures were compound while the femur fracture was simple. It was also noted that the respondent's right thigh had surgical scars and some bruising which had since healed but that the nail was still in situ and she would have to undergo surgery to remove the nail, and the Appellate court awarded set aside damages in the sum of Kshs 2,000,000 and substituted with an award of Kshs 1,200,000/=.
13. The respondents thus urged the court to maintain the award of the trial court.

### **Analysis & Determination**

14. The Appeal relates only to the issue of quantum.
15. I have considered the record, the submissions and the authorities relied on. In my view, the single issue that arises for determination is whether the general damages awarded by the trial court were inordinately low.
16. As regards an appeal on the quantum of an award, the Court of Appeal's decision in *Gitobu Imanyara & 2 others vs Attorney General* [2016] eKLR, gives guidance on the applicable principle. The Court held:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled”.
17. Therefore, this court will not interfere with an award of damages by the lower court merely because it would have arrived at a different decision.



18. The injuries sustained by the Appellant are not disputed. The Respondent pleaded that he sustained; Anterior dislocation of the left wrist joint with anterior dislocation of the lunate. Fractures of the left lower sacrum segment 4 and 5. Severe separation (diastasis) of the symphysis pubis. Separation of the left sacro-iliac joint. Comminuted fracture of the left tibia in the lower one third. Transverse fracture of the left fibula in the lower one third. Oblique fracture of the left fibula in the proximal third. Large hematoma anterior to symphysis pubis.
19. Dr. W. Kiamba, who examined the Appellant and prepared the medical report, confirmed the Appellant sustained the above injuries and in addition indicated that movements of his left wrist joint, left knee and ankle joints are restricted. He noted that he had not recovered from the above injuries and classified the degree of injury as grievous harm.
20. The trial court, in awarding Ksh. 1,200,000/= as General Damages, was guided by the case of Dennis Nyamweno Openda Vs Anwarali & Brothers Limited & Another [2015] eKLR where the plaintiff suffered fractured left clavicle, fractured right humerus, unstable multiple fractures of the pelvic bones (open book pelvic fracture), lacerated scalp wounds, right radial nerve injury leading to a right wrist drop and muscle wasting, blunt chest wall injury and urethral strictures complicating pelvic fracture and prolonged catheterization. The Plaintiff was admitted in the Intensive Care Unit (ICU) for over three weeks both at Nakuru Provincial Hospital and Kijabe Mission Hospital and permanent disability was assessed at 40%. The court awarded him general damages of KShs. 1,800,000/= in the year 2015.
21. The Court of Appeal in Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR stated that “comparable injuries should attract comparable awards”.
22. Having considered the decisions that are on record, it is my considered view that the cases that come nearest to the instant case are Dennis Nyamweno Openda Vs Anwarali & Brothers Limited & Another (supra) & Peace Kemuma Nyangera V Michael Thuo & Waiganjo Janet (supra).
23. Looking at these authorities and the injuries sustained by the appellant, I am of the view that the award by the trial court was inordinately low and thus this court ought to revise the same.
24. Accordingly, considering the passage of time and incidence of inflation, I am of the view that an award of Kshs 1,600,000/= would have been adequate compensation as general damages for the injuries sustained by the Appellant.
25. I am thus inclined to find that the trial court made an award that was inordinately low considering the nature of the injuries, the passage of time and rate of inflation.
26. I therefore set aside the award of kshs 1,200,000/- for pain and suffering by the trial magistrate and in its place award an amount of kshs 1,600,000/- less 15% contribution as agreed in the lower court.
27. Each party to bear their own costs of this appeal.
28. Orders accordingly.

**SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16<sup>TH</sup> DAY OF DECEMBER 2024.**

**H. M. NYAGA**

**JUDGE**

In the presence of;

