

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. 189 OF 2023

PETER MUSEMBI
KAMAKYAAPPELLANT

-VS-

JACINTA MARIA KIOKO
RESPONDENT

(Being an appeal from the judgment delivered by Hon. D. N. Sure (PM) delivered on 25th July 2023 in Kangundo Civil Case No. 130 of 2019)

JUDGMENT

1. This appeal concerns quantum only. In the trial court, the Respondent sued the Appellant seeking general and special damages of Kshs.3,700/= arising from a road traffic accident that occurred on 4th September 2018. According to the Plaint, the Appellant was sued as the registered owner of motor vehicle registration number KCG 623T. At the time of the accident, the Respondent was a passenger on board the said motor vehicle (“the subject motor vehicle”).
2. It was alleged that the subject motor vehicle was being driven negligently and carelessly, lost control, veered off the road, and overturned. As a result, the Respondent

sustained severe bodily injuries and suffered loss and damage.

3. In his Defence, the Appellant denied the claim, and the matter proceeded to full hearing. Upon conclusion, the trial court found the Appellant wholly (100per cent) liable for the accident and accordingly awarded the Respondent Kshs.800,000/= as general damages and Kshs.3,700/= as special damages.
4. Aggrieved by the trial court Judgment the Appellant filed this appeal vide the Memorandum of Appeal dated 11th August 2023. The grounds cited are that the Learned trial Magistrate erred in law and fact in finding that the Respondent was entitled to general damages of Kshs.800, 000/=, granting damages that were excessive in view of the evidence tendered; failing to consider the Appellant's evidence on quantum and failing to consider conventional awards in similar cases.
5. The Appellant therefore prayed that the judgment of the trial court to be set aside, the award reassessed, and this appeal be allowed with costs.
6. The appeal was canvassed through written submissions. Despite this Court's directions issued on 5th February 2025, requiring the Appellant to file written the appellant failed to comply. The court record only contains the Respondent's submissions, dated 26th March 2024.

Respondent's Submissions

7. The Respondent began her submissions with a brief outline of the proceedings before the trial court. She identified two issues for determination: whether the Learned Trial Magistrate applied the correct principles of law and the available facts in assessing damages payable to the Respondent, and whether the Learned Trial Magistrate's determination on the amount awarded was inordinately high as to represent an entirely erroneous estimate of compensation.
8. Relying on Section 107(1) of the Evidence Act, the Respondent submitted that she testified under oath and called one witness, PW2, Dr. Okere, who produced a medical report. She emphasized that the Appellant did not call any witness, rendering her testimony remained uncontroverted. She further urged that, as a passenger on board the Appellant's motor vehicle, she was entitled to be transported in a manner that would not expose her to loss, damage, or injury. Accordingly, she maintained that the trial court did not err in law or in apportioning liability at 100% in her favour, and urged this Court to uphold the same.
9. On the issue of assessment of damages, the Respondent submitted that it was undisputed that she sustained bodily injuries as particularised in her pleadings and corroborated by the medical report dated 6th May 2019 and the P3 Form. She also stated that she was examined by the Appellant's doctor, Dr. Jennifer Kahuthu, whose

report confirmed she suffered a fracture of the right mid clavicle and a dislocation of the right ankle joint as a result of the accident.

10. The Respondent argued that trial court are not bound to adopt authorities cited by the parties, as the court retains discretion to consider and rely on any relevant authorities. She maintained that the award of Kshs.800,000/= in general damages was reasonable and appropriate, considering the nature of her injuries and comparable awards adjusted for inflation. She further contended that the Appellant had not demonstrated that the trial court's assessment was based on any wrong principle or that the award was so inordinately high as to warrant interference by this Court.
11. In conclusion, the Respondent urged this Court to dismiss the appeal with costs.

Analysis and Determination

12. As this is a first appeal, this court is duty bound to re-evaluate and assess the evidence and make its own conclusions. However, it must in mind that a trial court, unlike the appellate court, had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand. The foregoing duty was succinctly stated by the Court of Appeal in the case of **Selle v Associated Motor Boat Company Ltd (1968)**

EA 123 and Peters v Sunday Post Limited [1985] EA 424).

13. Upon careful analysis of the trial court file, the documents filed therein and the Respondent's submissions the sole issue for determination is:

Whether the award of Kshs.800,000/= as general damages by the trial court was excessive or so inordinately high as to warrant interference by this Court on first appeal.

14. The principles upon which this court can interfere with an award of damages made by the trial court are well settled. **In Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR, the Court of Appeal held that -**

"...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.”

15. The trial court awarded Kshs.800,000/= as general damages for the injuries suffered by the Respondent. These injuries were outlined in paragraph 5 of the Plaint dated 30th May 2019. The medical report produced by PW2, Dr. Okere, dated 6th May 2019, confirmed that the Respondent sustained a fracture of the right mid clavicle, dislocation of the right ankle joint, and bruises on the ankle. A second medical report by Dr. Jennifer Kahuthu, dated 14th June 2021, corroborated these findings, noting injuries to the right shoulder and right ankle. Both doctors assessed permanent incapacity at 10%.

16. While the Appellant challenged the award as excessive and unjustified, he did not submit on the issue or propose an alternative quantum. Conversely, the Respondent, maintained that the award by the trial court was well-founded, justified and supported by evidence.

17. Notably, the trial court based its award on the authority of **Ann Ayuma Harrison versus Simon Githure Marungo [2014] eKLR**. I have also considered other comparable awards as follows;

a) In Osienya v Wamalwa (Civil Appeal E160 of 2023) [2024] KEHC 14208 (KLR) (14 November 2024) (Judgment)

the court upheld the awarded in the sum of Kshs.600,000/= for injuries including a fracture of right clavicle and dislocation of the shoulder joint and swollen shoulder,

b) In **Monicah Wangui Mundia v Simon Njuguna [2020] KEHC 6193 (KLR)**, the court awarded the sum of Kshs.750, 000/- for general damages pain and suffering and kshs.250,000/- for loss of earning capacity. The injuries included, fracture of pelvis, Commuted fracture of the clavicle, soft tissue injuries of the left shoulder joint and Deep cut wound on the left hand together with Permanent disability assessed at 5%.

18. Taking into account the nature and extent of the Respondent's injuries. The awards in similar cases, and prevailing inflationary trends, this court finds that the award of Kshs.800,000/= general damages was sufficient to compensate the Respondent for the injuries sustained. It is neither inordinately high nor low and does not warrant interference.

19. Based on the foregoing analysis, there is no misdirection in law, fact or principle that would warrant this Court's interference with the findings and judgment of the trial court.

20. Accordingly, the appeal herein lacks merit and is hereby dismissed. The trial court's judgment on general damages is upheld.

21. The Appellant shall bear the costs of this appeal.

Orders accordingly.

Dated, signed and delivered at Machakos this 14th day of October, 2025

RHODA RUTTO
JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant