Mohamed v HMB (Minor suing through Amina Deche Ziya) (Civil Appeal E004 of 2023) [2025] KEHC 13905 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13905 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARSEN

CIVIL APPEAL E004 OF 2023

JN NJAGI, J

OCTOBER 2, 2025

BETWEEN

FATUMA ABDI MOHAMED .... APPELLANT

AND

HMB (MINOR SUING THROUGH AMINA DECHE ZIYA) .... RESPONDENT

(Being an Appeal from the judgment and decree of Hon. E. Kadima, Senior Resident Magistrate, in Garsen PM's Court Civil Suit No. 54 of 2019 delivered on 10/3/2022)

JUDGMENT

1. The Respondent herein brought suit against the appellant wherein she was seeking general and special damages after she was injured in a road traffic accident while travelling in a motor vehicle owned by the Appellant. She blamed the Appellant for being liable for the accident. After the trial, the trial magistrate found the Appellant to have been wholly liable for the accident and awarded the Respondent Ksh.900,000/= in general damages for the injuries suffered. The Appellant was aggrieved by the judgment of the trial court and lodged this appeal. The grounds of appeal are that:

    1. That the learned trial magistrate erred and misdirected himself by relying on wrong principles when determining liability and assessing damages that were awarded to the Respondent.

    2. That the learned trial magistrate erred and misdirected himself and failed to apply precedents and principles of the law applicable in awarding damages.

    3. That the learned trial magistrate erred and misdirected himself by awarding a sum in respect of damages which was inordinately high in the circumstance thereby occasioning a miscarriage of justice.

    4. That the learned trial magistrate erred in law and in fact by failing to adequately evaluate the evidence thereby arriving at a decision unsustainable in law.

5. That the learned trial magistrate erred and misdirected himself by ignoring the defendant's submissions on record hence arriving at a wrong decision in awarding damages.

2. The appellant sought to have the appeal allowed and the judgment and decree of the trial magistrate be set aside and the award be re-assessed.

Submissions

3. The appeal was canvassed by way of written submissions of the respective counsels appearing for the parties. The appellant submitted that a re-evaluation of the quantum was necessary as the injuries sustained were not severe. That it is trite law that assessment of quantum of damages in a claim for general damages is a discretionary exercise that has set dimensions that must be exercised judiciously. The discretion ought to be disturbed if the trial court took into account an irrelevant factor, if the trial court left out a relevant factor or the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.

4. It was further submitted that it is trite law that the awards must be within consistent limits and damages must be made while taking into account comparable injuries or similar injuries and awards. Reliance in this respect was placed in the case of Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd [2013] eKLR and that of Kigaraari v Aya [1982-88] 1 KAR 768 as quoted in Godfrey Wamalwa Wamba & another v Kyalo Wambua [2018] eKLR.

5. It was submitted that the injuries suffered by the Respondent were mild hence an award of Kshs. 600,000/- would have been reasonably sufficient. That the award given was unjustified and was inordinately high as to warrant the intervention and revision by this court.

6. The Respondent on the other hand submitted that the Appellant in his memorandum of appeal contends that the trial court misdirected itself by relying on wrong principles when determining liability.

7. It was submitted that the respondent testified in the case and her evidence was corroborated by the police officer. That the appellant did not call any witness to challenge the evidence of the respondent. In any case that the respondent was a passenger in the accident motor vehicle and had no control over it. She could thus not have caused the accident. That in view of the fact that the appellant did not call evidence in the case their pleadings remained mere statements of fact and were unsubstantiated. Reliance in this respect was placed in the case of Trust Bank Limited v Paramount Universal Bank Limited & 2 others, Nairobi [Milimani] HCCS No.1243 of 2001.

8. On quantum of damages, the respondent submitted that the Appellant did not dispute the fact that the Respondent did sustain the injuries as contained in the medical report of her doctor. They supported the award of the trial magistrate.

Analysis and determination

9. The duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions. This principle was articulated in Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR where the Court of Appeal stated as follows:

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine

whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

10. Though the Appellant in her memorandum of appeal challenged the trial court`s determination on liability, she did not make any submissions on the issue. She did not call evidence in the case. The evidence of the respondent as to how the accident occurred was thus not challenged. The trial magistrate was correct in finding the appellant wholly liable for the accident.

11. On quantum of damages, the issues for determination are whether the award of general damages of Kshs. 900,000.00/= is inordinately high in light of the injuries suffered by the minor as to warrant interference by this court and whether the trial court failed to apply the correct principles of law applicable in awarding damages.

12. The principles that guide an appellate court on whether or not to interfere with the decision of the trial court are as was stated by the Court of Appeal in Kemfro Africa Limited T/A "Meru Express Services 1976" & Gathogo Kanini v A. M. Lubia & Olive Lubia [1982 – 1988] 1 KAR 727, where Kneller J. A. said:

> " The principle to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge in assessing the damage took into account an irrelevant factor, or left out of account a relevant one or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

13. The Medical report by Doctor Ajoni Adede dated 10th July, 2019 was to the effect that the minor who was 7 months at the time of the accident suffered multiple linear skull fractures [bilateral parietal and right temporal] and blunt object injury to the head.

14. The Appellant submitted that the injuries suffered by the minor were mild and did not warrant an award of Ksh.900,000/= in damages. They proposed an award of Ksh.600,000/= and relied on the case of Jitan Nagra Abidnego Nyandusi Oigo [2018] eKLR where an award of Ksh.1,000,000/= was reduced to Ksh.450,000/= in a case where the respondent had sustained compound fracture of the tibi/fibula, segmental distal fracture of the right femur, deep cut wound on the back, right knee and lateral lane and other soft tissue injuries. I have however noted that the injuries therein did not involve skull fractures as in the present case.

15. Counsel also made reliance in the case of Gladys 0Lvaka Mwombe v Francis Namatsi where Ksh.300,000/= was awarded for head injury, fractures of left lower tibia and fibula and other soft tissue injuries. Further reliance was placed in the case of Barnabas v Ombati [Civil Appeal E43 of 2021 [2022] KEHC 12136 [KLR] [28 July 2022] [Judgment] where the court declined to interfere with an award of Ksh.800,000/= where the respondent had sustained head and chest contusion, bruises on the right hand and waist and fracture of the right femur, fracture of right humerus and fracture of the pelvic.

16. The Respondent on the other hand submitted that the trial court did not err in awarding the sum of Ksh.900,000=. They relied on the case of P. N Mashuru Limited v Omar Mwakoro Makenge [2018] eKLR where the Plaintiff sustained fracture of the temporal bone with haematoma, head injury to the right frontal parietal bone with brain oedema and the court awarded a sum of Kshs. 1,200,000/-

17. They also relied on Sosphiant Company Ltd and another v Daniel Nganga Kanyi Civil Appeal HCCC No. 315 of 2001 where Ksh 2,000,000/= was made for compound depressed skull fractures of the right frontal bone.

18. The Respondent submitted that the award of the trial court was reasonable and fair.

19. The trial court in arriving at its decision relied on the case of Civil Appeal No. 2 of 2010 Julius Chelule Jessikay Enterprises Ltd v Nathan Kinyanjui where an award of Ksh.600,000/= was upheld by the High Court for linear fracture to the skull and bruised left knee with a small cut wound. The court considered the aspect of inflation since the time the said award was made and awarded the sum of Ksh.900,000/=.

20. It is trite law that comparable injuries should be compensated by comparable awards. It is however to be noted that injuries in one person will never be fully comparable to injuries in another person. What a court has to ensure is that as far as possible comparable injuries are compensated by comparable awards while taking into account the after effect of the injuries on the claimant, see Odinga Jacktone Ouma V Moureen Achieng Odera [2016] eKLR. In Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 [2014] eKLR, the Court of Appeal observed that:

    The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.

21. I have considered the authorities cited by both sides vis a vis the injuries suffered by the Respondent. The minor herein suffered multiple skull fractures which in the opinion of Dr. Adede were grievous. The doctor noted that there was no deformity and that owing to the youthful age of the minor, she was expected to regain full recovery within two years with no residual disability.

22. I find the authority cited by the trial magistrate in the case of Julius Chelule Jessikay Enterprises Ltd v Nathan Kinyanjui [supra] to have comparable injuries to those sustained by the respondent herein, save that the respondent therein had suffered one skull fracture while in this case there were multiple fractures [3 of them]. In the case of Kyoga Hauliers [K] & another v. Philip Mahiu Nyingi [2017] eKLR, the court affirmed an award of Ksh.1,000,000/- for cut wound on the scalp with depressed fracture of the skull and pain and swelling of the right ankle joint.

23. In view of the fact that the respondent minor in this matter suffered multiple skull fractures, I do not think that the award of Ksh.900,000/= was inordinately high or excessive. I am therefore not persuaded that the trial magistrate proceeded on wrong principles or misapprehended the evidence in some material aspect in arriving at the figure of Ksh.900,000/=. I accordingly uphold the award.

24. The respondent to have the costs of the appeal.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 2ND DAY OF OCTOBER 2025

J. N. NJAGI

JUDGE

In the presence:

Mr. Njuguna for Appellant

Mr. Kilonzo for Respondent

Court Assistant – Ms Rahma