

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**CIVIL APPEAL NO. E311 OF 2023**

**GEOFFREY                      GITHUA                      RIITHO.....1<sup>ST</sup>**  
**APPELLANT**

**PAUL                      MUCHEMI                      NDIRITU.....2<sup>ND</sup>**  
**APPELLANT**

**VERSUS**

**MARY                      NDANU                      NGULUTU.....**  
**RESPONDENT**

*(Being an appeal from the judgment of the Hon D. M Kivuti  
Senior Resident Magistrate delivered on 26<sup>th</sup> September 2022 in  
Milimani CMCC 9375 of 2019)*

**JUDGEMENT**

1. The appeal herein arises from a claim based on tort of negligence instituted via a Plaint dated 2<sup>nd</sup> December 2019, where the Respondent, being a pedestrian, was involved in a road traffic accident with motor vehicle registration number KCJ 092H along Ronald Ngala street Nairobi. It was alleged that as a result of the accident the Respondent sustained injuries to wit:
  - i. *Blunt injury to the right hip and right ankle*
  - ii. *Recurrent pains on the right hip*
  - iii. *Recurrent pains on the right ankle*
  - iv. *Tender hip joint movements*
  - v. *Tender right ankle joint movements*
2. The Respondent prayed for special damages at Ksh. 3,550.00, general damages, interests and costs of the suit.
3. The matter proceeded to hearing undefended as the Appellant did not participate in the hearing. The

Respondent testified as a sole witness and produced the bundle of documents in evidence.

4. At the end of the trial, the trial court found that the question of liability was unchallenged and proceeded to assess the same at 100%. On quantum, the trial magistrate assessed general damages at Ksh. 200,000.00 as the Respondent sustained soft tissue injuries. Special damages were assessed as prayed and awarded at Ksh. 3,550.00.
5. Ultimately, judgment was entered in favour of the Respondent against the Appellant for Ksh. 203,550.00 and interest from date of judgment. Costs were also awarded to the Respondent.
6. Being aggrieved and dissatisfied with the judgment of the court, the Appellant lodged the appeal herein via a Memorandum of Appeal dated 17<sup>th</sup> April 2023 urging the following grounds:
  - i. The learned magistrate erred in law and fact in entering judgment for the Respondent against the Appellants;
  - ii. The learned magistrate erred in law and in fact in finding that the Respondent was entitled to general damages and loss of amenities at Ksh. 200,000.00 which was inordinately high compared to the injuries suffered by the Respondent;
  - iii. The learned magistrate erred in law and in fact in failing to appreciate the long-established principle of stare decisis, precedent law thus making an erroneous award for damages;
  - iv. The learned magistrate erred in law and fact in failing to appreciate that the Respondent's pleadings and

evidence tendered in court were incapable of sustaining such a high award of damages;

- v. The learned magistrate erred in law and fact in entering judgment in favour of the Respondent against the Appellants despite the Respondent's failure to establish her case on quantum.

7. The Appellants therefore prayed that the judgment of the trial court be set aside.

8. Ultimately, the appellant summarized his appeal to be an appeal against quantum.

9. By consent of the parties, the appeal was disposed through written submissions.

10. The Appellants submitted that Kshs. 200,000.00 was inordinately high considering that the Respondent had suffered soft tissue injuries on the back and on the shoulder. Instead, it was submitted that a sum of Ksh. 100,000.00 would be most appropriate. Reliance was placed on the case of **Ndungu Dennis v Ann Wangari Ndirangu & another [2018] eKLR** which awarded Ksh. 100,000.00 for similar injuries and **HB (Minor suing through mother & next friend DKM) V Jasper Nchonga Magari & Another [2021] eKLR** where the Claimant sustained blunt object injury to the head, neck, thorax, abdomen and limbs and was awarded Ksh. 60,000.00 in urging this honourable court to substitute the award of Ksh. 200,000.00 with that of Ksh. 100,000.00

11. The Respondent on the other hand submitted that the award of Ksh. 200,000.00 by the trial magistrate was reasonable taking into account comparable awards and inflation. Therefore, this honourable court should not disturb the finding of the trial magistrate on general

damages. Reliance was placed on the authorities that the Respondent had filed at the trial court, being: **Kitale Hauliers Limited v Emmanuel Soita Simiyu [2013] eKLR Civil Appeal 107 of 2010** where the Plaintiff was awarded Ksh. 200,000.00 for sustaining painful shoulders, bruises on right forearm, and left upper arms and bruises on the knee. Further reliance is placed on **G4S Security Services Limited v Oyugi Obiria [2018] eKLR, Civil Appeal 19 of 2016** where the Plaintiff was awarded Ksh. 180,000.00 for blunt trauma to the neck, blunt injury to the back, tenderness to the right ear, blunt injury to the anterior chest and swollen right hand.

12. The Respondent therefore urged this honourable court to uphold the finding of the trial court.

13. I have noted that the appeal herein is only on the question of quantum. Upon considering the pleadings, the submissions and the authorities, the issue that commend itself for determination is whether the award of Ksh. 200,000.00 general damages was reasonable in the circumstance.

14. It is trite law that 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. As the Court is re-evaluating the evidence, it is required to 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 ..."***

15. 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.

16. This principle was restated by the Court of Appeal in ***Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47***, where the Court said:

***" In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."***

17. The principle underscores that the interference of the trial Court's award of damages should occur at very exceptional circumstances, especially where the trial Court acted on wrong principle of law, or misapprehended the facts, or made a wholly erroneous estimate of the damage suffered. This rule was succinctly articulated 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.”***

18. The Appellant does not suggest that the trial court misapprehended the facts on the injuries sustained by the Respondent. In the judgment, the trial Court held that “[the Respondent] had sustained soft tissue injuries as per the medical report by doctor Okere, The Appellant does not question this finding in this Appeal. In any way, the Appellant did not file any second medical report at the trial Court to refute the Respondent’s evidence that she had suffered the said injuries. I thus hold that the trial Court did not err in finding that the Respondent sustained the said injuries.

19. An appellate Court can rightly interfere with an award for damages if it finds that the award was a wholly erroneous estimate of the damage suffered. Courts have established parameters that should help an appellate Court determine whether a particular award of damages is an erroneous

estimate of the damage suffered. In **Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another [2017]eKLR**, the court held:

- i. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.*
- ii. The award should be commensurable with the injuries sustained.*
- iii. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.*
- iv. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account*

20. Similarly, 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 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. ..., 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.”***

21. The above authorities underscore the principle that, generally, the Courts should make similar awards for persons who have suffered similar injuries. They also

mandate the appellate Court to conduct a comparative analysis of injuries sustained and the extent of the awards made for similar injuries in previous decisions.

22. In the instant case, the Respondent sustained soft tissue injuries, namely, Blunt injury to the right hip and right ankle, recurrent pains on the right hip, recurrent pains on the right ankle, tender hip joint movements and tender right ankle joint movements. She did not suffer permanent disability. The sustained soft tissue injuries were managed and had healed. The trial Court assessed these facts and awarded her Kshs.200,000/= for the injuries.

23. In **Jyoti Structures Limited & another v Truphena Chepkoech Too & Another [2020] eKLR**, the High Court awarded Kshs.125,000 to a person who had sustained blunt injuries to the head, neck, chest, back, and both thighs. It also made a similar award for a second person who had sustained bruises on the parietal scalp, blunt injury to the chest, and deep cut wounds on the right forearm and right hand. I note that the case was not only decided 4 years ago but also the 2 complainants in that case suffered more injuries than the respondent in this case.

24. In **Ndungu Dennis v Ann Wangari Ndirangu [2018] eKLR** the court awarded Kshs. 100,000 for soft tissue injuries to the lower right leg and soft tissue injuries to the back.

25. In **Adembesa & Another v Gweno (Civil Appeal E192 of 2023) [2024] KEHC 5379 (KLR)**, the High Court awarded 120,000 to a person who had sustained soft tissue injuries to the head, back, chest, shoulders, elbow joints and knees. The Respondent in the current case

suffered similar soft tissue injuries, only that for her, she did not suffer such injuries on the back, chest, shoulders, elbow joints and knees.

26. Taking into consideration the actual injuries suffered by the Respondent herein it becomes obvious that the injuries similar to the respondent in **Ndungu Dennis v Ann Wangari Ndirangu** (*supra*).

27. It is also trite that in assessing compensatory damages, the Law seeks at most to indemnify the victim for the loss suffered, but not to nobble the tort feisor for the injury he has caused. The court in **Ramadhan Kamora Dhadho v John Kariuki & another Civil Appeal No. 27 of 2015 [2017] eKLR** opined thus:

***“There is no amount of compensation which can restore or renew the physical frame of the victim arising out of injuries occasioned in an accident. Secondly, the assessment and award of damages should not be construed as punishment to the defendant who has been held liable for the claim. Thirdly, while exercising discretion courts should endeavour to be moderate underpinning the decision on the well settled principles to avoid disparity on similar cases and facts.”***

28. In light of the above, I am persuaded that the award made by the learned trial magistrate was on the higher side. Accordingly, and for reasons stated, I allow the appeal, and set aside the award of Kshs. 200,000.00 by substituting it with Kshs. 120,000.00 considering the salvage of inflation as an additional factor.

29. Final orders: ***The appeal is allowed. Judgement delivered on 26<sup>th</sup> September 2022 and award of***

***Kshs. 200,000 is set aside and substituted with Kshs. 120,000.00. Each party shall bear its own costs for this appeal.***

30. Thirty (30) days stay of execution orders to apply.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. Ouya  
JUDGE**

ORIGINAL