



**Makola v Wamaitha & another (Civil Case E006 of 2024)
[2024] SCC 7 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] SCC 7 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
CIVIL CASE E006 OF 2024
FM MULAMA, RM
NOVEMBER 15, 2024**

BETWEEN

ANNE NZIOKA MAKOLA CLAIMANT

AND

CAROLYNE WAMAITHA 1ST RESPONDENT

JULIET WANJIRU KUNG’U 2ND RESPONDENT

JUDGMENT

A. Introduction.

1. By a statement of claim dated 9/10/2024 the claimant seeks the following reliefs from this court;
 - a. General and exemplary damages for battery
 - b. Special damages of Kshs.10,900/=
 - c. Costs and interests.
2. The claim was duly served but the respondents gave it a wide birth and as such it proceeded by way of formal proof. I have thus considered the statement of claim and the evidence and/or documents in support as well as the submissions and authorities filed.
3. It is the claimant’s testimony that on 27/5/2024 the respondents went to her salon in Witu at around 1700 hours and accosted her by use of blows and kicks without any justifiable reason until she was rendered unconscious and, in the process, smashed and/or destroyed 2 plastic chairs, a blow dryer machine and a tecno phone.
4. It was further her evidence that as a result of the assault she sustained a cut wound on the lower lip, tender suprapubic region, bruises on the left upper limb, tender thighs bilaterally and a cut wound at the right mid sole.



5. She further pleaded for special damages of Kshs.10,900/= and particularized the amount as against the 3 items that were destroyed in the ensuing melee.

B. Issues for Determination.

6. The issues for determination are;
- a. Whether the respondents are liable for committing the tort of battery.
 - b. What are the awardable damages
 - c. Who bears the costs of the claim.

C. Analysis and Determination.

7. The *Black's Law Dictionary* at Page 173 defines a 'battery' as follows:-

- “ 1. Criminal law. The use of force against another, resulting in harmful or offensive contact –
2. Torts. An intentional and offensive touching of another without lawful justification. Also termed tortious battery.....

A battery is the actual application of force to the body of the prosecutor. It is, in other words, the assault brought to completion. Thus, if a man strikes at another with his cane and misses him; it is an assault; if he hits him, it is a battery...”

8. From the definition above and the evidence by the claimant and in the absence of any rebuttal from the respondents, the claimant was hit by the respondents for no apparent reason. They found her at her place of work and for no apparent reason descended on her with blows and kicks.
9. That as a result of the attack she sustained injuries and she went to seek for medical attention. A P3 was filled and filed in court confirming the injuries sustained by the claimant. The examining doctor opined that the degree of injury was harm.
10. It is therefore the finding of the court in the absence of any evidence to the contrary or to controvert the evidence of the claimant, the respondents are to be blamed 100% jointly and severally for the injuries sustained by the claimant.
11. Having found that the respondents are to be blamed for the tortious act of battery it is time to find and award what would be in my view adequate compensation for the injuries sustained by the claimant.
12. I agree with the claimant's submissions and the decision in *Stanley Maore v Geoffrey Mwenda* Nyr CA Civil Appeal No. 147 of 2002 [2004] eKLR as cited with approval in the case of *Gitonga v Kalunge* (Civil Appeal E034 of 2021) [2022] KEHC 3070 (KLR) (30 June 2022) (Judgment) that similar injuries should attract similar awards in terms of compensation.
13. The claimant while placing reliance in the case of *Channan Agricultural Contractors Limited vs. Fred Barasa Mutayo* [2013] eKLR where the plaintiff was awarded Kshs.150,000/= for moderate soft tissue injuries asked the court to award her Kshs.200,000/= after considering the rate of inflation.
14. I have on my own noted that no medical report was filed in court to ascertain whether the injuries as sustained were soft tissue injuries and if they were what type they were, whether moderate or severe and as such I have no mechanism to ascertain the type of soft tissue injuries they are.



15. In the case of *Eunice Auma Onyango vs Salin Akinyi Oluoch* [2015] KEHC 1949 (KLR) [2015] KEHC 1949 (KLR) the court on appeal while dismissing an appeal sustained an award of Kshs.60,000/= for damages for battery.
16. In the absence of any indication as to the extent of the injuries sustained as stated hereinabove, I proceed and award the claimant Kshs.60,000/=
17. The claimant has also pleaded and/or prayed for special damages of Kshs.10,900/=. It is trite that such damages have to be specifically pleaded and proved. I have looked at the receipts and in my considered view they have sufficiently proved the expenses pleaded in the claim. The amount of Kshs.10,900/= has been proved and allowed.
18. Costs follow events. The claimant being the successful party, she is awarded costs of the claim.

D. Conclusion and Disposition.

19. The upshot of the foregoing I make the following final orders;
 - a. The claim succeeds and the respondents are found 100% liable jointly and severally.
 - b. The claimant is awarded Kshs.60,000/= as damages for the tort of battery.
 - c. The claimant is also awarded Kshs.10,900/= as special damages.
 - d. The claimant is awarded costs and interest of the claim. The interest on general damages from the date of judgement and special damages from the date of filing of claim until payment in full.
 - e. Let the file be closed forthwith.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 15TH DAY OF NOVEMBER 2024.

F. M. MULAMA

RM/ADJUDICATOR

In the presence of:

Court assistant: Fathiya Loo

Ms. Murimi advocate for the Claimant

