



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL NO. E009 OF 2022

BETWEEN

THE BOARD OF GOVERNORS,

UTANGWA DAY SECONDARY SCHOOL

alias UTANGWA SECONDARY SCHOOL..... APPELLANT

AND

PRISCILAN KATUMI KASANGI alias KATUMI

KASANGI..... RESPONDENT

(Being an appeal from the judgment and decree of the Tawa Senior Principal Magistrate's Court, S PMCC No. E059 of 2021, by Hon. M.K. Mutegi (Senior Resident Magistrate).

JUDGMENT

1. The Board of Governors, Utangwa Day Secondary School, alias Utangwa Secondary School, the appellant, was the defendant in Tawa Senior Principal Magistrate's SPMCC No.86 of 2019. They were sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration numbers KBT 516N, in which the respondent was a passenger. As a result of the accident, the respondent sustained injuries. The respondent was awarded Kshs. 1,427, 9300.00 in general and special damages.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Gichimu Mung'ata & Company Advocates. They raised the following grounds for appeal:
 - a) The learned magistrate erred in law and in fact by making an award of general damages that was manifestly excessive in the circumstances, thereby occasioning a miscarriage of justice.
 - b) The learned magistrate erred in law and fact and ended up misdirecting himself in awarding an exorbitant quantum of damages by failing to appreciate and be guided by

- the prevailing range of comparable awards granted for injuries sustained by the respondent herein.
- c) The learned magistrate's award was made without considering the medical evidence before the court, and failed to appreciate the nature of injuries sustained by the respondent, and failed to be guided by authorities on comparable awards.
 - d) The learned magistrate's award on damages was so high as to be entirely erroneous.
 - e) The whole judgment on quantum was against the weight of evidence before the court.
3. The respondent opposed the appeals through Annie Thoronjo & Company Advocates. She argued that the appeal lacked merit.
 4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
 5. This appeal is on the quantum of damages. The appellant argued that the learned magistrate made an error in awarding excessive general damages. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in **Nance vs British Columbia Electric Railways Co. Ltd. [1951] AC 601 on page 613**, where it stated:
The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.

6. In her submissions, the respondent requested an increase in general damages to Kshs. 2,000,000.00. This is incorrect. She could have made this argument if she had filed a cross-appeal. If her request is granted, it would amount to ambushing the appellant. This is untenable.
7. Priscilan Katumi Kasangi, alias Katumi Kasangi, the respondent, pleaded that she sustained the following injuries:
 - a) Blunt head injury;
 - b) Facial bruises;
 - c) Blunt injury to the right shoulder;
 - d) Blunt injury to the left wrist;
 - e) Blunt lower back injury;
 - f) Blunt injury to the left upper limb;
 - g) Fracture dislocation of the left shoulder joint; and
 - h) Blunt injury to the right thigh.
8. Dr Kimuyu J.M. examined her on 10th May 2019. He confirmed the injuries as pleaded. His findings were that the respondent's left upper limb was in an arm support. The left shoulder was stiff and tender. At the time of the examination, the inserted implant was still in situ and would need to be removed after the fracture had healed. He estimated the cost of removal to be Kshs. 300,000.00.
9. There was an earlier examination of the respondent by Dr Alex Ombati N. dated 30th August 2018. According to the doctor, she sustained about 70% function loss.
10. Dr Wamubugu's report dated the 1st day of November 2019 was produced. He assessed the permanent disability at 45 %.
11. These medical reports point to a serious injury.
12. In the trial court, the appellant proposed Kshs. 500,000.00, while the respondent argued that Kshs. 2,000,000.00 would be adequate compensation.
13. In **James Njau Kariuki vs Mary Goretti WaKwibubi & Joseph Wafula Ndienea [2007] KEHC 2593 (KLR)**, the Plaintiff suffered the following injuries and was awarded Kshs. 3,000,000/=for loss of amenities.
 - (i) Fracture dislocation of the left hip involving fracture of the femur.
 - (ii) Fracture of the femoral head.

- (iii) Total replacement of the left hip.
- (iv) Laceration on the forehead of 7 cm.
- (v) Cut wound over the right nostril.
- (vi) Deep cut wound on the left knee.
- (vii) Soft tissue injuries on the left side of the chest.
- (viii) Loss of libido and inability to perform conjugal rights.

14. I have reviewed the authorities cited by both parties. Given that the respondent was scheduled for another operation to remove the implant, and considering the injuries sustained, I am of the view that the ward cannot be considered excessive.

15. From the preceding analysis, I have concluded that the appeal lacks merit and the same is dismissed with costs.

Delivered and signed at Makueni, this 5th day of November 2025

KIARIE WAWERU KIARIE

JUDGE