

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E1284 OF 2024

FRED JOAB ODHIAMBO OSUMBA.....
APPELLANT

VERSUS

CHARLES OPOLLO DANGA.....
RESPONDENT

JUDGMENT

1. This is an Appeal against an award of quantum by the lower Court only. This Court as the Appellate Court is mandated to evaluate and reevaluate the evidence of the lower Court including examination of medical reports produced. I have read the authorities cited and wish to note the following;
2. Dr Cynthia Muriithi in her report dated the 16th day of April 2021 noted that the Respondent suffered disc prolapse at L4-L5 with muscle spasm and classified the injuries as "maim". This report was buttressed by Dr Ofulo of KNH which was dated the 1st day of March 2021. Dr Wambugu who relied on the same documents disputed that the Respondent suffered disc prolapse and instead stated that he suffered injuries on the back. Dr Siboko's report dated 18th March 2023 indicate that the Respondent suffered displaced fracture of S4 and S5, fracture of lumbosacral disc, muscle spasm and nerve compression. Dr Siboko awarded permanent disability at 35 percent.

3. All the doctors relied on the X-ray which was done at KNH and so I shall limit myself to this document. The X-ray clearly showed that the Respondent suffered disc prolapse and muscle spasm. This is the injury which should be considered when determining quantum. The Plaintiff's doctors clarified that the prolapse was in regard to L4-L5. No other fracture was captured by the CT scan.
4. I have considered relevant authorities and taken into account all relevant factors. This Court can only interfere with the lower Court judgement if it finds that the award was excessive. It is trite clear that an injury to the back is serious given the fact that the back bone holds the body together and significantly affects human activities like walking and working but however the award of Ksh 2,300,000 is excessive. The lower Court relied on Dr Siboko report which came two years later and included some injuries like fracture of the coccyx which was not captured by the CT scan nor was there another CT scan which was done to confirm such further injuries.
5. The conclusion if the above is that the award of the lower Court was excessive and is therefore replaced with an award of ksh 1,000,000. Special damages and liability shall remain the same. Each party shall bear own costs.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26TH DAY OF JANUARY 2026.

HON L P KASSAN

JUDGE

**In the presence of;
Mwangi for Appellant
Kuyo holding brief Waiganjo for Respondent
Carol - Court Assistant**

ORIGINAL