

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CIVIL APPEAL NO. 75 OF 2023**

**LUCY WANJIRU KAMAU.....APPELLANT**

**VERSUS**

**KENNEDY BELIO.....RESPONDENT**

*(Being an Appeal from the Judgement and Decree in Eldoret CMCC No. 189  
of 2022 delivered on 14<sup>th</sup> February 2023 by Hon. Mogire)*

**JUDGEMENT**

1. The Respondent instituted a suit in the trial court vide a Complaint dated 1<sup>st</sup> March 2022 seeking compensation in terms of general damages, special damages and costs of the suit for injuries arising from an accident which occurred on 9<sup>th</sup> February 2022. The brief facts leading to the claim were that on the material date the Respondent was a pedestrian walking along the Eldoret Kaptagat road when the Appellant, then the Defendant, negligently drove motor vehicle registration number KCN 925X causing it to lose control and cause an accident as a result of which the Respondent sustained injuries.
2. He pleaded the particulars of negligence and the particulars of the injuries sustained to wit; blunt injury to the head, right upper limb, right thigh, right knee joint, bruises and injury to the right leg. He also sought special damages amounting to Kshs. 9,600/-.
3. The Appellant filed a statement of defence dated 21<sup>st</sup> April 2022 where she denied the contents of the complaint including the occurrence of the accident and stated that, if the accident occurred, the same was due to the negligence of the Appellant. She listed the particulars of negligence and prayed the suit be dismissed with costs.

4. As the matter proceeded for hearing, the parties entered into a consent on liability to apportion the same at 80:20 in favour of the Respondent. The parties then filed submissions on quantum and the trial court apportioned damages as follows;

- 1) **Special damages Kshs. 9,600/-**
- 2) **General damages Kshs. 300,000/-**

5. Being dissatisfied with the judgment and decree, the Appellant, who the court notes did not file any submissions on quantum before the trial court, instituted the present appeal vide a Memorandum of Appeal dated 9<sup>th</sup> May 2023 premised on the following grounds;

- 1) **That the learned trial Magistrate erred in law and fact in making an award which was manifestly excessive without having regard to the injuries sustained by the plaintiff.**
- 2) **That the learned trial Magistrate erred in law and in fact in adopting the wrong principles in making a determination on the damages payable to the respondent thereby arriving at an erroneous decision.**
- 3) **That the learned trial Magistrate misdirected himself on the nature and extent of injuries suffered by the plaintiff thereby awarding damages which was inordinately high.**
- 4) **That the learned magistrate erred in law and fact in failing to take into account relevant issues and/or factors in making a**

**determination as to the damages payable thereby arriving at an erroneous decision.**

- 5) **That the learned trial magistrate erred in law and fact by failing to take into consideration and/or be guided by the relevant authorities and/or precedents with comparable injuries like the ones sustained by the respondent thereby arriving at an excessive amount payable for damages.**
6. The parties prosecuted the appeal by way of written submissions. The Appellant filed submissions dated 15<sup>th</sup> January 2024 through the firm of Messrs Onyinkwa & Co Advocates whereas the Respondent filed submissions dated 12<sup>th</sup> July 2024 through the firm of Messrs Morgan Omusundi & Co Advocates.

### **Appellants' Submissions**

7. Counsel for the Appellant set down the duty of the trial court and proceeded to submit on whether the general damages awarded by the Honourable Magistrate were excessive in the circumstances. On this issue, counsel urged that the award of Kshs. 300,000/= was excessive and the trial court did not have any regard to the injuries sustained by the respondent. She listed the injuries sustained and urged that the respondent was treated at Mediheal hospital as an outpatient as confirmed by the medical report by Dr. Joseph C. Sokobe.
8. That this confirms that the respondent only sustained minor injuries since if they were severe, the respondent would have been treated as an inpatient. That there is no evidence of admission and/or further treatment at the said

institution. That moreover, the medical report by Dr. Joseph C. Sokobe indicated that the respondent was healing very well.

9. Counsel submitted that the second medical report by Dr. Z. Gaya prepared on 30<sup>th</sup> May 2022 indicates that the respondent only suffered the following injuries: i) Bruises on the right hand ii) Blunt injury to the right thigh iii) Bruises on the right knee joint iv) Blunt injury to the right leg. According to this medical report, the respondent did not suffer any head injury and the doctor's conclusion was that the respondent was recovered with no permanent disability.

10. Counsel urged that the second medical report by Dr. Z. Gaya disputed the injuries suffered by the respondent as it did not indicate any head injury as part of the injuries. Further, that it is a well-established principle that in suits brought in respect of bodily injuries, the measure of damages is governed by the principle of restitution in integrum, that is; an award for bodily injuries is intended to be compensatory in nature such that the Plaintiff should receive in monetary terms no more and no less than the injuries sustained. Counsel submitted that the role of an appeal court as regards an appeal on quantum was well espoused by the court in **Barnabas vs. Ombati (Civil appeal E43 of 2021)**.

11. Counsel cited the decision in **Kisumu HCCA No. 30 of 2018 Joseph Mwangi Kiarie & Another vs Isaac Otieno (2019) eKLR** where the Learned Judge reviewed an award of Kshs. 300, 000 to Kshs. 180, 000 for soft tissue injuries. He urged that the appeal is merited and prayed that it be allowed with costs.

### **Respondents' Submissions**

12. Counsel for the respondents urged that in assessing damages under the limb on personal injuries, loss and damage, the trial court considered the evidence of the Plaintiff and the evidence in the medical reports on record. He urged the court to make reference to the medical reports by Dr. Sokobe which formed the opinion as to the nature of injuries suffered by the respondent. In the instant case, the trial court properly applied its mind in coming up with the award on general damages that was guided by the injuries the respondent suffered in the accident and the relevant authorities that the parties put at the court's disposal. Counsel urged the court not to interfere with the trial courts' finding on general damages.

13. On special damages, counsel urged that the respondent specifically pleaded a total of Kshs. 9,600/= special damages and the court awarded him Kshs. 9,000/= under this heading part of which was to be expended in offsetting hospital bill which the respondent stated that was justified to claim. He placed reliance on Court of Appeal's decision in **Cosmo Plastics Ltd vs Stephen Kiamba Nzura CA 117 of 2003**. He prayed the court dismiss the appeal with costs.

### **Determination**

14. The duty of the first appellate court is as was set out in **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR**, the court 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.”**

15. In **Williamson Diamonds Ltd and another v Brown [1970] EA 1**, the court held that:

**“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”**

16. The principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of **Butt v Khan [1981] KLR 470** where the court pronounced itself as follows;

**“An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”.**

17. In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles. The above said, an award on damages is a discretionary matter which is to be arrived at judiciously by a trial court. Being a discretionary matter, it is now well settled that an appellate court would rarely interfere and can only do so in line with the principles laid out in the above cited case and restated in **Kemfro Africa Ltd T/A Meru Express Services & Gathogo Kanini -Vs- Aziri Kamau Musika Lubia & Another (Nbi C.A No. 21 Of 1984)** where the Court of Appeal made the following guiding observations;

**"The principles to be applied by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, 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 have been a wholly erroneous estimate of the damages."**

18. Going forward, in the instant case, since the appeal is against the quantum awarded in general damages, I find no reason to consider the award on special damages. In **Daniel Gatana Ndungu & another v Harrison Angore Katana [2020]** eKLR, the respondent sustained a cut wound on the head, blunt injury to the right knee, multiple bruises on the upper limbs and bruises on the right knee. The court set aside the finding by the subordinate court that awarded Kshs 350,000/- in general damages and substituted it with an award of Kshs 140,000/-

19. In **Justine Nyamweya Ochoki & another v Jumaa Karisa Kipingwa [2020]** eKLR, the respondent suffered a blunt object injury to the lower lip, blunt object injury to the chest and blunt object injury to the left wrist and was awarded Kshs 300,000/=. On appeal Nyakundi J. set aside that amount and awarded Kshs 150,000/-. In **Onkoba v Nyang'au & another (Civil Appeal E008 of 2024) [2025] KEHC 3801 (KLR) (10 March 2025) (Judgment)** Magare J set aside an award of Kshs. 400,000/- and substituted it with an award of Kshs. 200,000 where the Respondent had sustained a chest contusion, bruises on the right hip, bruises trauma on the left forearm and bruises on the right hip.

20. The injuries sustained in the above cited cases are comparable to the injuries sustained by the Respondent herein and in noting that the awards therein range between Ks. 140, 000/- - Ks. 200,000/-, I am satisfied with the submission by the Appellant that the award of Ks. 300,000/- was inordinate in the circumstances and that then this is a case where the trial court gave an award that was inordinately high and therefore warrants the interference of the same by this court. I therefore find merit in the Appeal and the same is allowed in terms that the award of Ks. 300,000/- in general damages is now hereby set aside and the same is substituted with an amount of Ks. 200,000/-

**Read Dated and Signed at ELDORET on 12<sup>th</sup> March 2026**

**E. OMINDE**  
**JUDGE**