



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE

(SUB-REGISTRY)

CIVIL APPEAL NO. E002 OF 2024

SIGINAN GROUP LIMITED & STEPHEN KIPROTICH...APPELLANT

VERSUS

KIPKURUI K. VINCENT.....RESPONDENT

JUDGMENT

**(This appeal is from judgment/Decree in Eldama Ravine
CMCC NO.27 OF 2020 delivered on 5th May 2023by Hon.
Towett-Principal Magistrate)**

1. The Respondent instituted a suit against the Appellants/Defendants in the trial court on 5.6.2020 claiming general and special damages as a result of an accident which occurred on 01.12.2019 involving motor vehicle registration number KBS 543 H/Z 8469 which knocked the Respondent/plaintiff

2. The appellants/Defendants entered appearance and filed defence denying liability and stated that if an accident occurred, it was solely caused by the Respondent/plaintiff.
3. Upon hearing, by judgment delivered on 08.05.2023, judgment was entered in favor of the plaintiff/respondent against the defendants/Appellants at the ration of 10:90. plaintiff to shoulder 10% and the defendants 90%. General damages were assessed at kshs 650,000, special damages Kshs 8,675.
4. Being aggrieved and dissatisfied by the above decision, the appellants/defendants filed this appeal on the following grounds:
5. That the trial magistrate erred by awarding inordinately high damages and not commensurate with awards for comparable injuries.
6. That the trial magistrate failed to consider that the injuries sustained by the Respondent was a simple hairline fracture with no brain injury which had fully healed and therefore arrived at an excessively high award.

7. In submissions, the appellants submitted that the respondent pleaded that he sustained the following injuries.

8. Right orbital superior wall hairline fracture.

9. Friction burns on the forehead.

10. Blunt injury to the right hand leading to soft tissue injuries.

11. The appellants submitted that from the medical report dated 18.05.2020 by Dr. Omuyoma and second medical report dated 03.05.2021 by Dr Amos Otara, the Respondent did not suffer injury to the brain. In addition, the second medical report indicated that there was no residual deformity occasioned to the Respondent as a result of the accident.

12. The appellants submitted that the injuries suffered by respondent in this case are not similar to injuries suffered in the case of Risa Sampal v. David Kerembu & Another[2020]KEHC 6744 (KLR) which the trial court relied on; in that in the case of Risa, the plaintiff suffered excessive degloving on the left shoulder and left arm, blunt injuries to

the left side of pelvis and abdomen; hemorrhage fracture of left viral bone and blunt injury to the chest.

13. The appellants submitted that considering the injuries suffered by plaintiff and inflation rate, a sum of kshs 250,000 would be adequate to compensate the plaintiff and cited the case of Mitchelcotts v Omar [2023] KECH 23424 (KLR)[2023] where the plaintiff sustained hairline fracture of right femur and the trial court awarded kshs 280,000 as general damages on appeal.

RESPONDENT'S SUBMISSIONS

14. The Respondent started by explanting the duty of this court being the first appellate court to reevaluate evidence adduced before the trail court and arrive at independent determination. The court however has to take note of the fact that unlike the trial court, it has not had the benefit of taking evidence first hand and therefore has not had the benefit of observing demeanor of witnesses.
15. The respondent cited the case of Kiruga v Kiruga & Another and submitted that the appellate court cannot substitute the trial court's decision with its own decision. The respondent submitted that consent was recorded on liability at 10 :90 on 20.09.2022 and what is left for this court's determination is assessment of damages.

16. The respondent opposed the appeal and submit that ground 1 and 2 are on the same issue. The respondent listed injuries suffered as a result of the accident as earlier captured. And submit that the injuries were confirmed by Dr, Omutoma's medical report dated 8th march 2020.the respondent's counsel submitted that on examination of Respondent's head, Dr. Omuyoma found that he has permanent scar on the right parietal region of the scalp about 5cm long, that he has a friction ban scar on the forehead and CT scan of the head shows right orbital superior wall hairline fracture and the doctor classified the degree of injury s grievous harm.

17. The Respondent submitted for 1,500,000 in the lower court considering the nature of injuries and inflation. The Respondent submitted that the trial court took into consideration the submissions by both parties and awarded kshs 650,000 and submitted that the award by the trial court is not excessive. The respondent relied on the case of Kyoga Hauliers (k) & Another v Philip Mahiu Nyingi [2017] eKLR where the court awarded kshs 1,000,000 for similar injuries. The respondent further submitted that the trial court did not take into consideration any irrelevant factor neither did the court fail to take into consideration any relevant factor while considering damages. The appellant urged this court to find that the appeal lacks merit and dismiss with courts.

Analysis and Determination

18. This being a first appeal, this Court is duty bound to reconsider and re-evaluate the evidence adduced before the trial court and draw its own conclusions, bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify. This duty is well settled in *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123.
19. The appeal before this Court, however, is not on liability, which was settled by consent at the ratio of 10:90 in favour of the Respondent. The sole issue for determination is whether the award of general damages in the sum of Kshs. 650,000/= was inordinately high as to warrant interference by this Court.
20. The principles upon which an appellate court may interfere with an award of damages are well settled. An appellate court will not disturb an award of damages unless it is shown that the trial court acted on wrong principles, took into account irrelevant factors, failed to consider relevant factors, or that the award was so inordinately high or low as to represent an entirely erroneous estimate. See *Butt v Khan* [1977] 1 KAR 1 and *Kemfro Africa Ltd t/a Meru Express Service & Another v A.M. Lubia & Another* [1982-88] 1 KAR 727.

21. From the record, the Respondent sustained the following injuries:

- a) Right orbital superior wall hairline fracture
- b) Friction burns on the forehead
- c) Blunt injury to the right hand resulting in soft tissue injuries

23. The medical reports by Dr. Omuyoma dated 18th May 2020 and Dr. Amos Otara dated 3rd May 2021 are consistent that there was no brain injury and that the injuries had healed without residual deformity. Nonetheless, Dr. Omuyoma classified the injuries as grievous harm and noted permanent scarring on the scalp and forehead.

24. The Appellants faulted the trial court for relying on *Risa Sampal v David Kerembu & Another* [2020] eKLR, contending that the injuries in that case were far more severe than those sustained by the Respondent. While it is true that the injuries in *Risa Sampal* involved more extensive trauma, comparable cases are guides and not exact replicas, and each case must ultimately turn on its own facts.

25. The Respondent, on the other hand, relied on *Kyoga Hauliers (K) Ltd & Another v Philip Mahiu Nyingi* [2017] eKLR where an award of Kshs. 1,000,000/= was made for injuries involving a skull fracture. That authority demonstrates that awards for head and facial fractures have, over time, attracted relatively higher compensation, taking into account the seriousness of such injuries and inflationary trends.
26. It is evident from the judgment that the trial magistrate considered the nature of the injuries, the medical evidence, the submissions by both parties, and comparable authorities before arriving at an award of Kshs. 650,000/=. The court did not proceed on the basis that there was a brain injury, nor did it assume permanent incapacity.
27. While the Appellants proposed an award of Kshs. 250,000/=:, this Court is not persuaded that the award made by the trial court was so excessive as to warrant interference. Head and orbital fractures, even where classified as hairline and healed, are not minor injuries. The presence of permanent scarring was a relevant factor the trial court was entitled to consider.
28. In the circumstances, this Court finds no basis to conclude that the trial magistrate acted on wrong principles, ignored relevant factors, or arrived at an award that was

inordinately high. The award of Kshs. 650,000/= for general damages falls within a reasonable range for the injuries sustained.

29. **FINAL ORDERS:-**

- a) Appeal on quantum lacks merit and is dismissed.
- b) Costs to the Respondent.

Dated and signed at **Nairobi** this 11th day of March 2026.



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R NGETICH

JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

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J.R. WANANDA

JUDGE

In the presence of:

Court Assistant – Brian Kamotho

Plaintiff – No appearance

Defendant – No appearance

ORIGINAL