

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CIVIL APPEAL NO. E058 OF 2024

JACKSON KARIUKI NJOKI
APPELLANT

VERSUS

LAZARUS MUSEMBI MUSAU.....
RESPONDENT

*(An appeal from the judgment of Hon. S.N Mwangi in Murang'a
CMCC E022 of 2022 delivered on 31st May 2024)*

JUDGEMENT

1. This is an appeal against quantum assessed by the trial court following a claim based on a road traffic accident.
2. The Respondent averred that on 21st August 2021 at Gakungu trading centre, along Kenol Sagana Road he was lawfully standing as the bus stop off and away and apart from the road when the Appellant drove and or managed motor vehicle registration number KCJ 993U so negligently and carelessly that he caused an accident as a result of which the Respondent was seriously injured.
3. The injuries sustained by the Respondent included *fractures of the left femur bone, head injury i.e lacerations at the frontal and parietal regions, a deep cut wound on the abdomen and blunt soft tissue injuries (bruises and swelling) on the left elbow.*
4. As a result, the Respondent sought general damages for pain and suffering and special damages totalling Kshs. 105,550 being, motor vehicle search (Kshs. 550.00), medical report (kshs.3,000), medical expenses (Kshs.2,000) and future medical expenses (Kshs. 100,000.00).

5. The Appellant denied the claim and in the alternative pleaded contributory negligence. However, the parties later recorded a consent on liability at a ratio of 70:30 in favour of the Respondent against the Appellant.
6. The Respondent contended that an award of Kshs. 1,500,000 would be sufficient as general damages for pain and suffering while the Appellant maintained that an award of Kshs. 500,000 was sufficient.
7. The trial court considered the inflation and the high cost of living and awarded the Respondent Kshs. 1,300,000 less 30% contributory negligence. The Respondent was awarded Kshs. 4,720 as special damages as he same had been pleaded and proved. Further he was awarded future medical expenses at Kshs. 100,000 as pleaded.
8. Aggrieved and dissatisfied with the judgment of the trial court, the appellant lodged the instant appeal on grounds that:
 - i. The learned Magistrate erred in law and in fact by awarding the Plaintiff excessive general damages which were exceedingly high and without any factual or authoritative basis.
 - ii. The learned magistrate erred in law and fact in failing to consider the appellant's submissions and considering the relevant legal principles to critically analyse the Appellant's case while arriving at the judgment, thus resulting in a miscarriage of justice against the appellant.
9. Therefore, the appellant sought that the finding of the trial court on quantum be set aside.
10. The court directed that this appeal be canvassed through written submissions.

11. The appellant submitted that the quantum awarded was inordinately high and therefore required interference by this honourable court. The award was not commensurate to comparable awards granted by this honourable court in similar injuries. Therefore, the award failed to align with the guiding principles on award of damages.
12. Reliance was placed on **Anne Muriithi & 4others vs the headmistress Mks Girls & 3 others [2003] eKLR** where the court awarded a sum of Kshs. 420,000 to the plaintiff who had suffered fracture of the left femur. Similarly, in **David Otieno Owino & another vs Elizabeth Atieno Owuor [2020] eKLR**, the appellate court reduced an award of Kshs. 600,000 to Kshs. 400,000 for compound fractures of the tibia/ fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with a cut wound on the nose and blunt chest to urge that an award of Kshs. 500,000 was adequate compensation.
13. On future medical expenses, the appellant submitted that the Respondent's medical report filed by Dr. P.K. Mwangi indicated that the Respondent required surgical removal of internally fixated orthopaedic implant in situ for an estimated cost of Kshs. 100,000.00 while Dr. Wambugu for the Appellant indicated that the cost would be Kshs. 85,000.
14. Faced with these two reports the trial court ought to have relied on the 2nd report by the appellant's doctor as it was more recent. Therefore, an award of Kshs. 85,000.00 was more aligned to the Respondent's injuries.
15. The Respondent submitted that although the amount in the two reports stated as future medical expenses were different, the reports were comparable in nature. Therefore, the award of Kshs. 100,000.00 by the trial court was proper exercise of discretion when faced with two conflicting reports on the issue.

16. Similarly, it was submitted that the trial court properly exercised its discretion in determining the damages for pain and suffering. The Appellant had not advanced any cogent reason to warrant interference with the trial court's exercise of discretion. Reliance was placed on **Ken Odondi & 2 others vs James Okoth Ombura & Co. Advocates.**

17. In making the decision in this matter, this first appellate court should re-evaluate the evidence of the trial court and make a finding of its own. This was the position held in the case of **Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123**, where the court held:

"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

18. Following the accident, the Respondent suffered fractures of the left femur bone, head injury i.e lacerations at the frontal and parietal regions, a deep cut wound on the abdomen and blunt soft tissue injuries (bruises and swelling) on the left elbow.

19. The medical examination report by Dr.P.K Mwangi and Dr. Wambugu confirmed these injuries and stated that there would be internally fixated orthopaedic implant in situ. No disability was assessed.

20. The main issue is whether an award of Kshs. 1,300,000 was inordinately high in the circumstances. It is trite that the appellate court will not disturb the trial court's award of

damages unless the said award is so inordinately high or so inordinately low as to represent an entirely erroneous assessment. It must be shown that the trial court proceeded on wrong principles or that it misapprehended the evidence in some material respect to arrive at a figure which was either inordinately high or low.

21. The established principle is that comparable injuries should attract comparable awards as was held by the Court in **Tarasila Wanja & Anor v Peter Kirimi Muthuri [2014] eKLR** where the court stated:

“I have considered the principles set out in the above mentioned case in respect of the award by the trial court and agree that in assessment of damages each case depends on its facts for there is no case that is similar to the other in terms of the injuries and agree that comparable injuries should attract comparable awards, however, in this case the appellant’s counsel did not submit authorities relevant to the trial case and as such the court could not rely on the authorities which were not relevant...”

22. I have looked at the injuries sustained by the Respondent and I am alive to the fact that no two cases can be completely similar. However, the cases relied on by the Appellant have comparable injuries to those suffered by the Respondent save for the fact that the awards have been affected by inflation. More recent decisions place awards for such injuries within a range of Ksh. 600,000.00 to Ksh. 850,000.00: the case of **Watu Credit Limited & another v Oracha & another [2024] KEHC 3752 (KLR)**, the court awarded Kshs.850,000 for a spiral fracture of midshaft femur, deep cut wounds on the left leg, both knees swollen, chest pain, back pain, pain on the pelvic region and

multiple bruises on the left leg with 15% permanent disability.

23. In **Sylvester Onyango Lire v Isack Ouma Shikuku [2022] eKLR**, the Respondent suffered a fracture to midshaft left femur, fracture pelvis, laceration on the right inguinal region and laceration of the scrotum. The respondent had healed with no permanent disabilities. The High Court set aside the trial court's award of Kshs 850,000 in general damages and substituted it with an award of Kshs.650,000 general damages in March 2022.
24. In **Parvat Builders v Makau (Appeal 81 of 2022) [2023] KEELRC 575 (KLR)**, the respondent had sustained fractured left femur – upper 1/3 and a swollen tender and deformed left thigh. The ELRC Court set aside the trial court's award of Kshs. 1,400,000 in general damages and substituted it with an award of Kshs. 600,000 general damages in March 2023.
25. Flowing from the above, it is evident that an award of Kshs. 1,300,000 was inordinately high in the circumstances, as it is not based on comparable injuries and comparable awards.
26. On the issue of future medical expenses, while the Appellant admits that the reports of both Dr. Wambugu and Dr. P.K. Mwangi are comparable in terms of the nature of offences, the main point of departure is on the cost of the future medical expenses. The Appellant has urged that the Respondent be awarded Kshs. 85,000.00 as opposed to Kshs. 100,000.00 only on the basis that Kshs. 85,000.00 was the lower amount. There is a risk of miscarriage of justice if the determination on which report to be adopted were to be left on the lower amount. This would open a floodgate where litigants might collude to influence the assessment of the cost for future medical expenses thus undermining the overall course of justice.

27. I realize that the trial court's decision was based on his proper assessment of the case including exercise of discretion. I find no reason to interfere with the decision of the trial magistrate on future medical expenses.

28. The upshot is that the appeal partially succeeds in the following terms:

- i. The finding on general damages for pain and suffering is set aside and substituted with a finding of Kshs. 850,000 less 30% contributory negligence.***
- ii. The finding on future medical expenses at Kshs. 100,000.00 is upheld.***
- iii. Each party to bear their costs***
- iv. Special damages finding upheld.***

Dated Signed and Delivered virtually this 30th day of April, 2026.

**HON. T. W. OUYA, OGW
JUDGE**

In the presence of:

Mwangi Ben for Respondent

Mutesi for the Appellant

Nyabuto/Hamza - Court Assistants