



**Bildad v Rentwork East Africa Limited (Civil Appeal E051 of 2021)
[2024] KECA 1133 (KLR) (6 September 2024) (Judgment)**

Neutral citation: [2024] KECA 1133 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E051 OF 2021
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
SEPTEMBER 6, 2024**

BETWEEN

COLEY NJERU BILDAD APPELLANT

AND

RENTWORK EAST AFRICA LIMITED RESPONDENT

*(Being an Appeal from the Judgment and Decree of the High Court of Kenya
at Chuka (L.W. Gitari, J.) dated 11th March 2021 in HCCA No. 30 OF 2019)*

JUDGMENT

1. The appellant, Coley Njeru Bildad, was a passenger in motor vehicle registration number GKB 485H Toyota Land Cruiser which was beneficially owned by the respondent, Rentwork East Africa Limited. He was a teacher, a principal at Kathwana Secondary School, and was on duty on 14th November 2016 when the vehicle was involved in a road traffic accident along Chuka – Meru Road. He suffered injuries.
2. In a suit which the appellant filed at the Chief Magistrate’ Court at Chuka, he blamed the respondent of negligence and sought to be compensated in general and special damages. The respondent denied the claim. However, a consent on liability was entered into at 80:20% in favour of the appellant.
3. The trial court received evidence during the proceedings and on 14th August 2019 awarded Kshs.2,000,000.00 in general damages for pain, suffering, loss of amenities and future medical expenses, and nothing on special damages. When the consent was taken into account, Kshs.1,600,000.00 was awarded, together with costs and interest.
4. The respondent was aggrieved by the judgment and decree and appealed to the High Court at Meru. The grounds were that the award of Kshs.2,000,000.00 was manifestly excessive, given that the appellant had a closed-head injury which was a soft tissue injury from which he had fully recovered. The respondent’s case was that the appellant was entitled to an award of Kshs.500,000.00 because the doctors were not able to assess the degree of any permanent injury, that there was no evidence that he



developed any post-traumatic stress disorder (PTSD) or that he was seeing a psychiatrist as had been indicated by the trial court. The appellant supported the award and argued that he had suffered life-threatening head injuries from which he had not recovered.

5. The High Court (L.W. Gitari, J.) heard the appeal, and in a judgment delivered on 11th March 2021, found that the general damages awarded were excessive and based on unproven information. This is what the learned Judge observed:-

“The award of damages is an exercise of judicial discretion which must be exercised judicially. In this case, the respective medical reports did not assign any degree of permanent disability. They all agree that the respondent sustained a closed-head injury and all tests returned a result that was normal. The respondent did not suffer loss of consciousness and has never sustained epileptic seizures. There was no material laid before the court showing that he continued with treatment. It follows that he recovered fully. I agree with the appellant’s counsel submission that the trial magistrate took into account an irrelevant fact that was also not proved. The award was not based on any evidence.”

The learned Judge awarded Kshs.600,000.00 in general damages. When 20% liability on the part of the appellant was considered, the award was Ksh.480,000.00.

6. The appellant was aggrieved and appealed to this Court. He listed the following grounds:-

- “1. That the learned judge erred in law and facts in assessing general damages at Kshs. 600,000/= which amount was excessively low in the circumstances in light of the fact that even the respondent’s Doctor Stephen Maina acknowledged the kind of injuries the appellant sustained amounted to permanent disability.
2. That the learned judge erred in law and facts for failing to find that the appeal was incompetent for lack of certified copy of the decree.
3. That the learned judge erred in law and facts by overruling clear authorities of this honorable court.”

7. In this second appeal, our jurisdiction is limited to matters of law only. We can only interfere if it is demonstrated that the courts below considered matters, they should not have considered or failed to consider matters they should have considered, or looking at the entire decision, it is perverse. (See *Maina v Mugirira* [1983] KLR 78). In *Kenya Breweries Ltd v Godfrey Odongo* [2010]eKLR, this is what Onyango Otieno, JA. observed:-

“In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed a fresh, - see *Selle and Another v. Associated Motor Boat Company Ltd and Others* (1968) EA

123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”



8. Secondly, where a party is seeking to be compensated in general damages following a road traffic accident, and assuming that the question of liability has been determined, the compensation will be evaluated on the basis of the nature and extent of the injuries suffered and comparable awards made in the past for such or similar injuries. (See *Simon Taveta v Mercy Mutiru Njeru* [2014]eKLR). An appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate of the injuries suffered. (*Bashir Ahmed Butt v Uwais Ahmed Khan* [1982 – 88) KAR 5).
9. Mr. Kijaru, learned counsel for the appellant, submitted that the appeal before the High Court was incompetent for failure on the part of the respondent to attach a certified copy of the decree. We note that the issue of the competence of the appeal to the High Court was raised in the written submissions that had been filed by the appellant’s counsel. Our take is that if the appellant had seriously wanted to attack the appeal on its incompetence, he ought to have sought at a preliminary stage, to have it struck out. Nonetheless, when it was raised in the submissions, the learned Judge found, correctly in our view, that courts have since the enactment of sections 1A and 1B of the *Civil Procedure Act* and Article 159(2)(d) of the *Constitution*, moved away from the previous position that failure to attach a decree, even where there is a judgment, is a jurisdictional point that calls for the striking out of the appeal. (See *Chege v Suleiman* [1988]eKLR). The current position is exemplified by this Court’s decision in *Emmanuel Ngade Nyoka v Kitheka Mutisya Ngata* [2017]eKLR in which it was observed as follows:-
- “We entirely agree with the reasoning of the learned Judge on this aspect. In any event, this was a mere technicality that could not have sat well with the current constitutional dispensation that calls upon courts to go for substantive justice as opposed to technicalities. Further holding otherwise would have run counter to the overriding objective as captured in sections 1A and 1B of the *Civil Procedure Act*. Finally, one would ask what prejudice did the appellant suffer with the omission of the certified copy of the decree in the record of appeal. We do not discern any.”
10. On the substance of the appeal, learned counsel submitted that the learned Judge erred by setting aside the award of Kshs.2,000,000.00; that there was medical evidence in support of the appellant’s claim on the injuries sustained as a result of the accident, and that at the time of the trial he had not fully recovered. Lastly, that the injuries were of a permanent nature.
11. According to Mrs. Wachira, learned counsel for the respondent, the learned Judge was well-guided in awarding Kshs.600,000.00 to the appellant. This was because the appellant failed to prove that he had suffered PTSD; that the issue of PTSD was, in any case, not specifically proved and had only come up in the report of Dr. Wokabi dated 9th January 2018. Further, that Dr. Wokabi had concluded that the appellant had recovered normally without any neurological or physical disorder. It was submitted that Dr. Wokabi had referred the appellant to a psychiatrist, but that such psychiatrist had not produced a report to say that there were any psychiatric complications that had been suffered.
12. We note that the learned Judge was not of the same view as the trial court, which considered the injuries suffered to be serious and of having a permanent impact. The record showed that when the appellant filed his plaint dated 4th October 2018, he particularized his injuries as:-
- a) face deviated to the right side due to facial palsy and also have a tearing of the left eye.
 - b. head injuries;
 - c. MRI; Leukoaraiosis of deep white matter to ischemic demyelination;



- d. EEG; normal awake and drowsy EEG.

The present complaints were:-

- “a. frightening attacks;
- b. forgetfulness; Loss of memory;
- c. headache;
- d. stomach upset;
- e. small bang is eliciting mild tonic chronic jerks of the left lower limbs and both upper limb.
- f. interrupted conversation on and off trying to remember some of the things that he wants to say;
- g. epilepsy attacks.”

These injuries were based on the report by Dr. Stephen Maina Wambugu that was dated 30th October 2017.

13. However, the appellant was subsequently examined by Dr. Wokabi who did a report dated 9th January 2018. According to him, all medical, clinical, CT scans and MRIs confirmed that the appellant had suffered, “closed head injuries”, and that all CT scans and MRI of the brain indicated that the appellant was “normal”. He had been treated but had continued to complain of regular severe headaches, generalized body spasm and generalized feeling of being unwell. However,

“Repeat MRI’s, CT scans and brain tracings of EEGS were all reported as being normal. He was referred to psychiatrist, a psychologist and neurologist to asses and treat him.

After all these investigations no definite organic illness was detected”

He was finally diagnosed to have post-traumatic stress disorder (PTD) and was still undergoing treatment by a psychiatrist and a psychologist. Dr. Wokabi opined that patients with this disorder were expected to recover fully, and yet the appellant continued to complain. The Doctor was unable to put a number of his degree of permanent disability and indicated that the psychiatrist treating him could be best suited to access his degree of permanent disability.

14. We note that, although evidence was led by the appellant regarding Dr. Wokabi’s report, his suit was based on Dr. Stephen Maina Wambugu’s report. Unfortunately, Dr. Wokabi’s report indicated that the appellant had fully recovered from his injuries, except for the PTSD complaint that the Doctor felt could fully recover unless the psychiatrist that the appellant was seeing said otherwise. There was no report by the psychiatrist. The trial court did not, as was found by the learned Judge, fully appreciate the medical evidence, and especially the opinion of Dr. Wokabi who examined the appellant subsequent to the examination by Dr. Stephen Maina Wambugu. It was also evident to the learned Judge, and we agree with her, that the issue of the appellant having suffered PTSD was not pleaded in the plaint, and yet it was the basis of the trial court’s finding that there was a permanent effect to the injuries that had been suffered following the accident.
15. In short, having considered the judgment by the learned Judge, the grounds of appeal and the rival submissions, we do not find any merit in this appeal, which we dismiss with costs.



DATED AND DELIVERED AT NYERI THIS 6TH DAY OF SEPTEMBER 2024.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the Original.

signed

DEPUTY REGISTRAR

