



**Pavanputra Enterprises v Joseph (Employment and Labour Relations
Appeal 18 of 2018) [2022] KEELRC 1705 (KLR) (21 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1705 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL 18 OF 2018**

DN NDERITU, J

JULY 21, 2022

BETWEEN

PAVANPUTRA ENTERPRISES APPELLANT

AND

LEONARD MWANGANGI JOSEPH RESPONDENT

(trial court (E Riany RM))

JUDGMENT

Background

1. The respondent in this appeal filed Naivasha SRMCC no 699 of 2011 on January 11, 2012 seeking for special and general damages for injuries sustained at work in employment of the appellant herein.
2. The trial court (E Riany RM) delivered a judgment on October 24, 2013 in which the respondent, the plaintiff in the lower court, was awarded a sum of kshs 550,000/= in general damages and kshs 2,000/= in special damages.
3. Liability had been compromised between the parties at 80% to 20% in favour of the respondent and hence the payable general damages as per the judgment were calculated at kshs 440,000/=.
4. It is this award of general damages that the appellant is seeking to set aside in this appeal for, in its view, being excessive and inordinately high.
5. The appellant originally filed his appeal in the High court at Nakuru vide Nakuru HCCA no 217 of 2013 vide a memorandum of appeal dated November 23, 2013.
6. However, on July 2, 2018 the High Court (J. Mulwa J) found that the appropriate forum for the hearing and disposal of this appeal is the ELRC at Nakuru and the appeal was accordingly transferred and reallocated reference number ELRC Appeal no 18 of 2018.



7. By consent of counsel for both parties it was agreed that the appeal be heard by way of written submissions. Appellant's counsel filed on November 17, 2016 and respondent's on April 12, 2018.
8. It appears that the consent order/directions on disposal of the appeal by way of written submissions was recorded in the High Court and the same is not in the court file. However, since counsel for both parties already filed their respective submissions this court shall proceed to render a decision based on, *inter alia*, the said written submissions.
9. In the memorandum of appeal dated November 23, 2013 the appellant sets out the following three grounds of appeal:-
 1. That the learned trial magistrate erred in law and fact in failing to give a concise statement of the case, points of determination and reasons for her judgment.
 2. That the learned trial magistrate erred in law and in fact in failing to consider the Appellant's submissions.
 3. That the learned Trial magistrate erred in law and in fact in arriving at an award of damages of kshs 550,000/= which is inordinately too high as to represent an erroneous estimate of the damages payable against the injuries allegedly sustained.
10. It is on the basis of the above grounds that the appellant prays for:-
 - a) That the judgment/decree of the honourable court be reviewed and/or set aside.
 - b) That the appeal be allowed with costs to the appellant.
 - c) That this honourable court do make such further orders as it may deem fit to grant.

II. Duty of court

11. This being a first appeal this court has a duty to re-evaluate the evidence adduced in the lower and make its own conclusion bearing in mind that unlike the trial court this court has not had the advantage of hearing and taking the evidence.
12. Secondly, award of general damages is discretionary based on the facts and evidence in each case. This court can only interfere if it finds that the trial court proceeded on wrong principles, considered irrelevant factors or evidence, and hence arrived at an award that is inordinately high or low- see [Butt v Khan](#) (1989) KLR 349 and the earlier case of *Mbogo v Shah & Another* (1968) EA 93.

III. Appellant's case

13. The appeal is on the *quantum* of the general damages awarded as liability had been compromised as stated above.
14. As a matter of course, the *quantum* of general damages is based on the nature of the injuries. The more severe and serious the injuries, the higher the award is likely to be.
15. The appellant's case is that the trial court misdirected itself on the nature of the injuries sustained by the respondent and the extent thereof.
16. The appellant contends that two medical records were produced one by the appellant and the other by the respondent. One report by Dr Cyprinus Okot Okere (DW1) for the respondent indicates that the respondent suffered "crush injury to the left finger, ring finger and little finger." He classified the injuries as severe and assessed the permanent disability thereof at 20%.



17. Counsel for the appellant further submits that Dr Malik testifying for defence agreed with Dr Okere on the nature of the injuries but assessed the permanent disability at 12%.
18. Contrary to the opinion by the two doctors, the appellant urges, the learned trial magistrate in the judgment, at page 38 of the record of appeal commented as follows:-

“According to the plaint, the plaintiff sustained the following injuries:-Cute crush injury on the left hand with amputations of the index finger middle finger, ring finger and little finger.”
19. According to the appellant, the trial court misled and misdirected itself as to the extent of the injuries as described above in the judgment are not a true reflection of the injuries actually suffered and sustained by the Respondent. The appellant takes the view that this misdirection led to the trial court awarding an inordinately higher sum in general damages.
20. Further, the appellant argues that the trial court completely ignored its submissions and especially the authorities cited wherein the appellant had proposed a sum of kshs 300,000/= as an appropriate award.
21. It is on the basis of the foregoing that the appellant has insisted that the award of kshs 550,000/= to the respondent in general damages should be lowered to an amount not exceeding kshs 300,000/=.

IV. Respondent’s case

22. The respondent’s position is captured in the written submissions by his counsel dated April 3, 2018. The respondent takes the view that the award of kshs 550,000/= in general damages, as made by the trial court, is fair and reasonable compensation.
23. The respondent argues that he submitted for an award of kshs 700,000/= and the award of kshs 550,000/= was fair and reasonable in the circumstances, and hence this court should not interfere with the same.
24. The respondent urges that the trial court properly exercised its discretion in making the award based on the evidence adduced and hence this court should not interfere with the same. The respondent has relied on *Sophia Yusuf Kanyare v Ali Abdi Sabre & Another* (2017) eKLR in support of that position.
25. The respondent argues that the award of kshs 550,000/= is neither erroneous nor inordinately high as to amount to unjust enrichment to the respondent.

V. Disposal

26. This court has carefully gone through the submissions by counsel for both parties as summarized above.
27. In respect of ground 1 of appeal this court is unable to fault the style of the judgment by the trial court. While the judgment is short and too summarized, the learned magistrate did write a concise summary of the case, identified issues for determination, and gave reasons for her judgment as per pages 38 to 41 of the record of appeal.
28. Ground 2 of appeal is that the trial court failed or refused to consider the submissions by counsel for the appellant. However, at page 40 of the record it is clear that the trial court indeed considered the submissions of the appellant and gave due regard to the same including the authorities cited therein.
29. In the circumstances, this court finds no merits in grounds 1 and 2 of the memorandum of appeal.



30. Ground 3 in the Memorandum of appeal is that the award of kshs 550,000/= was erroneous and inordinately high and that the magistrate misapprehended the evidence on the injuries suffered.
31. Both Mr Malika and Dr Okere are in agreement on the injuries suffered. However, the appellant as explained in another part of this judgment argues that the trial magistrate based the award on a wrong assumption that the respondent had an amputation as pleaded in the plaint while that was not the case.
32. The reports by the two doctors did not confirm the alleged amputation. It is the discharge summary and the plaint that introduced the aspect of amputation.
33. At page 33 of the record of appeal Dr Okere denied that the respondent had an amputation. Further in pages 35 and 36 the respondent did not adduce any evidence of amputation.
34. Upon evaluating the evidence placed before the trial court, this court finds no evidence in support of amputation. The discharge summary and the statement in the plaint cannot override the evidence that was adduced in court and moreso the evidence from the two doctors based on their respective medial reports.
35. In his report at page 61 of the record of appeal Dr Malik is very clear and categorical that there was no amputation done on the respondent. He termed the allegations of amputation as “*inaccurate and misleading.*”
36. This court has carefully gone through the record of the trial court, re-evaluated the evidence and the materials placed before that court, including the authorities cited by counsel for both parties in regard to the *quantum* of general damages.
37. This court is of the considered opinion that although the trial court misdirected and misled itself on the nature and extent of the injuries sustained by the respondent the award of kshs 550,000/= less 20% contributory negligence was neither excessive nor inordinately high.
38. In *Pietro Canobbio v Joseph Amani Hinzano* (2016) eKLR the plaintiff was awarded a sum of kshs 700,000/= in general damages, although he suffered more serious injuries leading to amputation.
39. In the circumstances this appeal is denied with each party ordered to meet own costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 21ST .DAY OF JULY, 2022.

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DAVID NDERITU

JUDGE

