



**Ouma v Bukheit & another (Civil Appeal E394 of 2021)  
[2025] KEHC 774 (KLR) (Civ) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 774 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E394 OF 2021**

**REA OUGO, J**

**JANUARY 31, 2025**

**BETWEEN**

**OKIRI ERICK OUMA ..... APPELLANT**

**AND**

**FARID FARAJ BUKHEIT ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMMED MUYO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment delivered in Milimani Civil Suit No E5483  
of 2020 on 22/06/2021 at the CMC in Milimani by Hon. Kagoni E.M (P.M))*

**JUDGMENT**

1. At the trial court, the appellant filed a suit alleging that on 4<sup>th</sup> June 2018 along North Airport Road in Nairobi he was travelling in his vehicle KCA 218R Isuzu Bus when the 1<sup>st</sup> respondent's vehicle, KCB 901X DAF Prime Mover, driven by the 2<sup>nd</sup> respondent caused an obstruction causing the plaintiff to lose control and ram into the rear of the respondent's motor vehicle. The parties settled the liability issue through consent, agreeing that liability should be apportioned at 50:50.
2. The only issue before the subordinate court was the damages awardable to the appellant. The appellant in his plaint claimed to have sustained the following injuries:
  - a. Head injury
  - b. Maxillary and mandibular fracture
  - c. Avulsion of teeth number 33 and 34
  - d. Blunt injury to the face



- e. Fracture of teeth number 4 and 25
3. The appellant sought damages for pain, suffering and loss of amenities, future medical expenses, special damages, costs and interest.
4. The trial magistrate in his judgment made the following award in favour of the appellant:
  - a. Liability 50:50
  - b. Special damages Kshs 6,124
  - c. General damages Kshs 450,000 less 50%  
Net award Kshs 231,124
  - d. The plaintiff was awarded costs and interest from the date of judgment.
5. The appellant is dissatisfied with the award of the subordinate court on damages and has filed this instant appeal on the following grounds:
  1. That the learned magistrate grossly misdirected himself in treating the evidence and the submissions on quantum before him and consequently arrived at a wrong conclusion on the same.
  2. That the learned magistrate grossly misdirected himself in ignoring the principle applicable and the relevant authorities cited on quantum in the written submissions presented and filed by the appellant.
  3. That the learned magistrate proceeded on wrong principles when assessing damages to be awarded to the appellant and misapplied, misunderstood, overlooked or failed to apply precedents and tenets of the law as applicable
  4. That the learned trial magistrate erred in awarding an entirely erroneous estimate in respect of general damages which was inordinately low and disproportionate to the injuries suffered by the appellant thereby occasioning a miscarriage of justice.
  5. That the learned trial magistrate failed to adequately evaluate the evidence and exhibits tendered by the appellant and thereby arrived at a decision that is unsustainable by law.
  6. The learned trial magistrate erred in fact and in law in failing to appreciate that similar injuries should attract similar awards thereby failing to apply the doctrine of stare decisis.
  7. The learned trial magistrate erred in fact and in law in ignoring, overlooking and failing to award future medical expenses which had been pleaded and proved by the appellant.
  8. The learned trial magistrate erred in fact and in law in considering and relying on the respondent's 2<sup>nd</sup> medical report which was inadmissible as it was filed beyond the pre-trial time frame and without leave of the court.
  9. The learned trial magistrate erred in fact and in law in misreading, misapprehending, misunderstanding and misinterpreting the treatment notes issued by Dr. A.O Kenya a surgeon at the Nairobi West Hospital.
  10. The learned trial magistrate erred in fact and in law in relying solely and entirely on the treatment notes issued by Dr. A.O. Kenya as evidence of injuries sustained by the appellant and entirely disregarding all other treatment documents tendered as evidence by the appellant.



6. The appellant seeks that the judgment delivered by the subordinate court be set aside and the award made therein be re-assessed.
7. The appeal was canvassed by way of written submissions. The appellant argues that other than the treatment notes of Dr. A.O Kenyanya, the trial magistrate disregarded all other treatment documents by the appellant. The magistrate in his judgment disregarded the medical reports because they were conflicting but failed to consider the P3 form. The appellant submits that the treatment notes together with the P3 Form ought to have been considered as the P3 form would have confirmed that the injuries particularized on the medical report by Dr. Okere were correct. The appellant submitted that it was incorrect for the trial court to hold that he did not prove that he suffered a fracture of the maxillary and mandible yet the same was captured in the treatment notes as follows: ‘Has been taken to theatre where closed reduction and fixation of maxillary dento-alveolar fracture done’
8. The appellant also submits that the respondents’ medical report was inadmissible because it was filed beyond the pre-trial time frame and without leave of the court.
9. On future medical expenses, it was submitted that they were pleaded and proved. Dr. Okere’s medical report stated that the appellant would require Kshs 212,000/—for the extraction, bridging, and restoration of teeth.
10. On the award of damages, the appellant relied on the case of Thuge Caroline & 2 Others v Kimani Nganga Kago [2022] eKLR with similar injuries to the ones suffered by the appellant herein and the court awarded Kshs 1,600,000/- as general damages.
11. The respondent in opposing the appeal argues that the law does not permit the appellant having accepted payment of the decretal sum to challenge the decree on appeal again. They cited the case of NAIROBI C.A No 297 of 1998 Dr Sunny Samuel v Simon M Mbwika & Anor [1998] eKLR where the court held that “since the appellant had obtained the full benefit of the judgment, he cannot now appeal against it while he is still in enjoyment of the benefits as otherwise he would be approbating and reprobating the judgment at the same time”.
12. The respondent submits that the two medical reports were contradictory and that the trial court was correct to revert to the treatment notes. The appellant did not challenge the production of the respondent’s report at trial and cannot purport to do so at appeal.
13. They submit that the award of general damages was proper. They relied on the case of Badar Hardware Ltd v James Amwoma Oiko [2017] eKLR where the respondent sustained soft tissue injuries, broke 3 teeth, and lost 4 teeth and was awarded Kshs 250,000/-. Kshs 500,000/- was awarded as general damages in Civilon Ltd v Richard Njomo Omwancha & 2 Others [2017] eKLR the 3<sup>rd</sup> respondent sustained a fracture of 4 upper teeth, fracture of the right tibia and fibula.
14. Regarding future medical expenses, it was argued that they were not due as of the date of trial. As of 22<sup>nd</sup> April 2021, when Dr Wambugu prepared his report, the future medical expenses previously alluded to by Dr Okere had been incurred.

### **Analysis and Determination**

15. In this court, the appellant has filed his appeal according to Order 42 of the Civil Procedure Rules and section 79 of the *Civil Procedure Act* in a court clothed with the requisite jurisdiction. The respondent’s assertion that the appellant lacked the right to appeal the trial magistrate’s decision is unfounded.
16. The appeal before the court is against the damages awarded by the subordinate court. Circumstances in which an appellate court will interfere with the quantum of damages awarded by a trial court were



clearly laid out in the case of Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows:

“...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages.”

17. The injuries sustained by the appellant are highly contested. According to the treatment notes from Dr. Kenyanya of Nairobi West Hospital where the appellant sought treatment the appellant was taken to the theatre where a closed reduction and fixation of maxillary dento-alveolar fracture was done. He indicated that removal of splints had been done and the fractured teeth 14 and 25 required extraction and replacement. The teeth 33 and 34 also required replacement.
18. The report by Dr Okere recognized that the appellant sustained a fracture of the maxilla and mandible, fracture of teeth 14 and 25, avulsion of teeth 33 and 34, soft tissue injuries, and head injury.
19. The report by Dr Wambugu was however of the view that the injuries were soft tissue injuries and that there was no permanent disability. According to his report, the appellant sustained dentoalveolar injuries involving the maxilla and mandible, loss of teeth and a cut wound lower lip.
20. Although the trial magistrate relied on the treatment notes by Dr Kenyanya, he did not acknowledge that the report further revealed that the appellant sustained a fracture of the maxilla and mandible. The appellant, therefore, pleaded and proved his injuries.
21. The court in *Sancha v Oeri & another (Civil Appeal 1 of 2022)* [2023] KEHC 4145 (KLR) (11 May 2023) (Judgment) the court awarded general damages of Kshs 800,000/= where the appellant sustained a fracture of maxillae; broken front teeth; laceration of the gums; loss of upper incisor tooth; laceration of the lower lip; fractures of the lower jaw; and blunt laceration on the scalp. The injuries sustained by the appellant herein are similar to those in *Sancha v Oeri*, therefore the award of Kshs 450,000/- was inordinately low. Therefore, I set aside the award of Kshs 450,000/- for general damages and the same is substituted with Kshs 800,000/-.
22. On future medical expenses, the trial magistrate relied on the report by the respondent that indicated that the appellant had already received treatment. However, he failed to consider the report by Nairobi West Hospital that summed up the future expenses at Kshs 212,000/- and the report by the appellant prepared on 19/02/2020 that indicated that the appellant was yet to receive treatment. The report by the respondent was later done on 22/04/2021 showing that the appellant had received treatment. However, at the time of filing suit, they were classified as future medical treatment. Future medical treatment was pleaded and proved by the report from Nairobi West Hospital where the intended treatment was to take place.
23. On the submission that the appellant has received the decretal sum and that the law does not permit him having received and accepted payment of decretal sum to again challenge the decree and appeal, the respondent has not demonstrated that the appellant accepted the payment as a final payment.
24. In the end, I set aside the judgment of the trial court and entered judgment in favour of the appellant as follows:
  - a. General damages Kshs 800,000/-



Less 50% Kshs 400,000/-

- b. Future medical expenses Kshs 212,000/-
- c. Special damages Kshs 6,124/-
- d. Total Kshs 618,124/=
- e. Interest on the above total sum at (d) shall be at court rates from the date of this judgment till payment in full.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 31.1.2025 DAY OF JANUARY 2025**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

Miss Wandia h/b Mr. K. Kagunda -For the Appellant

Respondent - Absent

Wilkister -C/A

