



REPUBLIC OF KENYA



KENYA LAW
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**Kiptoo v Malahilu (Civil Appeal 20 of 2022)
[2025] KEHC 804 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 20 OF 2022
REA OUGO, J
JANUARY 29, 2025**

BETWEEN

TIMOTHY KIPTOO APPELLANT

AND

KENNETH INGOI MALAHILU RESPONDENT

*(Being an appeal from the Judgment/Decree of the Honourable C.A.S
Mutai SPM) delivered on 11/02/2022 in Bungoma CMCC No 339 of 2015)*

JUDGMENT

1. The appeal before the court is against the award of damages by the trial magistrate. The respondent was a passenger in the appellant's matatu, KBY 285G Toyota when the vehicle lost control and he sustained injuries. The respondent sustained the following soft tissue injuries: a deep cut wound to the left occiput, bruises of the lower 2/3 of the neck associated with contusion of the cervical vertebrae 6 and 7; Bruises on the right shoulder joint and between shoulder joint; bruises of the chest over the sternum, bruises to the lower lumbar spine and cervical spine; numbness of the right upper limb from the right side of the neck down the limb to all fingers; and foreign body left wrist antero-associated with a small puncture wound and numbness of the right thumb.
2. The trial magistrate after considering the case made the following award:
 1. General damages Kshs 380,000/-
 2. Special damages Kshs 2,000/-Subtotal Kshs 382,000/-
Balance Kshs 343,800/-
3. The appellant now appeals on the following grounds:



1. That the learned trial magistrate erred in law and in fact in the assessment of quantum by awarding Kshs 380,000/- for general damages an award which was an excessive and erroneous estimate of the damage awardable compared to the injuries sustained by the plaintiff/respondent.
2. That the learned trial magistrate erred in fact and in law in failing to consider the defendant's submissions and authorities supplied on the issue of quantum.
3. That the learned magistrate erred in law and misdirected himself to the extent and value of the respondent's injuries and thereby erred in law in his assessment of damages.
4. That the learned trial magistrate erred in law and in fact in failing to pay regard to authorities in the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar cases as the case he was deciding.
5. That the learned trial magistrate's exercise of discretion in the assessment of quantum was injudicious.

Analysis And Determination

4. The appeal before the court is solely challenging the award of damages. The parameters under which an appellate court will interfere with an award of damages was stated by the Court of Appeal in *Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR* as follows:

‘An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low...’

5. The Court of Appeal observed in *Simon Taveta vs. Mercy Mutitu Njeru [2014] eKLR* that:

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
6. The appellant disputes that the respondent suffered a contusion of cervical vertebrae C6 and C7 injuries, numbness of the right upper limb from the right side of the neck down the limb to all fingers, foreign body wrist antero-associated with a small puncture wound and numbness of the right thumb and the degree of disability assessed at 47%. The cervical spine was normal and the base of the skull was equally normal. It was submitted that the injuries were mere bruises.
7. The respondent maintained that he sustained the injuries listed in his plaint, however, the appellant failed to file a medical report to challenge the injuries sustained.
8. Although the appellant has argued that the respondent did sustain a contusion of cervical vertebrae c6 and c7 injuries, however, the cervical spine x-ray reveals that he suffered the loss of cervical lordosis likely due to muscle spasms. The respondent sustained injuries on his neck. Further, the medical report by Dr Lodrick Nodriball Mumoki identified that the respondents had the following problems after sustaining injuries:
 - a. Post-trauma contusion of cervical spine c6-7 with ligamentous strain of the cervical ligaments and tension headaches.



- b. Post-trauma arthritis of the right shoulder and elbow joints associated with numbness of the right hand and fingers and weak hand grip.
 - c. Ligamentous strain of the lumbar spine.
 - d. Post-trauma sternitis due to contusion of the sternum
9. The doctor assessed combined permanent disability of (a) and (b) at 40% while that of (c) and (d) at 9%. The medical report indicates that the respondent sustained no fracture, however, the soft tissue injuries sustained were serious and resulted in permanent disability. Therefore, the average of the 40% and 9% permanent disability is 24%. I find that the respondent sustained soft tissue injuries with 24% permanent disability.
10. I am constrained to agree with the submissions of the respondent that the appellant did not produce any medical evidence by way of a medical report to challenge the respondent's report presented in court. Therefore, the sole evidence regarding the respondent's injuries was derived from the treatment notes and medical report, which were consistent and remained unchallenged.
11. The appellant proposes an award of Kshs 80,000/-. In *Blue Horizon Travel Co Ltd v Kenneth Njoroge* [2020] which cited the case of *Godwin Ileri v Franklin Gitonga* [2018] eKLR the claimant sustained a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee and was awarded Kshs 90,000/-.
12. The respondent, on the other hand, cited the case of *Ahmed v Abdi* [2023] KCHC 7204 (KLR) where the respondent sustained injuries to the lower limbs, bruises and cuts to the left knee, bruises of the left leg, blunt injury to the head and back and the sum of Kshs 400,000/- was upheld.
13. The decision cited by the appellant did not take into account the degree of permanent incapacity that may be caused by soft tissue injuries and therefore are of little or no help to the court. In *Anyangu v Chepkirin (Civil Appeal E052 of 2022)* [2023] KEHC 17954 (KLR) (16 May 2023) (Judgment) the respondent sustained serious soft tissue injuries with permanent physical disablement of about 15% and the court affirmed Kshs 300,000/- as general damages.
14. In this case, the degree of permanent incapacity was 24% and therefore the award of general damages of Kshs 380,000/- cannot be said to be excessive. Consequently, the appeal stands dismissed. Costs of the appeal are awarded to the respondent.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF JANUARY 2025

R.E. OUGO

JUDGE

In the presence of:

Miss Ongang'o -For the Appellant

Respondent - Absent

Wilkister -C/A

