



REPUBLIC OF KENYA



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**Amuna v Jeremy & another (Civil Appeal 247 of 2023)
[2025] KEHC 287 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 247 OF 2023
JK NG'ARNG'AR, J
JANUARY 23, 2025**

BETWEEN

BONIFACE OMONDI AMUNA APPELLANT

AND

EMIS KATHURE JEREMY 1ST RESPONDENT

JOHN MUGAMBI JEREMY 2ND RESPONDENT

(Being an appeal against the Judgment and decree of Hon. Gatambia S. N. (RM) delivered on 31st August 2023 in Mombasa Small Claims Court Case No. E193 of 2023, Boniface Omondi Amuna v Emis Kathure Jeremy & John Mugambi Jeremy)

JUDGMENT

1. The background of the appeal is that through a Statement of Claim dated 27th March 2023, the Claimant/Appellant stated that on 23rd December 2022 at around 1800 hours, he was a lawful passenger of Tuktuk registration number KTWA 679V along Nyerere Avenue at Pandya roundabout when the driver, servant and/or agent of the 1st Respondent herein recklessly drove and controlled the Tuktuk and consequently swerving and overturning it.
2. According to the medical report dated 3rd January 2023 by Dr. Ajoni Adede, the injuries sustained by the Claimant/Appellant were fracture of the right radius forearm bone (distal 1/3), blunt object injury to the right wrist and 8% partial permanent disability due to the injuries.
3. The Claimant/Appellant in his written submissions dated 28th July 2023 prayed for general damages for pain, loss and suffering of Kshs. 700,000, special damages of Kshs. 6,750, costs and interest of the suit.
4. This suit proceeded in the small claims court by way of formal proof and judgment was delivered on 31st August 2023 where the court found that the case by the Appellant was uncontroverted and the



Respondents were jointly and severally held liable for the accident. The Appellant was awarded general damages of Kshs. 200,000, special damages of Kshs. 6,750, costs of litigation, and interest from the date of the judgment till payment in full.

5. Being dissatisfied, the Appellant appealed the judgment and decree through the Memorandum of Appeal dated 8th September 2023 on grounds that the learned trial magistrate misdirected himself in finding that the Appellant's pain and loss as a result of the injuries sustained owing to an accident that occurred on 23rd December 2022 can be compensated by general damages amounting to Kshs. 200,000, that the learned trial magistrate erred in law and in fact to award judgment against the Respondents while considering judicial precedents that sight awards for soft tissue injuries yet the claimant suffered a percentage of partial permanent disability, and that the learned trial magistrate erred in law and in fact by failing to keenly appreciate and consider the medical report computed, compiled and presented by Dr. Adede as the Appellant's list of documents opining that the Appellant suffered 8% partial permanent disability due to a fracture of the right radius forearm bone distal (1/3) and blunt object injury to the right wrist and accompanying of soft tissue injuries sustained in the accident to inform his final judgment and decree.
6. The appeal was canvassed by way of written submissions. The Appellant in their submissions dated 16th January 2024 argued that the general method of approach in assessing damages is that comparable injuries should as far as possible be compensated by comparable awards but that there are no two cases that are exactly the same as expressed by the Court of Appeal in *Stanley Maore v Geoffrey Mwenda*, NYR Civil Appeal No. 147 of 2002 (2004) eKLR. That the court must take into account the current value of the shilling and that although astronomical awards must be avoided, the court must ensure that awards make sense and result in fair compensation. The Appellant relied on the case of *Gogni Rajope Construction Company Limited v Francis Ojuok Olewe, Civil Appeal No. 1 of 2014* where the court awarded a sum of Kshs. 800,000 for fracture of the radius and ulna and dislocation of the elbow joint, and the case of *Henry Albert Andera v Car & General (K) Ltd (2000) eKLR* where the award of Kshs. 400,000 was made for compound fractures of the right ring and little fingers and fracture of the radius and ulna bones of the right forearm. The Appellant prayed for an award of Kshs. 700,000 in general damages. The Appellant submitted that it is clear determination of the appeal revolves around the question of whether the Appellant proved his case on a balance of probabilities. The Appellant cited Sections 107, 109 and 112 of the *Evidence Act* which were extensively dealt with in the case of *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another (2005) 1 EA 334*.
7. As at the time of writing this judgment, the Respondents had not filed their submissions. This court therefore went ahead to determine the appeal on merit.
8. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle vs. Associated Motor Boat Co. (1968) E.A 123* as follows: -

“... 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 ...”
9. I have considered the Record of Appeal dated 27th September 2023 and submissions by the Appellant. The issue for determination is whether the award of general damages of Kshs. 200,000 was fair in the circumstances.



10. Circumstances under which an appellate court can interfere with an award of damages were set out by the Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tete*, Civil Appeal No. 284 of 2001 (2004) 2 KLR 55 as follows: -

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

11. The Court of Appeal in *Southern Engineering Company Ltd. v Musingi Mutia* (1985) KLR 730 set out the principles to guide the court in awarding damages as follows: -

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated...The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion.”

12. This court has noted that while the injuries in an authority relied on by the Appellant to support their case were correct, the awards for general damages therein was misquoted. For instance, in *Gogni Rajope Construction Company Limited v Francis Ojuok Olewe*, Civil Appeal No. 1 of 2014 the Appellant stated



that the court awarded a sum of Kshs. 800,000 for fracture of the radius and ulna and dislocation of the elbow joint but the said award was reduced to Kshs. 350,000.

13. In my view, the relevant authority for the award of general damages is the case of *Peris Mwikali Mutua v Peter Munyao Kimata* (2008) eKLR where the Plaintiff sustained marked pain and tenderness on the left hip joint, marked swelling and severe tenderness of the left forearm, bruises on the left forearm, and fracture of the ulna of the left distal forearm. The court awarded Kshs. 450,000.
14. Taking into account inflation, passage of time and awards in similar cases, it is my view that the award of Kshs. 500,000 would be reasonable.
15. Consequently, this appeal on the award of general damages succeeds. The award of Kshs. 200,000 in the Small Claims Court is enhanced herein to Kshs. 500,000. There will be no orders as to costs as the Respondents did not participate in this appeal.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 23RD DAY OF JANUARY, 2025

.....

J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

..... Advocate for the Appellant

..... Advocate for the Respondents

Court Assistant – Shitemi

