



REPUBLIC OF KENYA



KENYA LAW
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**Dreamline Express Limited v Sabii & another (Civil Appeal
E027 of 2021) [2025] KEHC 9429 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 9429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E027 OF 2021**

TM MATHEKA, J

MARCH 28, 2025

CASE NUMBER: HCCA/E027/2021

**CITATION: DREAMLINE EXPRESS LIMITED AND
DOMINIC SABIU VS PAULINE MUTHATHI MUTWII**

BETWEEN

DREAMLINE EXPRESS LIMITED APPELLANT

AND

DOMINIC SABIU 1ST RESPONDENT

PAULINE MUTHATHI MUTWII 2ND RESPONDENT

JUDGMENT

1. The Respondent Pauline Muhathi Mutwii filed a suit in the lower Court seeking general damages for personal injuries sustained from a road accident on 22/05/2018 near DC Mukaa along the Mombasa-Nairobi Road. She averred that she was a lawful passenger in motor vehicle registration No. KCJ 870E on the material day when the 2nd Appellant drove/managed it recklessly and negligently that it violently collided with motor vehicle KBU 275G.
2. The Appellants filed a joint statement of defence whereby they denied all the allegations in the plaint and called for strict proof. They averred that if the accident occurred as alleged, it was solely and or substantially contributed to by the Respondent's own negligence.
3. The Respondent replied to the defence and reiterated the contents of his plaint.
4. After the preliminaries, the matter proceeded to trial and judgment was eventually delivered in favor of the Respondent. The trial magistrate found the Appellants 100% liable and awarded general damages of Kshs 220,000/= and special damages of Kshs 1,950/=.



The Appeal

5. Aggrieved by the decision, the Appellants filed this appeal and raised the following grounds;
 - a. That the learned trial magistrate erred in law and fact by disregarding established legal precedent and thereby erroneously arriving at a wrong conclusion on quantum.
 - b. That the learned trial magistrate erred in law and fact in not making an award which was within limits of already decided cases of similar nature.
 - c. That the learned trial magistrate erred in law and fact in awarding judgment on general damages of Kshs 220,000/= soft tissue injuries, bruises and dislocation of shoulder without showing how she arrived at that figure and in total disregard of the submissions of the defendant on the issue of quantum.
6. The parties elected to canvass the appeal through written submissions and appropriate directions were given. Accordingly, the parties complied and filed their respective submissions.

Submissions by the Appellants

7. The Appellants submitted that the Respondent sustained soft tissue injuries and as such, the award of Ksh 220,000/= is high. It was submitted that an award of Kshs 100,000/= would be sufficient and reasonable compensation. Relying on the case of Power Lighting Co. Ltd & Anor -vs- Zakayo Saitoti Naingola & Anor (2008) eKLR, it was submitted that in assessment of damages, the Court has to bear in mind the following principles;
 - a. Damages should not be inordinately too high or too low.
 - b. They are meant to compensate a party for the loss suffered but not to enrich a party and as such, they should be commensurate to the injuries suffered.
 - c. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
 - d. Where past awards are taken into consideration as guides, an element of inflation should be taken into account as well as the purchasing power of the Kenyan shilling at the time of the judgment.
8. Further, the Appellants relied on the following authorities;
 - a. Ndung'u Dennis -vs- Ann Wangari Ndirangu & Anor (2018) eKLR where an award of Kshs 300,000/= was reduced to Kshs 100,000/= on appeal. In so doing, the appellate Court stated as follows;

“If one takes into consideration the actual injuries suffered by the Respondent-to wit soft tissue injuries to the lower right leg and to the back-it becomes readily obvious that an award of Kshs 300,000/= is manifestly excessive.”
 - b. Eva Karemi & 5 Others -vs- Koskei Kieng' & Anor (2020) eKLR where the 1st Appellant was awarded Kshs 70,000/= for injuries to her right thigh and bruises on her lower and upper limbs. The 2nd Appellant was awarded Kshs 40,000/= for injuries on the right shoulder and cut wound on her mouth. The 3rd Appellant was awarded Kshs 45,000/= for injuries and pain on her back and right shoulder pain. The 4th Appellant was awarded Kshs 40,000/= for cuts on the chin and right shoulder tenderness. The 5th Appellant was awarded Kshs 60,000/= for



2 cm cut on the forehead, cut wound on the right elbow and right limb (leg & ankle joint). The 6th Appellant was awarded Kshs 65,000/= for bruising on the forehead, hip and left ankle.

9. The Appellants submitted that the award of Kshs 220,000/= should be substituted with Kshs 80,000/=.
10. With regard to costs, the Appellants relied on section 27(1) of the *Civil Procedure Act* for the submission that costs follow the event. It urged the Court to allow the appeal and award costs in its favor.

Submissions by the Respondent

11. The Respondent submitted that at the hearing of CMCC 102 of 2019, paragraph 7 of the Plaintiff was orally amended to show the injuries she suffered as per Dr. Okere's Medical report dated 24th August 2018 i.e. Laceration of the left forehead, Blunt injury to the shoulder and Bruises on the right knee. That the Appellants chose not to produce any Medical Report in rebuttal. She contended that if the Defendant fails to disprove facts as stated by the Plaintiff, then the issue is taken as established. Reliance was placed on the case of Ferdinand Kalevi Kinyumu -vs- Nzomo Kimulu Civil Appeal No. 290 of 2001 where it was held that;

“Where the Defendant and his driver chose not to give evidence the Plaintiff's evidence remains unrebutted”

12. It was submitted that assessment of general damages is in the discretion of the trial court and therefore an appellate court is not justified in substituting a figure of its own for that awarded by the trial court simply because it would have awarded a different figure, if it had tried the case at the first instance. Reliance was placed on *Kemfro Africa Limited T/A Meru Express Services & Gathongo Kanini -vs- A.M. Lubia & Olive Lubia (1982-88) I KAR 727* at page 730 where Kneller J.A. stated:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilango V Manyoka [1967] E.A. 705, 709, 713*; *Lukenya Ranching and Farming Cooperative Society Limited Vs Kalovoto [1970] E.A. 414, 418, 419*. This court follows the same principles.”

13. It was submitted that taking into consideration the inflation rates and the injuries sustained by the Respondent which clearly hampered her livelihood to an extent; the award of Kshs. 220,000/= on general damages for the injuries suffered was not inordinately high to warrant interference by this court as there is no evidence that the trial court acted on wrong principles of law, misapprehended the facts or made a wholly erroneous estimate of the damage suffered.
14. Further reliance was placed on the following cases;
 - a. *Blue Horizon Travel Co Ltd -vs- Kenneth Njoroge (2020) eKLR Civil Appeal 132 of 2017*; Kenya Law Reports 2021 where the High Court awarded the Plaintiff Kshs. 380,000/= on 14th February 2020.



- b. Samwel Martin Njoroge Kamaya -vs- Mildred Okweya Barasa [2020] eKLR Civil Appeal 107 of 2018; Kenya Law Reports 2021. in which the High Court awarded the Plaintiff Kshs. 300,000 on 20th April 2020.
15. It was submitted that this court should be slow to interfere with the trial court's findings on the Respondent's degree of injury as the trial court had the benefit of hearing the Respondent, observing her physical injury as well as her demeanor, which benefit cannot be overlooked.
- Duty of Court
16. It is now settled that the duty of a first appellate Court is to analyze and re-evaluate the evidence on record in order to reach its own conclusions bearing in mind that it did not have the benefit of seeing or hearing the witnesses.
17. Having looked at the grounds of appeal, the rival submissions and entire record, the only issue for determination is whether quantum of damages awarded should be disturbed.

Analysis and determination

Quantum

18. The injuries sustained were pleaded as follows;
- a. Bruises below left waist
 - b. Cut below right knee bone
 - c. Dislocation of the shoulder
 - d. Multiple soft tissue injuries to both forearms
 - e. Head injuries
 - f. Loss of body tissue
19. A medical examination report was one of the documents in the Respondents list dated 02/05/2019 and the listed documents were produced as exhibits in the case. However, I could not trace the medical report in the record of appeal or in the trial court file. Be that as it may, the trial magistrate made reference to the medical report in his judgment as follows; "In the medical report tendered herein, the plaintiff as confirmed by the defendant's doctor sustained bruises below left waist, cut below right knee bone, dislocation of shoulder, multiple soft tissue injuries to both forearms, head injuries and loss of body tissues."
20. In their submissions before the trial court, the Appellants stated as follows with regard to the injuries; "Your Honour, both medical reports by plaintiff and upon re-examination by the defendant's doctor confirmed that the plaintiff sustained soft tissue injuries. In light of the plaintiff's medical report prepared by Dr. C.O Okere dated 24/8/2017 and produced in court, injuries were classified as harm."
21. Consequently, it is a fact that the medical report was produced in evidence and I will adopt the evidence of the injuries listed by the trial magistrate which are similar to the ones pleaded. In addition, in her evidence in court on 12/03/2021, the Respondent (PW1) testified that; "I was injured on the face, shoulder and bruises on the knee. I am healed. I am praying for compensation as per the plaint."
22. I have looked at the soft tissue injuries sustained by the Respondent and I am alive to the fact that no two cases can be completely similar. I have also looked at the cases relied on by the parties.



23. In Blue Horizon (supra), the Respondent sustained inter alia, fractured 3rd and 9th ribs hence not comparable. In Samwel Martin Njoroge (supra), the Respondent sustained inter alia, deep cut wounds on the forehead and legs. The same is also not comparable as the Respondent herein did not sustain deep cut wounds.
24. In their submissions before this court, the Appellants stated that the award should be reduced to Kshs 100,000/= and towards the end of their submissions, they stated that the award should be substituted with Kshs 80,000/= and in their submissions before the trial court, the proposed an award of Kshs 50,000/=. It appears as though they can't really make up their minds on what the Respondent is entitled to.
25. As for the authorities cited by the Appellants, the awards were too low in my view considering that the Respondent herein also suffered a dislocation of the shoulder. It is trite that the appellate Court will not disturb the trial Court's award of damages unless the said award is so inordinately high or so inordinately low as to represent an entirely erroneous assessment.
26. We have a host of cases dealing with similar injuries including Channan Agricultural Contractors Ltd –vs- Fred Barasa Mutayo (2013) eKLR where an award of Kshs 250,000/= was reviewed downwards to Kshs 150,000/= for 'moderate soft tissue injuries that were expected to heal in eight months time.' ;Purity Wambui Muriithi –vs- Highlands Mineral Water Company Ltd (2015) eKLR where an award of Kshs 700,000/= was reviewed downwards o Kshs 150,000/= for injuries to the left elbow, pelvic region, lower back and left knee. It is noteworthy that these two cases were decided over seven years ago; Justine Nyamweya Ochoki & Anor –vs- Jumaa Karisa Kipingwa [2020] eKLR where the plaintiff sustained blunt injuries to the chest, left wrist and lower lip. An award of Kshs 300,000/= was reduced to Kshs 150,000/= on appeal.
27. In trying to achieve comparable awards for comparable injuries I am aware no two case can be exactly the same and my view is that the award of Kshs 220,000/= is not inordinately high as it is within the acceptable range .
28. It is not correct that the the Appellants' submissions were not considered. In his judgment, the trial magistrate stated that; "The defendant has also proposed a figure of Kshs 50,000/= which was quite low considering the fact, even at the time of hearing of this case after almost two years after the accident, the plaintiff was still living under its effects."
29. Further, the trial magistrate quoted several authorities in making his determination hence showing how he arrived at the figure of Kshs 220,000/= contrary to the Appellants assertion in the Memorandum of Appeal.
30. From the foregoing it is evident that there is no sufficient ground to warrant disturbing the award by the trial court. The judgment is upheld. The appeal is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH MARCH 2025 MUMBUA T MATHEKA

JUDGE

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV



DATE: 2025-03-28 14:10:21

