



REPUBLIC OF KENYA



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**Netia v Shoka (Civil Appeal E280 of 2023)
[2025] KEHC 12138 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 12138 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E280 OF 2023
F WANGARI, J
MARCH 27, 2025**

BETWEEN

CHRISTINA MAKOKHA NETIA APPELLANT

AND

MOHAMED MGANDI SHOKA RESPONDENT

*(Being an Appeal from the Judgment of Hon. E. Muchoki (RM)
delivered on 06/10/2023 in Mombasa CMCC No. E347 of 2022)*

JUDGMENT

1. This Appeal is on quantum only.
2. Through a Plaintiff dated 09/03/2022, the Respondent claimed general and special damages as a result of injuries sustained in an accident that occurred on 23/04/2021 between himself and motor vehicle registration no. KAT 826T, Toyota 110. It was pleaded that the Respondent who was a pedestrian was rammed into a gate by the Appellant's authorized driver due to his negligent and careless driving.
3. In the Judgment, the Court entered liability as per the consent by the parties at 20% liability against the Respondent and 80% against the Appellant. Kshs. 600,000 was awarded as General Damages for pain and suffering, special damages of Kshs. 2,000 less 20% contributory negligence in both awards.
4. Aggrieved by the finding of the Trial Court on the award on general damages, the Appellant lodged the Memorandum of Appeal dated 07/10/2023. The appeal is on quantum only.

Submissions on quantum

5. In the trial court, the Respondent in his submissions sought for Kshs. 1,300,000/= as General Damages for pain and suffering, loss of earning capacity for Kshs. 1,882,400, future medical expenses for Kshs.



86,000/= and special damages at Kshs. 3,000/=. Since the appeal is on the award of general damages for pain and suffering, I shall limit myself to the said award.

6. The Respondent in support of the claim for general damages relied on the case of *Alphonse Muli Nziki v Brian Charles Ochuodho* [2014] eKLR, *George Wamalwa Wamba & another v Kyalo Wambua* [2018] eKLR and *Joseph Musee Mua v Julius Mbogo Mugi & 3 others* [2013] eKLR.
7. On the other hand, the Appellant relied on the case of *Triad Coaches Ltd & ano v Mary Mubeu Kakemu* [2020] eKLR, *Naomi Momanyi v G4s Security Services Kenya Limited & ano* [2018] eKLR and 2 other cases in proposing an award of Kshs. 200,000 as General Damages for the injuries sustained.
8. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions and both parties complied by filing of rival submissions. The Appellant filed submissions dated 29/12/2023 submitted that the trial court's award of Kshs. 600,000 as General Damages was exorbitant and unjustified and should be reduced to Kshs. 200,000. She relied on the same authorities as relied on in the lower court proceedings.
9. The Respondent in the submissions dated 06/03/2025 prayed that the judgment of the lower court be upheld as the Appellant had failed to show that the award of Kshs. 600,000/= was excessive. It was submitted that the award was fair and adequately compensated the Respondent for the injuries sustained. He relied on the same authorities relied on in the lower court proceedings.

Analysis

10. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (see *Peters v Sunday Post Limited* [1958] EA 424 and *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)

Quantum

11. The Appellant submitted that an award of Kshs. 600,000/= was too high for general damages for pain and suffering as commensurate compensation in the circumstances of this case.
12. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd v Meru Express Service v. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.”
13. It is thus settled that for the Appellate court, to interfere with the award it is not enough to show that the award is high or had if I handled the case in the subordinate court, I would have awarded a different figure. Damages are said to be at large. They must be commensurate with similar injuries.
14. Further, as it was held in *Job Obanda v. Stage Coach International Services Limited & Another* Civil Appeal No. 6 of 2001, it is not for the appellate court to set aside the trial court's exercise of discretion and substitute its own simply because if it had been the trial court it would have exercised the discretion differently.



15. There is no dispute that the Respondent suffered the injuries as pleaded. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages.
16. The Court of Appeal in *Odinga Jacktone Ouma V Maureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”
17. The principle on the award of damages is settled. In *Charles Oriwo Odeyo v. Appollo Justus Andabwa & Another* [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -
 1. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
 2. The award should be commensurable with the injuries sustained.
 3. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
 4. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
 5. The awards should not be inordinately low or high.
18. The Appellant suffered;
 - i. fracture of the right proximal tibia bone
 - ii. multiple soft tissue injuries
19. The Appellant faulted he trial court for relying on the case of *Gladys Lyaka Mwombe v Francis Namatsi & 2 others* [2019] eKLR where Kshs. 300,000 was awarded for more severe injuries yet the trial court gave double the amount as Kshs. 600,000 for the fracture injury. It was submitted that the court ought to have adjusted the award for the less severe injuries and awarded Kshs. 200,000.
20. I have perused through the Medical Report by Dr. Darius Wambua Kiema. The Respondent is said to have suffered a partial permanent disability at 10% due to risk of post traumatic arthritis and a lifetime of recurring post traumatic pains. The Respondent ought to receive compensation commensurate to the injuries suffered and the lifetime recurring pains. In *Ali Malik Brothers Motor (K) Limited and Another v Emmanuel Oduor Onyango* NRB HCCA No. 252 of 2016 [2018] eKLR, the plaintiff sustained a fracture of the pelvic and cuts of the right knee and was awarded Kshs. 700,000/- which was affirmed by the High Court.
21. In *Joseph Njeru Luke & 3 others v Stellah Muki Kioko* [2020] eKLR, the Plaintiff sustained pelvic fractures and soft tissue injuries, the High Court reduced the Lower Court’s award of Kshs. 1,700,000 to Kshs. 750,000.
22. From the above, I find that the award of Kshs. 600,000/= was adequate compensation for the injuries suffered. I find to reason to interfere with the court’s discretion in awarding the said amount.
23. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan*



Singh Rai Estate of & 4 others [2013] eKLR. The court exercises this discretion and award costs to the Respondent.

Determination

24. In the upshot, I make the following orders: -
- a. The Appeal lacks merits and is hereby dismissed.
 - b. Costs awarded to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 27TH DAY OF MARCH, 2025.

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F. WANGARI

JUDGE

In the presence of;

Mr. Kioko Advocate for the Appellant

Mr. Mulisha Advocate for the Respondent

M/S Salwa, Court Assistant

