



REPUBLIC OF KENYA



**Nyaocha & another v Mogaka (Civil Appeal E041 of 2023)
[2025] KEHC 4575 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E041 OF 2023
WA OKWANY, J
MARCH 27, 2025**

BETWEEN

GEOFFREY NYAOCHA 1ST APPELLANT

HAROON YUASA LIMITED 2ND APPELLANT

AND

SHADRACK NYAGETIRIA MOGAKA RESPONDENT

*(Being an Appeal from the Judgment and Decree at the Chief
Magistrate's Court in Nyamira in CMCC No. E009 of 2022 delivered
by Hon. B.O. Okong'o, Resident Magistrate on 3rd August 2023)*

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court where he sued the Appellants (Defendants) seeking the following orders: -
 - i. General Damages
 - ii. Special Damages at Kshs. 9,050/=
 - iii. Future Medical Expenses at Kshs. 150,000/=
 - iv. Costs
 - v. Interests on (a), (b) and (c) above
 - vi. Any other relief the honourable court may deem fit to grant.
2. The Plaintiff's case was that he was on or about the 5th October 2021 travelling as a fare paying passenger aboard the Appellants' Motor Vehicle Registration No. KDB 260V along Nyamira-Kisii Road when at Omogonchoro area, the Appellants' driver drove the said motor vehicle in a careless, negligent and/



or reckless manner thereby allowing it to veer off the road, lose control and overturn severally before landing into a nearby stream thus occasioning him serious injuries.

3. The Appellants filed a defence dated 11th March 2022 in which they denied the allegations made in the Plaintiff and attributed the accident to the Respondent's negligence. A trial was thereafter conducted in which the Respondent testified and presented the evidence of 3 other witnesses.
4. At the close of the trial, the learned trial magistrate rendered a judgment in favour of the Respondent as follows: -

Liability assessed at 100% in favour of the Plaintiff

General Damages – Kshs. 1,800,000/=

Special Damages – Kshs. 9,050/=

Total Award – Kshs. 1,809,05/=

Costs and interests of the suit
5. Aggrieved by the trial court's decision, the Appellants filed the instant appeal challenging the findings on quantum. They enumerated the following grounds of appeal in the Memorandum of Appeal: -
 1. That the Learned Trial Magistrate erred in law and in fact in the assessment of quantum thereby giving an award on quantum on general damages of Kshs. 1,800,000/= that was overly excess in the circumstances of the case.
 2. That the Learned Trial Magistrate erred in law and in fact in failing to pay regard to decisions filed alongside the Defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar injuries as the case he was deciding.
 3. That the Learned Trial Magistrate's exercise of discretion in assessment of quantum was injudicious.
6. The Appeal was canvassed by way of written submissions which I have considered.
7. The Appellants' case was that the award of general damages for pain and suffering was inordinately high considering the Respondent's injuries. Reference was made to the case of Joseph Kimanthi Nzau vs. Johnson Macharia (2019) eKLR where the court awarded Kshs. 800,000/= to an Appellant who sustained haematoma formation on the scalp, severe pain and tenderness on the scalp, fracture of the skull, fracture of the 2nd molar lower jaw on both sides, fracture of the 1st right rib, 2nd left rib, right clavicle bone and had severe pain and tenderness on the right hip.
8. The Appellants also cited the decision in Morris Miriti vs. Nahashon Muriuki & Another (2018) eKLR where an award of Kshs. 300,000/= was made to an Appellant who sustained multiple bruises, tender chest posterior and anterior, post-traumatic fracture of the 3rd and 4th ribs, bilateral haemophireino thorax, left lung contusion and fracture of the right scapula. The Appellants were of the view that an award of Kshs. 800,000/= would be sufficient compensation for the Respondent's injuries.
9. The Respondent, on the other hand, referred this court to the principles set out in the case of Peter Nyagacha vs. Nyagaka Bisera Peter (2018) eKLR where it was held that an appellate court will not easily interfere with the award of damages made by the trial court unless it is shown that; the trial court took into consideration an irrelevant fact; or awarded an inordinately high or low award such that it amounted to a wholly erroneous estimate; or that the said court applied a wrong principle of law.



10. The Respondent submitted that the award was fair as the trial court considered all the evidence and submissions placed before it and that the Court should dismiss the Appeal for want of merit.

11. The duty of a first appellate court was restated in the case of *PIL Kenya Ltd vs. Oppong* [2009] KLR 442 where the Court of Appeal held that:-

“It is the duty of the Court of Appeal, as a first appellate court, to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanour and giving allowance for that.”

12. I find that the only issue for my determination is whether the trial court arrived at the correct verdict on quantum.

13. The circumstances under which an appellate court may interfere with the trial court’s assessment of damages are now settled. In *Nance vs. British Columbia Electric Railways Company Limited* [1951] AC 601 at page 613 the Privy Council held thus:-

“The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of the law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages (*Flint –vs- Lovell* [1935] 1KB 354) approved by the House of Lords in *Davis –vs- Powell Duffryn Associated Collieries Ltd.* [1941]AC 601.”

14. Similarly, in *Cornilliac vs. St Louis* {1965} 7 WIR 491, Wooding C.J., outlined the principles governing the award of damages thus: -

“the Court in assessing damages should adopt the following guidelines:

- (a). The nature and extent of the injuries sustained.
- (b). The nature and gravity of the resulting physical disability.
- (c). The pain and suffering which had to be endured.
- (d). The loss of amenities suffered.
- (e). The extent to which, consequently the claimant’s pecuniary prospects have been materially affected.”

15. In the present case, it was not disputed that the Respondent sustained the injuries enumerated at paragraph 6 of the Complaint thus: -

- a. Left rib cage multiple fracture with ipsilateral hemo-pneumothorax and partial left lung atelectasis.
- b. Post-traumatic pulmonary haemorrhage



- c. Left lung collapse
 - d. Blunt thoracoabdominal injury
 - e. Chest injury
 - f. Bruises on the lower limbs
16. The Respondent's injuries were confirmed by the Medical Reports and Discharge Summaries that were produced as exhibits during the trial. I have considered the nature of the said injuries against the injuries sustained by claimants in the following comparable similar decided cases: -
- i. In *Muli vs. Nyoike & another (Civil Appeal E011 of 2020)* [2024] KEHC 4656 (KLR) (7 May 2024) (Judgment), the court upheld an award of Kshs. 1,800,000/= general damages where the respondents suffered comminuted fracture of the left tibia and fibula (secured with external fixators clamp), comminuted fracture of the right tibia and fibula (secured with external fixators clamp), large oblique fracture of the left scapula slitting into two, fracture to the posterior ribs 6th and 7th(accompanied by surgical emphysema), collapse of the left lung (consolidation), a large pneumothorax occupying the left thorax (causing mediastinal shift to the left) and severe soft tissue injuries to the left hand.
 - ii. In *Subati Flowers Limited vs. Walter Wanyonyi Wekesa* [2019] eKLR, the Court upheld an award of Kshs. 1,600,000/= general damages for the plaintiff who suffered a fracture of the right and left tibia and fibula, fracture of L2 of the lumbar spine and blunt injury to the right side of the chest.
 - iii. In *Geoffrey Mwaniki Mwinzi vs. Ibero (K) Ltd & Another* [2014] eKLR, the plaintiff sustained extensive fractures of the left tibia and fibula, soft tissue injuries on the left leg and fracture of the collar bone, and was awarded Kshs. 2,500,000.00 in general damages.
17. Having considered the injuries sustained by the claimants in the above cited cases and compared them to Respondent's injuries in the present appeal, I am not persuaded that the award of Kshs. 1,800,000/= was excessive or inordinately high so as to warrant this court's interference with the said award. I find that the trial court correctly applied the principles governing the assessment of damages and arrived at a reasonable award based on the Respondent's injuries and the comparable past awards. For the above reasons, I am not persuaded that there is justification in interfering with the said award of damages.
18. In conclusion, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.
19. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 27TH DAY OF MARCH 2025.

W. A. OKWANY

JUDGE

