



REPUBLIC OF KENYA



**Nyaocha & another v Osogo (Civil Appeal E044 of 2023)
[2025] KEHC 4538 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E044 OF 2023
WA OKWANY, J
MARCH 27, 2025**

BETWEEN

GEOFFREY NYAOCHA 1ST APPELLANT

HAROON YUASA LIMITED 2ND APPELLANT

AND

ELIZABETH KERUBO OSOGO RESPONDENT

*(Being an Appeal from the Judgment and Decree at the Chief
Magistrate's Court in Nyamira in CMCC No. E008 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 she sued the Appellants (Defendants) seeking the following orders: -
 - i. General Damages
 - ii. Special Damages at Kshs. 9,050/=
 - iii. Future Medical Expenses at Kshs. 190,000/=
 - iv. Costs
 - v. Interests on (a), (b) and (c) above
2. The Respondent's case was that she was on 5th October 2021 a lawful fare paying passenger aboard the 1st Appellant's Motor Vehicle Registration No. KDB 260V travelling along Nyamira – Kisii Road when at Omogonchoro area, the 2nd Defendant or the 1st Appellant's servant, agent and/or employee drove the said motor vehicle so carelessly, negligently and/or recklessly thereby permitting it to veer



off the road, lose control and roll severally before landing into a nearby stream thereby occasioning injuries to the Plaintiff.

3. The Defendants denied all the allegations made in the Plaint and attributed the accident to negligence of the Plaintiff.
4. The trial court conducted the trial in which the Respondent testified and presented the evidence of three witnesses, namely; No. 83327 P.C. Justus Kipkoech (PW1), Dr. Peter Momanyi Morebu (PW3) and one Edmond, the records officer at Mediheal Hospital (PW4). The Plaintiff and her witnesses produced 11 exhibits as follows: -
 1. Plaintiff's Identity Card (P.Exh1)
 2. P3 Form (P.Exh2)
 3. Police Abstract (P.Exh3)
 4. Treatment Notes from Mediheal and Fertility Centre (P.Exh4)
 5. Medical Report by Dr. Morebu (P.Exh5)
 6. Certificate of Search from the Registrar of Motor Vehicles (P.Exh6)
 7. Receipts in support of Special Damages (P.Exh7)
 8. Receipt for Medical Report (P.Exh8)
 9. Demand Letter (P.Exh9)
 10. Notice of Intention to sue (P.Exh10)
 11. Discharge Summary (P.Exh12)
5. The Appellants called one witness, Dr. Steve Ochieng', who testified on behalf of Dr. Jennifer Kahuthu and confirmed the Plaintiff's injuries. He noted that the metal implants on the Respondent's spinal area were meant to cure the vertebral column and were not removed so as to justify the claim for future medical expenses.
6. At the close of the end of the case, the trial court delivered a judgment in favour of the Plaintiff as follows: -

Liability assessed at 90:10 in favour of the Plaintiff

General Damages – Kshs. 3,500,000

Special Damages – Kshs. 9,050

Future Medical Expenses – Kshs. 200,000

Sub-total – Kshs. 3,709,050

Less 10% contribution – (Kshs. 370,905)

Total Award – Kshs. 3,338,145

Costs and interests of the suit
7. Aggrieved by the trial court's decision, the Appellants filed the instant appeal challenging the trial court's assessment of quantum of damages and 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. 3,500,000 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.
8. The Appeal was canvassed by way of written submissions which I have considered.
The Appellant's submissions
9. A perusal of the Appellants' submissions dated 16th October 2024, reveals that the particulars of injuries listed at paragraph 6 of the said submissions are not consistent with the injuries that the Respondent sustained in the accident in question. The Appellants also referred to an award of Kshs. 1,800,000 which was not the award made by the trial court in this case. It was therefore evident that the Appellants' submissions were incongruent with the facts of this case and are therefore not useful in the determination of this appeal. I am of the view that it is possible that there was a mix-up in the Appellant's submissions.

The Respondent's Submissions

10. The Respondent submitted that the court should be guided by the principles governing the circumstances under which an appellate court may interfere with the trial court's award of damages. Reference was made to the decision in the case of Peter Nyagacha vs. Nyagaka Bisera Peter (2018) eKLR where it was held that an appellate court may only interfere with an award of damages if it is shown that the trial court applied a wrong principle of law or took into consideration an irrelevant fact or awarded an inordinately high or low award or that the award amounted to a wholly erroneous estimate.
11. It was submitted that the award was fair as the trial court considered all the evidence and submissions placed before it.
12. The duty of a first appellate court was restated in the case of Kenya Ports Authority vs. Kusthon (Kenya) Limited 2000 2EA 212 where the Court of Appeal held, inter alia, that: -

“On a first appeal from the High Court, the Court of Appeal should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
13. I have carefully considered the record of appeal and the parties' respective submissions. I note that the trial court's findings on liability was not challenged in this appeal. I find that the main issue for determination is whether the trial court arrived at the correct finding on quantum of damages.
14. It is trite that an appellate court will not easily interfere with the assessment of damages, by a trial court, unless it is established that the said court applied the wrong principles or misapprehended the evidence thereby arriving at an amount that is inordinately high or low as to represent an entirely erroneous



estimate. This is the position that was taken by the Court of Appeal in the case of Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 thus: -

“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.”

15. Similarly, in *Southern Engineering Company Ltd. vs. Musingi Mutia* [1985] KLR 730 the principles were restated thus: -

“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.”

16. I note that the Respondent established that she sustained the following injuries in the said accident: -

- a. Lumbar (L1), Lumber (L2) and Lumber (L3) Column fracture
- b. Spinal Canal Stenosis
- c. Paraplegia
- d. Spinal Cord Injury
- e. Bruises to the upper limbs.

17. The Respondent's injuries were confirmed by Dr. Momanyi (PW3) who produced his Medical Report dated 5th November 2021. The injuries were also recorded in the medical report (D.Exh1) produced by the Appellants' witness Dr. Ochieng'. I note that in the first medical report by Dr. Morebu, disability was assessed at 50% while in the second report, prepared about a year later, permanent disability was assessed at 30%.

18. I have considered the nature of the Respondent's injuries alongside the following past comparable cases: -



- i. In HCC No. 266 of 1998 at Machakos, Zachariah Nyabuti Uchiri vs. Tashrif Bus Services Ltd, the court awarded Kshs. 1,650,000/= in general damages where the respondent suffered a severe head injury with a fracture of the right macular sinus, a fracture of the right transverse process of the cervical, spine and a compound fracture of the left tibia and fibula with the degree of permanent incapacity was assessed at 45%.
 - ii. In the case of Regina Mwikali Wilson vs. Stephen M. Gichuhi & another [2015] eKLR the respondent who sustained multiple skeletal fractures and soft tissue injuries which occasioned her pains and prolonged ongoing mobility with permanent incapacitation assessed at 20% was awarded Kshs. 2.5 million in general damages.
 - iii. In Ezekiel Nzuki Mumo vs. John Kinuthia & Another; [2016] eKLR, the claimant suffered spinal injury at T12 and L1, complete paraplegia with stool and urine incontinence, bladder and urethral injury and blood loss with physical and psychological pain. The doctor assessed his permanent disability at 100% and Msagha J. (as he then was) awarded Kshs. 6,000,000/=.
 - iv. In Ngure Edward Karega vs. Yusuf Doran Nassir (2014) eKLR Omondi J. (as she then was) awarded Kshs. 5 Million for pain and suffering where the plaintiff sustained a spinal injury, of the right acetabulum and the cervical vertebra C6 with narrowing of the spinal cord, resulting into paraplegia verterbractory of C6 and fusion of C5 and C6 being done from the level of T6 up to the feet; loss of sensation from the nipples to the feet, urine incontinence and was using an indwelling catheter and diapers. The doctor described the plaintiff as bed-ridden with 100% disability and would always require an assistant as he could not do anything for himself.
19. I have considered the injuries sustained by the claimants in the above cited cases and I note that the Respondent's injuries were less severe when compared to the said injuries. I also note that the second medical report indicated that the Respondent was healing progressively as shown in the reduced percentage on permanent disability. The trial court relied on the case of Nelson Mghadi vs. Razick Obuba (2021) eKLR and Subati Flowers Ltd vs. Walter Wanyonyi Wekesa (2019) eKLR and awarded Kshs. 3,500,000/= general damages. I do not find any justification in disturbing the assessment of damages by the trial court.
20. In conclusion, I find that the appeal is not merited and I therefore dismiss it with costs to the Respondent. I also award the Respondent the costs of the trial court suit.
21. 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

