



**Kipyegen v Kingori & another (Civil Appeal 189 of 2022)
[2025] KEHC 3779 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 189 OF 2022
PN GICHOHI, J
MARCH 26, 2025**

BETWEEN

RICHARD C KIPYEGEN APPELLANT

AND

JOSEPH MURUNGA KINGORI 1ST RESPONDENT

MUGUMA NDIRANGU 2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. E Soita (SRM
in Molo CMCC No. E316 of 2021 delivered on 21st November, 2022)*

JUDGMENT

1. This judgment is in regard to an Appeal by the Appellant against judgment on quantum only in Molo CMCC No. E316 of 2021 as the parties entered into a consent on liability in the ratio of 85:15 in favour of the Plaintiff Richard C. Kipyegen (herein referred to as the Appellant) against the Defendants Joseph Murunga Kingori & Muguma Ndirangu (herein referred to as the Respondents).
2. According to the Plaint dated 22nd January 2020, the Respondent pleaded that he sustained:-
Dislocation of the right hip joint. Multiple cut wounds on the face. Loss of right upper incisor tooth. Blunt injury to left shoulder joint. Blunt injury of anterior chest wall. Soft tissue injuries of the left wrist joint. Blunt injuries to the head. Blunt injuries to the head.
3. The Appellant had allegedly sustained the said injuries on 9/9/2021 when motor vehicle registration No. KAN 675 T in which he was travelling in was hit by motor vehicle registration No. KAQ 029 B along Nakuru - Eldoret Highway.
4. He therefore prayed for judgment against the Respondents jointly and severally for:-
 - a. General Damages for pain and suffering.



- b. Special damages of Kshs. 20,500/= plus 16 % VAT.
 - c. Costs of the suit.
5. After hearing both parties, the trial Court entered judgement on 21st November, 2022 in favour of the Appellant herein against the Respondents jointly and severally as follows:-
- a. General damages..... Kshs 250,000.
 - b. Special damagesKshs 17,300.
 - c. Sub- total.....Kshs. 267,000.
 - d. Less 15% liability.....Kshs. 40,095
 - e. Grand Total.....Kshs. 227,205.
- Costs and interest and interest until payment in full.
6. Aggrieved, the Appellant filed a Memorandum of Appeal dated 19th December, 2022 on the following grounds:-
- 1. That the learned trial magistrate erred in law and in fact in making a finding and arriving at an award of Kshs 250,000 being general damages which award is inordinately low as to represent an erroneous estimate of damages payable.
 - 2. That the learned Trial magistrate erred in law and in fact in failing to apprehend and consider the Appellant Submissions.
7. He therefore urged this Court to make the following Orders: -
- a. The finding of the trial magistrate on quantum be set aside, be reviewed and revised and or be substituted with the judgement of this Honourable Court.
 - b. The Honourable Court do make such further orders as it may deem fit.
 - c. The Appeal be allowed with costs to the Appellant.

Appellant’s Submissions.

- 8. The Appellant submitted that after the accident, he was taken to Nakuru Provincial General Hospital where he was admitted from 10/9/201 to 13/9/2021 and was later issued with a medical report dated 27/9/2021 confirming the injuries sustained, which in summary were classified as Grievous harm.
- 9. It was his submissions that Dr. Omuyoma wrote a medical-legal report dated 7/10/2021 and that one of the major concerns was dislocation of the right hip joint which restricted movement and the pain in the left wrist which injuries the Doctor classified as grievous harm.
- 10. Based on the above, the Appellant submitted that the award given by the trial court is not commensurate to the injuries sustained. In support of the same, he relied on thre case of Hamid Abdulrahman Abdalla & Another v Dixon Ngoti Mwakondi & Another [2015] EKLR, where the 1st Respondent sustained posterior dislocation of the left hip, cut wounds on the right chin and cut wounds on the lower lip and High Court upheld an award of Kshs.700,000/=.
- 11. He further relied on the case of Easy Coach Limited v Emily Nyangasi [2017] eKLR where the Respondent sustained facial injury, injury to the chest back and right hand with cut wound, injury to the right leg with cut wound and High Court upheld an award of Kshs. 700,000/=.



12. Lastly he cited the case of Jennifer Kerubo Omundi v Registered Trustees Catholic Diocese of Kisii [2016] eKLR, where the Court awarded Kshs. 500,000 to an Appellant who had sustained blunt trauma to the left hip joint leading to dislocation of the hip bone, blunt trauma to the left knee, deep cut wound on the left leg, deep cut wound on the left thigh, left shoulder joint and degloving injury on both gluteal areas.
13. Based on the cited case law, the Appellant submitted that the award of general damages was inadequate and does not reflect the severity of the injuries suffered. He urged this Court to substitute the trial Court's award with an award consistent with the evidence tendered and relevant precedents. He also prayed for award of costs of this Appeal.

Respondents' Submissions

14. They submitted that the award by the trial court was within the comparable highest limits. In any event that if any review is to be done, then it should be reviewed downwards.
15. It was their submissions that as per Dr. Malik's Report, the Appellant herein suffered anterior dislocation of the right hip joint, loss of a tooth and several soft tissue injuries to the face, left shoulder and left wrist joint and therefore the award by the trial Court was within the limits for comparable injuries.
16. In support of their view, the Respondents relied on the case of Millicent Atieno Ochunyo v Katola Richard [2015] eKLR and the case of HB (Minor suing through mother and next friend DKM) v Japer Nchonga Magari & Another [2021] eKLR where the Court reiterated that comparable injuries so far as possible should be compensated by comparable awards.
17. The Respondent further relied on the case of Charles Oriwo deyo v Apollo Justus Andabwa & Another [2017] eKLR where the Court listed the principles to be observed in awarding damages in such as case as follows:-

“The assessment of damages in personal injury case by court is guided by the following principles: -

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 (See Boniface Waiti & another v Michael Kariuki Kamau [2007] eKLR.”
18. While citing among others, the Court of Appeal decision in the case of Catholic Diocese of Kisumu v sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2KLR 55, the Respondents submitted that discretion of a magistrate or a judge can only be interfered with if such a court erred in principle of law and arrived at a wrong decision.



19. It was their submissions that the trial Court was alive to the principles applicable in awarding damages in such circumstances and thus the award was justified. They therefore urged if the Court is to interfere with the award of the trial court, then the award be revised downwards.
20. In support of this line of submissions, they relied on the case of:-John Wambua v Matthew Makau Mwololo & Another [2020] eKLR, where the Court upheld an award of Kshs. 120,000/= to a party that sustained blunt injury of the right shoulder and blunt injury to the right toe. Jyoti Structures Limited & Another V Truphena Chekoech Too 7 Another [2020] eKLR, where the Respondent sustained blunt injury to the head, neck, chest, back and both thighs and was awarded general damages of Kshs. 250,000/=, but on Appeal the award was reduced to Kshs. 120,000/= *ENA Investment Limited v Onduso (Civil Appeal E092 of 2021)* [2023] KEHC 23549 (KLR), where the Respondent suffered multiple soft tissue injuries that included loss of one tooth and the High court upheld an award of Kshs. 250,000/= by the trial Court.
21. In conclusion, the Respondents submitted that as per the injuries suffered by the Appellant, the award of damages ordinarily range from Kshs 120,000/= to Kshs 250,000/= and therefore, the trial court awarded maximum award possible in the circumstance and if any variance is to be made then the award be reduced and the Respondents awarded costs.

Analysis and Determination

22. As earlier stated in this judgment, this is an appeal on quantum of damages only. After considering the submissions by both parties, the issue for consideration is whether this court should interfere with the award of damages made by the trial court.
23. This Court is alive to the well settled principle that an award of damages is discretionary and an appellate court should be slow in interfering with that discretion. To be precise, the Court of Appeal in Catholic Diocese of Kisumu (supra) held:-

“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 difference 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 or leaving out of account some relevant one or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate.”
24. In this case, the trial court’s record shows that with liability settled , the parties relied on the two medical reports one being by Dr. Obed Omuyoma for the Appellant and the other by Dr. Malik for the Respondent herein, both produced by consent of the parties without calling the makers.
25. From the record, there is no dispute that the Appellant was injured in this accident. It is evident from the Discharge Summary that the Appellant was admitted at Nakuru Level 5 Hospital on 10/9/2021 and discharged on 13/9/2021. According to the P3 Form, the degree of injury suffered by the Appellant was classified as grievous harm.
26. The medical report by Dr. Obed Omuyoma dated 7/10/2021 indicates the injuries as stated by the Appellant. He also opined that the degree of injuries sustained by the Appellant was grievous harm.



27. The Appellant was subjected to a second medical examination and Dr. Malik who examined him on 11/2/2022 prepared a medical report on a “without prejudice” basis that:-

“He was taken to the Nakuru Level 5 Hospital where he was examined , X-rayed and admitted . His dislocated right hip joint was reduced and his right leg was fitted with skin traction and was confined to bed. He was discharged only three days after admissions. He did not seek further treatment.”

28. He found that the Appellant complained of occasional pain on the right hip on walking. Regarding face and mouth , the doctor noted that:- “There were two linear scars measuring 3 cm each on the right cheek . The right upper , second incisor tooth is missing.” Regarding the right hip joint, he opined that all movements at the joint were full and free of pain. He indicated that the X-rays were on CD and therefore he could not open them on lap top computer.

29. However, he opined in regard to the Appellant:-

“Richard probably sustained an anterior dislocation of his right hip joint and lost a tooth as a result of a traffic accident. He also sustained soft tissue injuries to his face , chest , left shoulder joint and wrist joint. He was as admitted to a hospital and X-rayed. His dislocated hip joint was reduced. And he was confined to bed for three days in skin traction. The traction was removed and he was discharged home. He did not go back for more treatment. He still complains of occasional pain in the right hip joint on walking. His hip is fully mobile and normal. Although his X-rays cannot be accessed to confirm the presence of a dislocation of the hip joint, his hospital card states that the hip was indeed dislocated and was reduced in the hospital.”

30. Dr. Malik concluded:-

“He suffered Total incapacity of a Temporary nature for a period of Three Weeks followed by a Partial incapacity of a Temporary nature for a further period of One Week. He suffered no permanent physical disability.”

31. From the above reports, this Court has established that the Appellant sustained:-Dislocation of the right hip joint, Loss of upper incisor tooth, Multiple wounds on the face, blunt injury to the left shoulder, anterior chest, head and neck which were severe soft injuries.

32. While arriving at the impugned award of general damages, the trial court had this to say in its judgment:-

“On quantum the Defendants rely on the precedent of Lilian Anyango Otieno v Philip Mugoya Ogila, where Ochieng J, as he then was , awarded Kshs 150,000 for dislocation and soft tissue injuries.... On basis that the plaintiff sustained similar injuries but also lost one tooth, Court awards the plaintiff Kshs 250,000 as general damages.”

33. However, a perusal of the decision in that case whose full citation is Lilian Anyango Otieno v Philip Mugoya Ogila [2022] KEHC 1006 (KLR), shows that the Respondent therein had pleaded in his plaint as having suffered head injury, with dislocation of cervical spine of the neck, chest injury, with damage of the rib cage and blunt abdominal injury, tissue injuries of both upper limbs with dislocated wrist and elbow joint, dislocated pelvic frame involving both hip joints and damage of the right lower limb, with dislocation at the ankle joint.



34. However, Fred Ochieng J (as he then was) found that these injuries were not established by medical reports save for soft tissue injuries and therefore, he increased the award from Kshs. 100,000/= to Kshs. 150,000/= for the Respondent who had suffered soft tissue injuries only. It is therefore evident that the trial court misapprehended the facts of the case and indicated that the plaintiff before it had suffered a dislocation which influenced her decision in arriving at the impugned award.
35. In *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] KEHC 8373 (KLR) Justice D.S Majanja (as he then was) reduced an award of damages from Kshs. 1,000,000/= to Kshs. 450,000/= for the 2nd respondent who sustained a single fracture of the tibia and fibula and dislocation of the hip joint. The fracture was treated by POP but that he was still walking with the aid of a cane and had left hip joint tenderness at the extremes of abduction and flexion.
36. In *Veronicah Mkanjala Mnyapara v Patrick Nyasinga Amenya* [2021] eKLR, R.E. Ougo, J upheld an award of Kshs. 300,000/= for contusion to the head and chest, bruises on both hands and legs and dislocation of the left hip joint.
37. In *Kembe v Abiud* (Civil Appeal E133 of 2021) [2023] KEHC 1673 (KLR), T. A. Odera J substituted the trial courts award of Kshs. 150,000 with an award of Kshs 250,000 for the Appellant who had suffered dislocation of the right hip joint and chest pain in the right thigh.
38. In the present case, cases that the the Respondents relied on show that the injuries suffered therein are soft tissue injuries only and therefore, the Respondents failed to factor in the dislocation of the hip joint and the loss of one tooth. In the circumstances, the awards therein are not comparable to the injuries sustained in this case.
39. On the other hand, in the case of *Hamid Abdulrahman Abdallan & Another* (Supra) relied on by the Appellant herein, the 1st Respondent indeed suffered posterior dislocation of the joint with cut wounds. However, the wounds were deep cut wounds and Dr. S. K. Ndegwa, opined that Mwakondi suffered severe joint and soft tissue injuries and that the prognosis was that he was likely to develop severe post traumatic arthritis of the left hip.
40. In light of the injuries sustained by the Appellant herein, this Court is satisfied that the award of Kshs. 250,000/= by the trial court was inordinately low hence calling for interference. Consequently, that award is enhanced to a sum of Kshs. 400,000/=.
41. There is no issue raised in this Appeal in regard to the award of special damages and therefore, the sum of Kshs. 17,300/= awarded by the trial court is upheld. In conclusion, this Appeal is allowed in the following terms:-
 1. The trial court's award of Kshs. 250,000/= as General Damages for pain and suffering is hereby set aside and substituted with an award of Kshs 400,000/=.
 2. Special damages Kshs. 17, 300/=.
Subtotal Kshs. 417,300/= Less 15% contributory negligence of Kshs. 62,595/=.
Grand total.....Kshs. 354,705/=
 3. Costs of this Appeal is awarded to the Appellant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF MARCH, 2025.

PATRICIA GICHOHI

JUDGE



Ms Chepkoech for Ms Chelagat for the Appellant

N/A for the Respondents

Ruto, Court Assistant

