



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nyaga v Kingori & another (Civil Appeal 191 of 2022)
[2025] KEHC 5499 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 191 OF 2022
PN GICHOHI, J
APRIL 30, 2025**

BETWEEN

MAUREEN WAKIIRA NYAGA APPELLANT

AND

JOSEPH MURUNGA KINGORI 1ST RESPONDENT

MUGUMA NDIRANGU 2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. E Soita,
delivered on 21st November, 2022 in Molo CMCC No. E314 of 2021)*

JUDGMENT

1. The background of this Appeal is that the Appellant herein sued the Respondents vide a Plaint dated 12th October, 2021, seeking judgement against them for:-
 - a. General damages for pain and suffering and future medical expenses.
 - b. Special damages of Kshs. 20,950 plus 16% VAT.
 - c. Costs of the suit.
 - d. Interest on (a), (b) and (c) above at Court rates.
 - e. Any other relief that this Honourable Court shall find fit and just to grant.
2. Her claim was that on or about 9th September, 2021, she was travelling on board motor vehicle registration No. KAN 675T along Nakuru-Eldoret Highway at Ngata area when the 2nd Respondent, being the driver of motor vehicle KAQ 029B, carelessly and negligently drove and or controlled the said motor vehicle, causing it to hit motor vehicle registration No. KAN 675T, as a result of which she sustained serious injuries to wit; cut wound on the per-orbital region leading to severe soft tissue



injuries, lacerated wound on the nose and upper lip leading to soft tissue injuries, loss of one lower incisors and four upper incisors, blunt injury to the neck, anterior chest, left shin, left leg and head leading to soft tissue injuries, lacerated wound to the lower lip leading to severe soft tissue injuries and blunt injuries of both eyes leading to traumatic conjunctivitis.

3. She blamed the 2nd Respondent for allegedly carelessly overtaking and encroaching on the lane of Motor Vehicle Registration No. KAN 675T, driving without due care and attention, driving without proper look out, driving at excessive speed, failing to swerve or brake to avoid the accident, driving under the influence of Alcohol and driving a defective motor vehicle.
4. She pleaded that as the registered owner of the subject Motor Vehicle Registration No. KAQ 029B, 1st Respondent is vicariously liable for the negligent acts of the 2nd Respondent.
5. The Respondents filed a joint defence on 26th November, 2021 and denied the entire claim. They stated that if indeed such an accident occurred, then it was occasioned solely by the negligence of the Appellant herein in that she failed to buckle up while inside the motor vehicle, boarded un-roadworthy vehicle, deliberately tried to jump out of a moving vehicle, distracted the driver while he was driving and engaged in other frolics while a board the said motor vehicle.
6. In the alternative and without prejudice, the Respondents pleaded that the accident was occasioned by the driver of Motor Vehicle Reg. No. KAN 675T for driving at excessive speed and without due care and attention to other road users; driving a defective motor vehicle, failing to break timeously, veering off the road, encroaching on KAQ 029B lane, failing to stop, slow down and failing to maintain proper control of the Motor Vehicle Reg. No. KAN 675T.
7. They claimed that that since the driver and the owner of Motor Vehicle Reg. No. KAN 675T were partially to blame for the accident, the two should be apportioned liability. They then undertook to join in the suit Evans Kiplangat and Jackson Komen as the driver and owner of Motor Vehicle Reg. No. KAN 675T respectively.
8. Upon hearing both parties, the trial court delivered his judgement on 21st November, 2022 in favour of the Appellant herein against the Respondents jointly and severally as follows:-
 - a. General damages Kshs. 300,000.
 - b. Future medical expenses.....Kshs. 50,000.
 - c. Special damages.....Kshs. 17,750.Subtotal.....Kshs. 367,750.
Less 15% liability.....Kshs. 55, 162.50.
Grand Total Kshs. 312,587.50
9. Aggrieved by this decision, the Appellant filed a Memorandum of Appeal dated 19th December, 2022, on the grounds that:-
 1. The learned trial magistrate erred in law and in fact in making a finding and arriving at an award of Kshs 300,000 being general damages which award is inordinately too low as to represent an erroneous estimate of damages payable.
 2. The learned Trial magistrate erred in law and in fact in failing to apprehend and consider the Appellant Submissions.
10. She therefore urged this Court to; -



1. To set aside, review and/or substitute the trial court finding with the judgement of this Honourable Court.
2. Make such further orders as it may deem fit.
3. Allow the Appeal with costs to the Appellant.

Appellant Submissions

11. On quantum, the Appellant emphasised the injuries she sustained as pleaded in the Complaint and argued that when the accident occurred, she was taken to Nakuru Provincial General Hospital, where she was admitted on 10/9/2021 and discharged the next day on 11/9/2021. She was later issued with a medical report dated 27/9/2021 confirming the injuries sustained, which were classified as grievous harm. Further that Dr. Omuyoma wrote a medical-legal report dated 7/10/2021 confirming the injuries and also classified the same as grievous harm.
12. Based on the foregoing, the Appellant submitted that the trial court failed to adequately consider the nature and severity of her injuries resulting to an award that is manifestly low and that does not adequately compensate her for the pain and suffering experienced.
13. Moreover, that the trial court failed to apply the relevant legal precedents therefore arriving at an award that is inordinately too low compared to awards in comparable cases.
14. To support its argument on the review upwards, the Appellant relied on the case of Joseph Gatitika & Another v Felista Muthoni & 2 others [2020] eKLR where the 1st Respondent sustained severe injury on her lips, mouth, chest and all her limbs, loss of both upper incisors and canine teeth and injury to the left eye and scarring to the eyelid was awarded general damages of Kshs. 700,000.
15. Further, She 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 on appeal, the award of Kshs. 700,000 was upheld.
16. Lastly, she cited the case of Anthony Nyamweya v Dorca Gesare Mounde [2022] eKLR, where the High Court made an award of Kshs. 600,000 to the Respondent who had sustained a swollen knee joint tender on palpation, loss of three upper teeth, loss of three lower teeth and bruises on the neck which injuries.
17. From the foregoing, the Appellant argued that the award of damages by the trial court was inadequate and does not reflect the severity of the injuries suffered. She therefore urged this Court to set aside the trial Court's award and substitute with an award that is consistent with the evidence tendered and relevant precedents. She also prayed for award of costs of this Appeal.

Respondents' Submissions

18. The Respondents submitted that this Appeal is unmerited for the reason that the damages awarded is within the comparable highest limit. In any event that if any review is to be done, then it should be reviewed downwards reason being that in his report, Dr. Malik indicated that the Appellant suffered facial wounds, loss of five teeth and soft tissue injuries to the neck, chest and left lower leg. They therefore maintained that the award by the trial Court was within the limits for comparable injuries.
19. 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) Vs Japer



Nchonga Magari & Another [2021] eKLR, where the Court reiterated that comparable injuries so far as possible to be compensated by comparable awards.

20. Further, the Respondents 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 Vs Michael Kariuki Kamau (2007) eKLR.”

21. Citing among others, the Court of Appeal decision in Catholic Diocese of Kisumu V sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2KLR 55, the Respondents argued that the role of an appellate court in interfering with exercise of discretionary 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.
22. Accordingly, the Respondents argued that the trial court was alive to the principles applicable in awarding damages in such circumstances and thus the award was justified. The Respondent submitted that if the Court is to interfere with the award of the trial court then do the same downwards.
23. To support the award granted by the trial Court, the Respondents relied on the following cases :- Ayieko v Obat [2023] KEHC 22846(KLR), where the Plaintiff had suffered loss of teeth and soft tissue injuries and on appeal, High Court set aside an award of Kshs. 250,000 and substituted with Kshs. 180,000. Matunda(Fruits) Bus Services Ltd v Agnes Chemngeno Tuiya [2021] eKLR where the Respondent sustained deep cut wound on the scalp, cut wound on the temporal region right shin, blunt injuries to the neck, lost two upper incisors and two lower incisors and a cut wound on the lower lip and appeal, the Court reduced the award of the trial Court of Kshs. 390,000 with Kshs. 250,000. Justice Nyamweya Ochoki v Prudence Anna Mwambu [2020] eKLR where the Respondent lost upper incisors, suffered deep cut wound on the chin and injury to the forearm and loss of consciousness and on appeal, the award of Kshs. 650,000 was reduced to Kshs. 300,000.
24. Accordingly, they submitted that as per the injuries suffered by the Appellant award range from Kshs. 50,000 to Kshs. 390,000, therefore the award of Kshs. 300,000 granted by the trial court was within the higher limits, therefore, the same should remain undisturbed.

Analysis and Determination

25. Liability was recorded by consent in the ratio of 85:15 in favour of the Appellant as against the Respondents and therefore, this is an appeal on quantum of damages and specifically general damages for pain and suffering only. Accordingly, the legal principles guiding such an appeal were enunciated in Butt –vs- Khan (1981) KLR 349, which was applied in Kemfro Africa Ltd t/a Meru Express Service



& Gathongo Kanini –vs- A.M Lubia and Olive Lubia (1982 – 1988) I KAR 727 at page 730, wherein Kneller JA stated as follows: -

“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 for East Africa to be that it must be satisfied that either the Judge in assessing 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”.

26. The injuries suffered by the Appellant were established as; cut wound on the per-orbital region leading to severe soft tissue injuries, lacerated wound on the nose and upper lip leading to soft tissue injuries, loss of one lower incisors and two upper incisors, Blunt injury to the neck, anterior chest, left shin, left leg and head leading to soft tissue injuries, lacerated wound to the lower lip leading to severe soft tissue injuries and blunt injuries of both eyes leading to traumatic conjunctivitis.
27. The trial court awarded general damages of Kshs. 300,000 basing its decision on the case of Justice Nyamweya Ochoi V Prudence Anna Mwambu [2020] EKLRL , where a Respondent lost upper front incisor tooth, suffered deep cut on the chin, cut on the lips, injury to the right forearm and loss of consciousness and High Court reduced the trial court’s award of Kshs. 650,000 to Kshs. 300,000.
28. In making its award, the trial Court indicated that the Appellant had suffered soft tissue injuries and lost five teeth, thus the award was commensurate to the injuries suffered.
29. The Medical Report of 27/09/2021 by Dr. Thaithi FB of Provincial General Hospital Nakuru, shows that the Appellant herein suffered severe head and dental injuries which were classified as grievous harm.
30. The Medical report of Dr. Obed Omuyoma dated 7/10/2021 confirmed the injuries as listed in the Complaint and indicated that save for the loss of four upper incisors and one lower incisor, all the other injuries indicated were soft tissue injuries.
31. Dr. M.S Malik’s Medical Report dated 11/2/2022, also noted that there was abrasion on the left eye brow and nose, a cut on the upper lip, loss of upper incisors and one lower incisor, pain on the neck and chest and bruises on the left lower leg. He confirmed that the Appellant’s injuries had healed without any complication but noted that the lower teeth had braces. In conclusion, he indicated the injuries suffered as facial wounds, loss of teeth and soft tissue injuries.
32. From these medical reports, it is evident that the injuries suffered are loss of teeth and several soft tissue injuries to the head region. In Joseph Mutua Nthia vs. Fredrick Moses M. Katuva [2019] eKLR, Odunga, J. (as he then was) awarded Kshs. 400,000/= where the claimant suffered loss of 2 teeth and loosening of 3 others, with an injury to the face, blunt chest injury and blunt back injury.
33. In Washington Mukanya Karanja & Another v Margaret Wambui Maina [2020] eKLR the appellate Court upheld the sum of Kshs. 300,000 awarded on general damages to the Plaintiff with swelling of upper part of mouth, alveolar fracture of both incisor teeth, soft tissue injuries on right leg and a superficial wound.
34. In Acacia Ventures Limited v Nellie Belindah Osok [2021] eKLR , High Court reduced general damages awarded to the Respondent from Kshs. 1,000,000 to Kshs. 500,000 for bruises on the forehead, upper lip cut wound, nose bleeding, loss of four lower teeth, complex soft tissue injuries and anterior maxillary dental alveolar fracture.



35. In the latter case, the Respondent was awarded Kshs. 500,000 as in addition to the lost teeth and soft tissue injuries, he suffered anterior maxillary dental alveolar fracture.
36. Accordingly, it is clear that the award of damages for such injuries as suffered by the Appellant herein range between Kshs. 250,000 to Kshs. 400,000. In the circumstances, there is no justification for interfering with the trial court's assessment of general damages. The award falls within the range of awards made by other courts for the same type of injuries.
37. In conclusion:-
1. The Appeal is devoid of merit and therefore dismissed.
 2. Costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF APRIL, 2025.

PATRICIA GICHOHI

JUDGE

Ms Jeptanui for Ms Chelagat for the Appellant

Ms Mwangi for Mr. Kisila for the Respondents

Ruto, Court Assistant

