



REPUBLIC OF KENYA



**Khetia Drapers Limited v Ngomere (Civil Appeal 78 of 2022)
[2025] KEHC 5549 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5549 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 78 OF 2022
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

KHETIA DRAPERS LIMITED APPELLANT

AND

PERIS STAISY NGOMERE RESPONDENT

*(Being an Appeal from the Judgment of Hon. C. Cheruiyot delivered
on 16th September 2022 in Kakamega CMCC NO. E156 OF 2021)*

JUDGMENT

1. The Respondent herein filed suit seeking for damages for injuries and incidental loss suffered as a result of a road accident which occurred on 19/6/2021 along Mumias – Kakamega road. The accident involved motor vehicle registration number KDB 255 and Motor bike registration No. KMFC 525G. The Respondent was a pillion passenger on the motorcycle.
2. At the conclusion of the hearing, the trial court delivered judgment in which it apportioned Liability in the ratio of 10% against the respondents and 90% against the Appellant. The court further awarded Kshs. 350,000 general damages and Kshs. 8,240 in special damages.

Memorandum of Appeal

3. The appellant was the aggrieved by the award on general damages, and he proffered this Appeal. He has set out grounds as follows;
 1. The Learned Trial Magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently coming to a wrong conclusion on the same.



2. The Learned Trial Magistrate misdirected herself in ignoring the principles applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the Appellant.
 3. The Learned Trial Magistrate proceeded on wrong principles when assessing the damages awarded to the Respondent (if any) and failed to apply precedents and tenets of law applicable.
 4. The Learned Trial Magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstance that it represented an entirely erroneous estimates vis-à-vis the Respondent's claim.
 5. The Learned Trial Magistrate failed to apply himself judicially and to adequately evaluate the evidence and exhibits tendered on quantum and thereby arrived at a decision unsustainable in law.
4. The Appeal proceeded by way of written submissions.

Appellants Submissions

5. It is the Appellant's submissions that the award of Kshs. 350,000 for general damages was manifestly excessive; that it was not supported by any authority with comparable injuries. It is further submitted that the injuries in the case of *Mwendwa Kuti & 2 Others Vs Ibrahim Kunyaga* [2020] eKLR relied on by the trial court, could not be compared to the injuries sustained by the Respondent herein.
6. It is submitted that the award ought to have been a comparable award for similar injuries as was held in the case of *Simon Taveta Vs Mercy Mutitu Njeru* [2014] eKLR & *Mbaka Nguru & Anor Vs James George Rakwar* [1998] eKLR.
7. The Appellant then proposes an award of Kshs. 200,000 on the basis of the following authorities;
 - i. *Ephraim Wangura Muthui & 2 Others Vs Toyota Kenya Limited & 2 Others* [2019] eKLR.
 - ii. *Jubilee Hauliers Limited & Anor Vs Mary Waithera Wanja* [2019] eKLR.
 - iii. *Maseno University College Vs Elizabeth Kerubo Mokaya* [2021] eKLR.

Respondent's Submissions

8. It is the Respondent's submission that the Appellant has not demonstrated that there is any factor that the trial court considered which it sought not to have ; that an award of Kshs. 350,000 for injuries classified as "maim" cannot be said to be too high. The Respondent urges the court to consider the gravity of injuries and the effects of inflation.
9. In urging the court to uphold the award, the Respondent has relied on the case of *Poa Link Services Co. Ltd & Duo Vs Sindani Boaz Bensemo, Francis Njunge Karemi Vs Rose Ndinda Kutoma* (2021) KLR, *Nyangawa & 2 Others Vs Obiero* (2023) KEHC 22537 (KLR) and *Robinson Njoroge Vs Daniel Ombasa* (2017) (2021) eKLR which she submits, are indicative of the fact that the court award for such injuries range between of Kshs. 300,000 – Kshs. 400,000 .

Analysis & Determination

10. From the grounds of Appeal, it is evident that the Appellant is challenging the award on general damages only.



11. In proof of the injuries she sustained, the Respondent produced treatment notes from Mantumu Sub-Location Hospital and attendance card from Kakamega Referral Hospital (Exbs2a & 2b) and report by Doctor Joseph Sokobe (Exh. 7a). The documents were produced without calling the makers.
12. According to the doctor’s report the respondent sustained injuries as follows;Head injury with mild loss of consciousness.Laceration on the right side of the face/forehead.Bruises on both buttocksCut wound on the right knee anteriorly.Degloving injury proximal right leg.Deep cut wound on the lateral ankle.
13. The doctor described the injuries as multiple moderately severe soft tissue from which the Respondent was yet to heal from, at the time of examination.
14. The doctor who filed the P3 form on 29/6/2021 classified the injuries as “ maim” . On the form , the term “Maim” is described as “the destruction or permanent disability of any external or internal organ, member or sense”
15. The Appellant’s contends that the award is excessive.
16. Assessment of damages is an act of discretion by the trial court and the principles upon which an appellate court can interfere with the exercise of such discretion are well established. In the case of Butt v Khan {1981} KLR 470 the Court pronounced itself as follows; “An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”.
17. Thus, can the award of Kshs. 350,000 be said to have been manifestly excessive to warrant the intervention of this court? The operative ward in my view is “manifestly excessive”. It follows that though an award may be excessive, it may not necessarily be manifestly excessive or inordinately high . In other words if it is high it must be outrageously high for the appellate court to interfere.
18. The principle in assessing damages is that comparable injuries should attract comparable awards. However inflationary trends must also be considered
19. The injuries sustained by the respondent may be described as multiple and serious soft tissue injuries. A degloving injury for instance involves some destruction of the skin. The fact that the respondent initially suffered loss of consciousness was also not contested under cross -examination. Notably the Doctor who filed the P3 described the injuries as “ maim”
20. I have noted the authorities relied on by the parties in their submissions. I have noted the authorities by the appellant which though not binding on this court are persuasive. I noted that except the case of Maseno University Vs Elizabeth Kemuto (2021) eKLR, the rest are old decisions and inflationary trends need to be considered from the time the said decisions were made.
21. Taking into account the observation I have made to the effect that the injuries are serious soft tissue plus factors of inflation I am not convinced that the award of Kshs. 350,000 for injuries described as “Maim” was manifestly or inordinately high to warrant the intervention of this court.
22. I find no merit in this Appeal it is hereby dismissed. I order each party to meet their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29TH DAY OF APRIL, 2025.

S.CHIRCHIR

JUDGE.



In the presence of:

Godwin Luyundi- Court Assistant

Mr. Menezes for the Appellant

