



**Muyila v Wasula (Civil Appeal E066 of 2022)
[2025] KEHC 5431 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E066 OF 2022
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

DENNIS ZAKARIA MUYILA APPELLANT

AND

ANDREW WASULA RESPONDENT

JUDGMENT

1. The Appellant brought suit against the respondent at the trial court, seeking for damages for injuries and related loss arising from an assault on the person of the Appellant by the respondent on 15th April, 2018. At the conclusion of trial, the Court awarded the Appellant general damages of Kshs. 500,000/=, special damages of Kshs.15,820/= plus costs and interest plus Kshs.500,000/- for future treatment.

Memorandum of Appeal

2. The appellant was aggrieved by the award on damages and proffered this Appeal. He has listed 6 grounds of Appeal, namely:
 - a) That the learned trial magistrate erred in law and fact in awarding Kshs.500,000/= as general damages which was manifestly inadequate without taking into consideration the injuries sustained by the appellant.
 - b) That the learned trial magistrate erred in law and fact in adopting the wrong principles in making a determination on the assessment of damages payable to the appellant thereby arriving at erroneous decision.
 - c). That the learned trial magistrate erred in law and fact in failing to take into consideration and/or be guided by the relevant authorities and/or precedents with comparable injuries like the ones sustained by the appellant thereby arriving at an excessive amount payable for the general damages.



- d). That the learned trial magistrate erred in law and fact in failing to take into consideration and/or account relevant issues and/or factors in making a determination as to the damages payable thereby arriving at an erroneous decision.
 - e). That the learned trial magistrate erred in law and fact in failing to consider the authorities submitted by the appellant.
 - f). That the learned trial magistrate erred in law and fact in failing to give the reasons for his decision on general damages and without reference to any
3. The Appeal was canvassed by way of written submissions.

Appellant's submissions.

4. The appellant has submitted that the award was too low; not commensurate with the injuries sustained; and was not in tandem with comparable awards for similar injuries. In this regard he has relied on the case of *Lions Eye & Blood Centre v James Kithuka Makau* [2018] eKLR, wherein the court awarded Kshs.2,000,000/= to the claimant as general damages for similar injuries.
5. The appellant further submitted that, the trial court did not award future medical expenses despite the testimony of the doctor and the fact that the Appellant had pleaded it.
6. The respondent did not file submissions.

Analysis and determination

7. I have considered the pleadings, evidence presented and the submissions in this appeal. This court, being the first appellate court is enjoined to subject the whole proceedings to fresh scrutiny and make its own conclusions as was held in *Selle & Another v Associated Motor Boat Co ltd & others* (1968) EA 123 ,wherein the court stated: "I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the high court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally. (*Abduk Hammed saif V Ali Mohammed Sholan*(1955), 22 EACA 270"
8. The only issues in the Appeal are two : That is firstly whether the award on general damages was too low, and secondly whether the trial court failed to award future costs of treatment .
9. The principles upon which an appellate court can interfere with the trial court's assessment on damages are well settled. In *Catholic Diocese of Kisumu v Sophia Achieng Tete* (2004)eKLR the Court of Appeal, set out the principles as follows: "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 in the first instance. The appellate court can justifiably interfere with quantum of damage's 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 factors 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 represent an entirely erroneous estimate.”

10. The Appellant suffered a severe crush injury to his left eye , causing it to rupture had had to be enucleated. It led to complete loss of sight on the eye. permanent disability was assessed at 60% . The doctor further opined that the appellant required aesthetic prosthesis and use of optics to improve his aesthetics and prevent loss of sight on the right eye at the cost of ksh. 500,000
11. The question which then arises is whether the award of damages of Kshs 500,000/= was adequate. In Fred Ben Okoth v Equator Bottlers Ltd (2015)eKLR, Peter Gichuri Mwangi v James Kabathi Mwangi(2007) eKLR, and Laban Buyole Mamboleo v Rift valley textiles (1998) eKLR the courts awarded average damages of between Kshs 600,000/= to Kshs 650,000/=. However the above decisions were made between 1998 and the year 2015.
12. In lions eye hospital v James kithuku (2018) e KLR (cited by the Appellant), the court awarded ksh. 2,000,000. In that case however there was also a case of disfigurement of the face.
13. I do find that given the inflationary trends and comparable awards for similar injuries as referred to above, and the rate of disability at 60 % I find that the award was on the lower side, warranting the intervention of this court. Consequently, I hereby set aside the award of ksh. 500,000 and substitute it with ksh. 1,000,000.
14. On the cost of future treatment, the court awarded ksh. 500,000. The Appellant’s submission that this was not awarded is factually wrong. In concluding the judgment, the trial Magistrate stated...” judgment is entered in the sum of ksh. 515,820 plus costs and interest plus ksh. 500,000 for future medical treatment”
15. In conclusion, the Appeal succeeds and I hereby proceed to make orders as follows:
 - a). the lower court award of ksh. 500,000 is hereby set aside and substituted with an award of ksh. 1, 000,000
 - b). The costs of this Appeal is awarded to the Appellant.
 - c). The award on damages to attract interest at court rates from the date of judgment at the trial court.

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

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant

