



REPUBLIC OF KENYA



KENYA LAW
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**Kakunzu alias Sakayo Kakunzu v Muuo (Civil Appeal E007 of 2023)
[2025] KEHC 7859 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E007 OF 2023**

RC RUTTO, J

MAY 29, 2025

BETWEEN

ZAKAYO KAKUNZU ALIAS SAKAYO KAKANZU APPELLANT

AND

WAMBUA MUUO RESPONDENT

*(Being an Appeal from the Judgement delivered on
30th November 2022 by the Hon. B Bartoo (SRM))*

JUDGMENT

1. This is an appeal against the quantum. The appeal arises from a judgment and decree in Machakos Chief Magistrate's Court Civil Suit No. 281 of 2020. In the said suit, the Respondent sued the Appellant for general and special damages arising from a road traffic accident in which she sustained bodily injuries.
2. As a result of the accident the respondent herein suffered the following injuries blunt head injury; blunt injury right jaw; loss of two teeth-top incisors; multiple bruises right hand and blunt injury right thigh with multiple bruises.
3. Upon hearing the respective parties' evidence, the trial court delivered judgment in favour of the plaintiff as follows; liability at 100% against the defendant; general damages kshs.400,000/- future medical expenses kshs.50,000/- special damages kshs.2,100/-; costs of suit and interest at court rates from the date of judgment.
4. Aggrieved by the trial court decision, the appellant lodged its Memorandum of Appeal dated 9th January 2023 seeking that the appeal be allowed, by setting aside the judgment of the trial court and reassessing the award. They also prayed for the costs of the appeal.



5. This appeal is premised on four grounds as follows, that the learned magistrate erred in fact and in law; in finding the respondent was entitled to general damages of kshs.400,000/=; erred in fact and in law in awarding general damages that were too high, not justified, in view of the evidence tendered and that the respondent did not suffer any liability nor did he suffer any fractures; erred in law and in fact in failing to consider the appellants evidence on quantum and erred in failing to consider the conventional awards in cases of similar nature.
6. The court directed that the appeal be canvassed by way of written submissions. The Appellant's despite numerous mentions did not file its submissions. The Respondent's submissions are dated 12/03/2024. This court will therefore proceed to determine the appeal based on the record before it since submissions serve to persuade the court but do not constitute pleadings. See the Court of Appeal in Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR the Court stated "Submissions are generally parties' "marketing language", each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented."
7. The Respondent submitted that the trial court award of kshs.400,000/- was not inordinately high given the nature of injuries. That they had submitted for an award of kshs.800,000/- and the trial court awarded kshs.600,000/-. The respondent relied on the cases of Antony Nyamweya v Dorcas Gesare Mounde (2022)eKLR where kshs.600,000/- was awarded after the plaintiff sustained loss of teeth. Also relied upon is the case of Joseph Mutua Nthia vs Fredrick Moses Kituva (2019) eKLR where kshs 500,000/- was awarded after respondent suffered loss of two teeth and soft tissue injury.
8. The respondent urged the court to take into account the similarities in nature of the injuries sustained, the high cost of living and the rate of inflation in Kenya to find that the award of kshs.600,000/- awarded is not inordinately high and to leave it undisturbed.
9. On the award for future medical expenses the respondent stated that it pleaded for kshs.100,000/- but was awarded kshs.50,000/- only. That the award of kshs.50,000/- was based on and supported by the medical report produced in evidence by the appellant's doctor. They urged the court to find that the award is not inordinately high as the appellant doctor had indicated the same. They urged the court to dismiss the appeal with costs.

Analysis and Determination

10. This being a first appellate court, this court is guided by the dictum in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.
11. Having considered the record of appeal, grounds of appeal, the Respondent's submissions and the authorities relied on, I opine that the sole issue for determination is: Whether the award on general damages was excessively high in the circumstance.
12. The principles upon which this court can interfere with an award of damages made by the trial court are well settled. In *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR, the Court of Appeal held that –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial



Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. (Emphasis mine).

13. Additionally, the Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated as follows: -

“comparable injuries should attract comparable awards”.
14. Before addressing the substantive merits of the case, I note an inconsistency in the respondent’s submissions. In one section, the respondent states that the general award granted by the court is Kshs.400,000/-, while in another section, the award is indicated as Kshs.600,000/-. However, as per the judgment of the trial court, the correct awarded amount is Kshs400,000/-, not the Kshs.600,000/- stated in part of the submissions. This clarification ensures accuracy in the record before proceeding with further analysis.
15. There is no contention regarding the nature of the injuries sustained by the respondent, as the appellant’s doctor confirmed the injuries as stated in the plaint. However, the appellant argues that the awarded amount is excessive, asserting that the respondent did not suffer any disability or fractures and that the trial court failed to consider their evidence on quantum.
16. Notably, when determining general damages, the trial court thoroughly reviewed and analyzed the parties’ submissions. In its judgment, the court considered legal authorities presented by both sides and made specific reference to their relevance. It noted that the authorities relied upon by the appellant were outdated, with no recent case law provided to support their position. The court also factored in inflation rates and referred to the case of *Antony Nyamweya v Dorcas Gesare Mounde* (2022) eKLR, where a plaintiff with more severe injuries was awarded Kshs.600,000/-. Based on these considerations, the court found that Kshs.400,000/- was a reasonable and sufficient amount for general damages and proceeded to award it.
17. Given these findings, the appellant’s claim that the court failed to consider their evidence on quantum is unfounded.
18. To determine whether the awarded amount is consistent with similar cases, reference is made to *Retco East Africa Limited v Wycliff Kennedy Makori* [2021] KEHC 5761 (KLR). In that case, an initial award of Kshs.500,000/- was reduced to Kshs.400,000/- for injuries including bruises on the left knee, blunt trauma to the left cheek, loss of two lower pre-molar teeth, and blunt trauma to the back. The award was issued in 2001.
19. Upon taking into account the age of the cited authorities as well as the inflationary trends injuries cited in the cases presented by parties, I conclude that the amount awarded as general damaged for pain and suffering is fair and reasonable compensation for the Respondent. There is no compelling reason to alter the judgment. Additionally, the special damages remain as per the trial courts judgment, as they were not contested.
20. Consequently, the appeal is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29TH DAY OF MAY, 2025

RHODA RUTTO

JUDGE



In the presence of;

.....for Appellant

.....for Respondent

Sam court assistant

