



Watu Nominees Company Limited & another v Elneo (Civil Appeal E007 of 2024) [2025] KEHC 7634 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E007 OF 2024
CM KARIUKI, J
MAY 29, 2025**

BETWEEN

WATU NOMINEES COMPANY LIMITED 1ST APPELLANT

HILLARY KIPKOECH LANGAT 2ND APPELLANT

AND

LYDIA MORAA ELINEO RESPONDENT

(Being an appeal from the judgment of Hon. D. Ngayo (R. M.) delivered on 05/02/2024 in Narok SCC NO. E018 of 2023)

JUDGMENT

1. This appeal challenges the judgment of the Small Claims Court at Narok in SCCIV No. E018 of 2023, delivered on 05/02/2024, in which the trial court made awards as follows: -
 - i. No evidence of negligence on the part of the 3rd and 4th respondents. Claim against them with costs.
 - ii. Judgment entered for the claimant as against the 1st and 2nd respondents jointly and severally
 - iii. Special damages Kshs. 7,550/=
 - iv. General damages Kshs. 600,000/=.
Total (less 20%/) Kshs. 486,040/=
 - v. The Claimant shall also have the costs of this suit plus interest on such costs from the date of this judgment until payment in full.
2. The appellants, aggrieved with the decision, filed a memorandum of appeal dated 15/02/2024. They cited 4 grounds of appeal as follows;



1. That the learned trial Magistrate Court erred in fact and law in awarding general damages so inordinately high that it amounts to a wholly erroneous estimate of damages awarded to the respondent, considering the injuries suffered by him
2. That the learned magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions filed by the appellants.
3. That the learned magistrate proceeded on wrong principles when assessing damages to be awarded to the respondent and failed to apply precedents and tenets of the law applicable.
4. That the learned magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at an erroneous decision.

Directions of the court

3. The appeal was canvassed by way of written submissions.

The Appellants' Submissions

4. The appellants submitted that the learned magistrate erred in fact and law in awarding general damages so inordinately high that it amounts to a wholly erroneous estimate of damages awarded to the respondent, considering the injuries he suffered. The appellants contend that the authorities cited by the respondent, the plaintiffs, sustained unrelated or more serious injuries. the appellants contend that the credibility of Dr. Omuyoma's conclusions is questionable as they may have been based on falsified documents, given the inconsistencies in the medical reports and the absence of documentary proof of the surgery. The appellants proposed a range between Kshs. 60,000/= and 350,000/= subject to 20% liability apportioned to the respondent. The appellants relied on *Shabani V City Council Of Nairobi (1985) KLR 516* as quoted in the case of *Stephen Mutisya Muumbi V Peter Mutuku Katuli [2008] eKLR*, *Ramadhan Kamora Dhadho V John Kariuki & Another [2017] eKLR*, *Joseph Muse Mua V Julius Mbogo Mugi & 3 Others [2013] eKLR*, *Millicent Atieno Ochuonyo V Katola Richard [2015]eKLR*, *Francis Njunge Karanu V Rose Ndinda Kitema [2021] eKLR*, *Leah Wambui Ngugi V George Mbugua Karanja & 2 Others Civil Appeal No. 532 Of 2013 [2016] eKLR*, *Eastern Produce (K) Ltd (Savani Estate) Vs Muhunzi Makotsi [2013]eKLR*, *Robert Ngari Gateri Vs Maingo Transporters [2015] eKLR*, *LNK (A Minor Suing Through CNK As Next Friend) & 2 Others V Simon Gatuni Njuki [2022] eKLR*, *HB (Minor Suing Through Mother And Next Friend DKM) Vs Jasper Nchonga Magari& Ano [2021] eKLR*, *Nguku Joseph & Another V Gerald Kihui Maina [2020] eKLR*, *Jane Kanyi Kahara V The Attorney General [2003] eKLR*, *Jeffrey L. Brown (Suing On His Own Behalf And As Administrator Of The Estate Of Sharon Mary Brown MCB) V Castle Forest Lodge Limited & 2 Others [2018] eKLR*, *Kenagro Suppliers Limited V Munene (Civil Appeal E033 Of 2023) 2024 KEHC 8732(KLR) (18 July 2024)(Judgment)*, *Lydia Chao V Dhanjal Brothers Ltd & 3 Others [1990] Eklr*, *Simon Mwinzi V Mwithi Muse(HCC 3160/NRB/1988)*, *Mbaka Nguru And Another V James George Rakwar[19989] eKLR*,

The respondent's submissions

5. The respondent submitted that the trial court's award was in line with the injuries suffered, and it is thus not inordinately high and/or unreasonable to be interfered with by this court. The respondent relied on *Robert Musyoki Kitavi V Coastal Bottlers Ltd (1985) 1 Kar 891*, *Savanna Saw Mills Ltd Vs Gorge Mwale Mudomo [2005] eKLR*, *Bashir Ahmed Butt V Uwais Ahmed Khan [1982-88] Kar 5*, *Peters Vs Sunday Post Limited [1958] Ea 424*, *Franins Njunge Karamu V Rose Ndinda Kitema*



Analysis And Determination.

Duty of the court

6. The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein (Section 78(2) of the *Civil Procedure Act*).
7. The first Appellate Court should, therefore, evaluate the evidence afresh and make any of its conclusions, albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –vs. Associate Motor Boat Co. Ltd* 1968 EA 123.

Issues

8. I have considered the record of appeal and the respective written submissions. The main issue that falls for determination is;
 - i. Whether the award of damages is inordinately high
9. It is an appeal on the quantum of damages only.

Quantum

10. On quantum, as was held in the cases of *Paul Kipsang Koech & another v Titus Osule Osore* [2013] eKLR, and *Kiwanjani Hardware Ltd & another v Nicholas Mule Mutinda* [2008] eKLR, an appellate Court will only interfere with the award of the trial Court if it is inordinately so high or low as to represent an entirely erroneous estimate, or it is based on some wrong legal principle or on a misapprehension of the evidence. The trial Court is bound by the principle of compensation, which requires comparable awards for comparable injuries. Whatever the proposals for award of damages made by parties, it is the discretion of the Court to award damages in a particular case, the principle only being that like injuries should be compensated by comparable awards. Although it be desirable that Courts take submissions on the question of quantum for the parties, it is the compliance with the principles for the award of damages that matters: an award that is otherwise consistent with the principles for the grant of damages will not be set aside for failure to invite or consider or apply quantum supported by a party's submissions. Indeed, in *Gicheru v Morton*, the Court of Appeal held that in that case "several High Court cases cited to the Court concerning the quantum of damages in matters libel did not appear to have solid juridical grounding and they were not to be taken as persuasive or as guidelines to be followed by trial courts."
11. The respondent pleaded that she sustained blunt injury to the anterior abdominal wall, leading to acute abdomen with multiple bowel perforations and gangrenous bowel, blunt injury to the head, leading to soft tissue injuries, and multiple cut wounds on both knees, leading to soft tissue injuries. the respondent stated that she was taken to Narok County referral hospital, where she was admitted from 18/09/2023 to 05/10/2023. She was treated by Dr. Mitei and Dr. Munga and was taken to the theatre for exploratory laparotomy.
12. The accident is said to have occurred on 18/09/2023.



13. The P3 form dated 06/11/2023 confirmed the injuries alleged by the respondent. the discharge summary indicates that she was admitted on 18/09/2023 and discharged on 05/10/2023. Dr. Obed Omuoyoma noted the surgical scar. he opined that she suffered a permanent disability of 30%.
14. The trial court awarded the appellant Kshs. 600,000/= as general damages.
15. I have perused the authority relied upon by the trial and noted that the injuries in the said decision were severe than the injuries sustained by the respondent herein. see Nguku Joseph & Another V Gerald Kihiu Maina [2020] eKLR.
16. I find the authorities cited by the Appellants to have been far more relevant
17. Based on the nature of the injuries and the authorities cited, I find that the award of Kshs. 600,000.00 was excessive in the circumstances, and this court has to interfere with the trial court's discretion in assessing the damages for pain and suffering. An award of Kshs. 400,000/- would be adequate for pain and suffering.
18. The award on special damages was not challenged, and there is no basis to interfere with it.
19. In the end, the Appellants' appeal succeeds, and the trial court judgment is set aside. I enter Judgment as follows: -
 - i. General Damages - Ksh. 400,000/-
 - ii. Special damages Kshs. 7,550/=
 - iii. Less 20% Contributions - Ksh 326,040/-
 - iv. interests at court rates
 - v. The appellants to get half the costs in the lower court and half the costs of the appeal.
20. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,
THIS 29TH DAY OF MAY, 2025**

JUSTICE CHARLES KARIUKI

JUDGE

