



**Njuguna v Oseko & another (Civil Appeal E027 of 2023)  
[2025] KEHC 7096 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL E027 OF 2023  
CM KARIUKI, J  
MAY 28, 2025**

**BETWEEN**

**PETER MUCHAI NJUGUNA ..... APPELLANT**

**AND**

**EZEKIEL N OSEKO ..... 1<sup>ST</sup> RESPONDENT**

**LABAN NYANGARORA OBACHI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. D. Ngayo (R. M.)  
delivered on 20/07/2022 in Narok CMCC NO. 44 OF 2020)*

**JUDGMENT**

**28/05/2025**

1. This appeal challenges the judgment of the Chief Magistrate's Court at Narok in Civil Suit No.44 of 2020, delivered on 20/07/2022, in which the trial court made awards as follows: -
  - i. liability 100%
  - ii. Special damages Kshs. 10,550/=
  - iii. General damages Kshs. 600,000/=Total Kshs. 610,550/=
- Plus costs and interest at court rates.
2. The Appellant, aggrieved with the decision, filed an amended memorandum of appeal dated 06/10/2023. He cited five grounds of appeal as follows;
  1. That the learned trial Magistrate Court erred in law and, in fact, in failing to take into account the injuries sustained by the Appellant, the then Plaintiff.



2. That learned trial Magistrate erred in law and, in fact, in awarding a lesser amount than required under General Damages.
3. The learned trial Magistrate erred in law and failed to take into account the submissions filed on behalf of the Appellant (the then Plaintiff).
4. That the learned trial Magistrate erred in law and, in fact, in failing to take into account the evidence tendered in support of the award of the General Damages.
5. That the learned Judge erred in law and failed to take into account the evidence presented for the award of Special Damages.

### **Directions of the court**

3. The appeal was presented through written submissions. The Appellant filed written submissions. The respondent, despite service, neither participated in the appeal nor filed written submissions.

### **The Appellant's Submissions**

4. The Appellant submitted that the respondent did not contest the special damages that the Appellant argued; hence, the court ought to have awarded the said sum. The Appellant contends that the Appellant had proved the sums that receipts for the same were issued and also from the fact that the burial of the deceased must have been conducted in one way or another. The Appellant proposed an award of Kshs. 90,750/=. The Appellant relied on Francis Odhiambo Nyunja & 2 others v Josephine Malala Owinyi, Kakamega High Court Civil Appeal Number 106 of 2018, Premier Dairy Limited v Amarjit Singh Sago & another [2013]eklr, Capital Fish Kenya limited vs the Kenya power & lighting company limited [2016] Keller, JNK (suing as the legal representatives of the estate of MMM(deceased) V chairman board of governors[...] boys high school [2018]
5. poker.
6. The Appellant submitted that the award of general damages is too low in comparison to the injuries sustained by the said Appellant. The Appellant proposed an award of Kshs. 1,000,000/=
7. The Appellant submitted that he does not contest the award of Kshs. 150,000/= for loss of expectation of life; hence, it can remain undisturbed. On this point, the court notes that there was no such award in the trial court judgment.

### **Analysis And Determination.**

#### **Duty of the court**

8. The appellate court shall have the same powers. It 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*).
9. 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**

10. I have considered the record of appeal and the Appellant's written submissions. The main issue that falls for determination is;



- i. Whether the award for damages was reasonable.
11. It is an appeal on the quantum of damages only.

### **Quantum**

12. Regarding the quantum of damages, it is a general rule that an appellate court should not interfere with the award unless it is so high or inordinately low or founded on incorrect principles. This is the principle enunciated in *Rook v Rairrie* [1941] 1 ALL E.R. 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:

“An appellate court will not disturb an award of damages unless it is so 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.”

### **Special damages.**

13. The trial court noted that the Appellant pleaded a sum of Kshs. 90,750/- but through his receipts, he was able to prove a sum of Kshs. 10,550/=
14. The Appellant's argument suggests that the trial court was under a peremptory command to award the claim for special damages as prayed for because the suit was not defended, and the claim for special damages was uncontroverted.
15. This argument raises the important issue of proof of special damages and the essence of formal proof.
16. Whilst special damages must not only be specifically pleaded but also strictly proved, what amounts to strict proof depends on the circumstances of the case, that is to say, the character of the acts producing damage and the circumstances under which those acts were done. See *Nizar Virani T/A Kisumu Beach Resort vs. Phoenix of East Africa Assurance Company Limited Civil Appeal No. 88 of 2002* [2004] 2 KLR 269, *Gulhamid Mohamedali Jivanji vs. Sanyo Electrical Company Limited Civil Appeal No. 225 of 2001* [2003] KLR 425; [2003] 1 EA 98, *Coast Bus Service Ltd vs. Sisco E. Murunga Ndanyi & 2 Others Civil Appeal No. 192 of 1992*.
17. See also the Court of Appeal in *Jackson K Kiptoo vs. The Hon Attorney General* [2009] KLR 657 that:

“The court is conscious that the degree of certainty and particularity of proof required depends on the circumstances and the nature of acts complained of.”
18. More indents. In *Hahn vs. Singh, Civil Appeal No. 42 of 1983* [185] KLR 716, the Court of Appeal held that strict proof of special damages;

“...The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
19. Judicial authorities agree that the degree of certainty and particularity of proof required in strict proof for special damages depends on the circumstances and nature of the acts themselves.
20. However, the determination of the degree of certainty and particularity of proof required is not by arbitrary judicial discretion or judicial fiat to allow an astronomical special award.



21. The court makes a conscientious decision guided by best judgment values, drawing upon the circumstances of the case and the nature of the acts complained of.
22. Applying the test, in claims for damages for personal injuries, the claimant must prove special damages within these precincts of the law, whether the suit is defended or not. This is the essence of the formal proof procedure.
23. The trial court was not under a peremptory command to award the claim for special damages as prayed for because the suit was not defended. The Appellant has raised the issue of burial expenses, but in this case, the Appellant was not deceased. He has already covered the burial expenses in Narok CMCC No. E045 OF 2020, as was noted in *Njuguna v Oseko & another (Civil Appeal E010 of 2022)* [2024] KEHC 5656 (KLR) (21 May 2024) (Judgment). The trial court was guided by best judgment values and the circumstances of the case in awarding special damages. There was, therefore, no error in principle committed by the trial court in the assessment of burial expenses. This ground, therefore, fails.

### **General damages.**

24. In this case, the Appellant is said to have suffered the following injuries: fracture of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> metacarpal bones of the right hand; blunt injury to the chest leading to dislocation of the right sterno clavicular joint; and the extension tendon injury of the right hand. The degree of permanent incapacity was assessed at 30%.
25. The trial court considered the injuries suffered and awarded Kshs—600,000/= as general damages.
26. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent, and comparable awards. This position finds legal backing in the case of *Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002* [2004] eKLR, where the Court of Appeal held:
 

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in the assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards, keeping in mind the correct level of awards in similar cases.”
27. I have considered comparable awards for similar injuries, although no two injuries can be the same. In *Eldoret Steel Mills Limited v Elphas Victor Espila* [2013] eKLR, the Plaintiff was awarded Kshs. 300,000/= in 2013 for a fracture of the right femur, fracture of the metatarsal bones of the right foot, and soft tissue injuries to the right arm, right hip, right thigh, and right foot, and in which permanent disability was assessed at 35%.
28. In *Abyssinia Iron & Steel Limited v Isaack Okoth Ochieng* [2018] eKLR, the respondent sustained a blunt head injury, dislocation of the left shoulder, chest injury with damage to the right rib cage, fracture at the left elbow part with a deep penetrating wound at the same region, dislocation of the lumbar-sacral spine at the back and injury of the left foot, with cut wounds and dislocated metatarsal bones of the pedis with injuries classified as grievous harm the High Court upheld an award of Kshs. 380,000.
29. Taking into consideration the injuries sustained by the Appellant herein as enumerated above, the awards by courts on similar injuries, and the inflationary trends that have lowered the value of the Kenya Shilling, I find the award of Kshs. 600,000 awarded by the trial court to the Appellant was reasonable in the circumstances. I thus find no reason to interfere with the trial court’s award of general damages. Therefore, the orders that commend themselves are.



- i. This appeal has no merit, and the court shall proceed to dismiss it without incurring any costs.
- ii. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,  
THIS 28<sup>TH</sup> DAY OF MAY, 2025.**

**JUSTICE CHARLES KARIUKI**

**JUDGE**

