



**Mini Bakeries (Nairobi) Limited v Mwaura (Civil Appeal E009 of 2022)  
[2024] KEHC 2211 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 2211 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E009 OF 2022  
REA OUGO, J  
FEBRUARY 27, 2024**

**BETWEEN**

**MINI BAKERIES (NAIROBI) LIMITED ..... APPELLANT**

**AND**

**WASHINGTON MBUTHIA MWAURA ..... RESPONDENT**

*(An appeal from the judgment and/or decision of the Chief Magistrate's Court Bungoma in Civil Suit No. 375 of 2017 delivered on 14/1/2022 by Hon. C.A.S Mutai, Senior Principal Magistrate)*

**JUDGMENT**

1. This appeal solely challenges the finding of the trial magistrate on quantum. The case before the subordinate court relates to a road traffic accident that occurred on 5/2/2017 involving the respondent, a pedestrian, and the appellant's motor vehicle registration number KCH 014T. It was alleged that the vehicle was recklessly controlled and as a result, it veered off the road and knocked the respondent causing him severe body injuries. The respondent sustained blunt injury to the head leading to loss of consciousness, right fracture of the frontal bone, multiple right rib fractures 3 to number 11, severe blunt injury to the chest with resultant hemopneumothorax, and bruises to the right hand. On 30/9/2021 the parties before the subordinate court settled the issue of liability in favour of the respondent against the appellant in the ratio of 80:20.
2. At the close of the hearing, the trial magistrate rendered his judgment in favor of the respondent:  
General damages Kshs 1,800,000/-  
Special damages Kshs 22,994/-  
Sub total Kshs 1,822,994/-  
Less 20% Kshs 364,599/-  
Balance Kshs 1,458,395/-



3. The appellant dissatisfied with the judgment of the lower court has filed this instant appeal on the following grounds:
  1. THAT the Learned Trial Magistrate erred in law and in fact in making an award in General Damages that was so excessive as to amount to an excessive estimate of loss or damage suffered by the respondent.
    2. THAT the Learned Trial Magistrate erred in law and in fact in failing to appreciate that the injuries suffered by the respondent had healed and could not attract the damages awarded.
    3. THAT the Learned Trial Magistrate erred in law and in fact in using wrong principles in the assessment of damages.
    4. THAT the Learned Trial Magistrate erred in law and in fact in failing to consider the pleadings, evidence and medical reports tendered by the parties in awarding damages.

### **Submissions by the parties**

4. The appeal was canvassed by way of written submissions. The appellant filed its submissions dated 13<sup>th</sup> November 2013 while the respondent's submissions are dated 23<sup>rd</sup> November 2023.
5. The appellant submits that Dr. Kubasu who examined the respondent after 7 months indicated that the respondent was in the healing process and recommended further medical follow-up. Dr. Gaya through the medical report dated 1/8/2018 indicates that the respondent has sustained both soft and bonny tissue injuries. It was submitted that the award of general damages of Kshs 1,800,000/- was excessive given the injuries suffered by the respondents. They relied on the case of Joseph Kimathi Nzau v Johnson Macharia (2019) eKLR.
6. The respondent submits that the general damages awarded by the trial court should not be disturbed as the same confirms the injuries sustained by the respondent. The respondent proved the injuries that were sustained by producing all treatment notes, P3 and a medical report. The damages awarded were commensurate to the injuries sustained. The respondent pleaded and proved by the production of receipts special damages of Kshs 22,994/-. They urged the court that the appeal lacked merit and the same should be dismissed.

### **Analysis and Determination**

7. In cases where the assessment of damages has been challenged, an appellate court must exercise caution and refrain from intervening in the trial court's discretion unless specific conditions are satisfied. These conditions were outlined in the case of Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR thus:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”



8. According to the medical report by Dr. Cleophas Kubasu, the respondent sustained blunt injury to the head leading to loss of consciousness, right fracture of the frontal bone, multiple right rib fractures 3 to number 11, severe blunt injury to the chest with resultant hemopneumothorax and bruises to the right hand. He was treated at Bungoma West then Moin Teaching and Referral Hospital. The wound on the head had healed but the scalp was tender on palpation. He noted that he also had long and intermediate memory loss. He noted that he was in the healing process as he still suffered chest pains due to rib fractures. The P3 Form also noted that he sustained a frontal lobe fracture and multiple rib fractures ribs 3-7 and ribs 8-11. The treatment notes from Moi Teaching and Referral Hospital noted that the respondent developed hemothorax that was not drained and he developed a clot. The right lung collapsed. Washington Mbuthia Mwaura (Pw1) testified that he was given a breathing enhancer as one of his lungs had not fully healed.
9. The appellant relied on the medical report by Dr. Gaya. According to Dr. Gaya's medical report, the respondent's x-rays confirmed that he had rib fractures and a fracture of the frontal bone. He formed the opinion that the respondent sustained both soft and bony tissue injuries and further, he had not suffered any permanent disability.
10. The respondent therefore proved that he had sustained the injuries enumerated in paragraph 5 of his plaint, that is:
  - i. Severe blunt injury to the head. Lost consciousness for some time.
  - ii. Right fracture of the frontal bone.
  - iii. Multiple rib fractures 3-11.
  - iv. Severe blunt injury to the chest with resultant hemopneumothorax.
  - v. Bruises on the right hand.
11. The trial magistrate in arriving at the award of general damages of Kshs 1,800,000/- stated that he had considered the authorities cited by the parties, Weddy Kendi Kabira & Grace Muthoni Rubia v Umalia VM 2021 eKLR and Joseph Kimathi Nzau Case (supra). In the Weddy Kendi Kabira case (supra), the respondent therein had sustained a depressed fracture, depressed right parietal skull fracture, loss of consciousness, fracture of the right humerus and bruises on the scalp and knees with a 5% chance of developing epilepsy or convulsion. The injuries sustained by the respondent therein, in my view, were more severe when compared to this case. The appellant relied on the decision made in Joseph Kimathi Nzau Case (supra) where the appellant therein sustained a fracture of the skull, right clavicle, left 1<sup>st</sup> and 2<sup>nd</sup> ribs and multiple soft tissue injuries. When compared to this case, the respondent had more fractured ribs and the soft tissue injuries sustained were much more severe.
12. However, even with the authorities cited by the parties before the lower court an award of Kshs 1,800,000/-, in my view was on the higher side. In Moiz Motors Limited & another v Harun Ngethe Wanjiru [2021] eKLR the respondent sustained a depressed frontal bone fracture of the skull and minor soft tissue injuries and was awarded Kshs 500,000/-. In Blue Horizon Travel Co Ltd v Kenneth Njoroge [2020] eKLR the respondent sustained fractured ribs L1-6 and R11-12, right haemothorax and dislocation of the right hip and shoulder joints and was awarded Kshs 400,000/-.
13. I have considered the authorities cited by the parties as well as the above authorities with similar injuries and the necessity to factor inflation and hereby set aside the award of general damages of Kshs 1,800,000/- and substitute the same with an award of Kshs. 1,000,000/- There was no appeal on the special damage award and costs. The appellant shall have half the costs of the appeal.



**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2024**

**R.E. OUGO**

**JUDGE**

In the presence of:

For the Appellant

For the Respondent

Ms Wilkister -C/A

