



REPUBLIC OF KENYA



**Onditi v Anytime Limited (Civil Appeal E020 of 2022)
[2024] KEHC 1614 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E020 OF 2022
KW KIARIE, J
FEBRUARY 22, 2024**

BETWEEN

**ERNEST ONDITI OCHUODHO ALIAS EARNEST ONDITI OCHUODHO
ALIAS OLRENCE ONDITI ONDITI ALIAS ENERST ONDITI APPELLANT**

AND

ANYTIME LIMITED RESPONDENT

*(Being an Appeal from the judgment in Homa Bay Chief Magistrate's
CMCC No.61 of 2019 by Hon. J.M. Nang'ea–Chief Magistrate)*

JUDGMENT

1. The appellant herein was the plaintiff in Homa Bay Chief Magistrate's CMCC No.61 of 2019. This was a claim from a road traffic accident involving motorcycle registration number KMEC 0182, where the appellant was a pillion passenger, and motor vehicle registration number KCL 101W, owned by the respondent. As a result of the collision, the appellant sustained injuries. The learned trial magistrate delivered a judgment dated 28th February 2022.
2. The parties entered a consent on liability on 19 May 2021 at 65:35 in favour of the appellant. The learned trial magistrate made an award of Kshs. 200,000.00 in general damages and special damages Kshs. 3 200.00 in favour of the appellant.
3. The appellant was aggrieved by the judgment and filed this appeal through the firm of S.N. Ngare & Company Advocates. The following grounds of appeal were raised:
 - a. That the learned trial magistrate misdirected himself in law and, in fact, by misapprehending the evidence adduced, thereby reaching an erroneous finding.
 - b. That the learned magistrate misdirected himself in law and fact by failing to consider the glaring inconsistencies in the respondent's evidence, which diminished its probative value.



- c. That the learned magistrate misdirected himself in law and fact by failing to consider the totality of the appellant's evidence.
 - d. That the learned magistrate erred in law and, in fact, by failing to consider the appellant's submissions.
 - e. That the learned magistrate erred in law and, in fact, by failing to award damage proportional to the appellant's injuries.
4. The respondent was represented by P.R. Ojala & Company Advocates. They opposed the appeal and contended that the learned trial magistrate made an appropriate award in general damages.
 5. This court is the first appellate court. I am aware of my duty to evaluate all the evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements 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 conclusions in the matter.
 6. The appeal is on the quantum of damages awarded. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs Khan* [1981] KLR 349 on page 356, Law JA stated:

...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 a figure which was either inordinately high or low.
 7. The appellant complained that the compensation of Kshs. 200,000 was inadequate. He pleaded that he sustained the following injuries as a result of the accident:
 - a. Active haemorrhage from the left ear;
 - b. Multiple bruises on the right elbow joint laterally;
 - c. Deep cut wound on the right knee joint laterally;
 - d. Deep cut wound on the right thigh;
 - e. Head injury; Deep cut wound on the right ankle joint; and
 - f. Skull fracture.
 8. The medical report the appellant produced in support of his case confirmed all the injuries in the plaint except that it did not refer to any skull fracture. This report was prepared at Homa Bay County and Referral Hospital and was signed by Michael Ochola. It reflected what was contained in the P3 form filled out in the same facility. Even if the court disregarded the second medical examination report by Dr Andegu, these two documents were silent on the issue of skull fracture. The injuries were, therefore, soft tissue injuries.
 9. I have perused the decided cases relied on by both parties, and I have not been persuaded that the learned trial magistrate proceeded on wrong principles or that he misapprehended the evidence in some material aspect in arriving at the judgment on the quantum of damages.
 10. The upshot of the preceding is that the appeal lacks merit. It is, therefore, dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF FEBRUARY 2024



KIARIE WAWERU KIARIE
JUDGE

