



REPUBLIC OF KENYA



**Nguyo v Njoroge (Civil Appeal E444 of 2021)
[2024] KEHC 4891 (KLR) (Civ) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 4891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E444 OF 2021

JN MULWA, J

MARCH 22, 2024

BETWEEN

SIMON MURIITHI NGUYO APPELLANT

AND

DAVID WANYOIKE NJOROGE RESPONDENT

(Being an Appeal from the Judgment delivered by Hon. D. M. Kivuti (Mr.) Principal Magistrate on the 9th day of July, 2021 in Milimani CMCC No. 92096 of 2018)

JUDGMENT

1. On 20/02/2018, the Respondent was knocked down by Motor vehicle registration no. KCA 139 W while walking along Kasarani –Mwiki Road. He sustained injuries i.e. Deep wound on the left arm, blunt injury on the left arm and fracture of the ulna as stated in the medical reports by Dr. W. M. Wokabi dated 17/09/2018 and Dr. W. N. Njogu dated 3/07/2018. At the date of examination by Dr. Wokabi, the wounds had healed but he experienced pain on the arm and wrist joint which the doctor estimated to be fully rehabilitated within 6 months.
2. Upon hearing the suit against the owner of the motor vehicle the Defendant, the trial court in its judgment dated 9th day of July, 2021 found the Defendant/Appellant 90% liable for the accident and awarded him Kshs. 500,000/= general damages and Kshs. 16,411/= special damages.
3. Being aggrieved by the award of damages the Appellant preferred this Appeal by a Memorandum of Appeal dated 19/07/2021 on the matter of quantum of damages as being excessive and urged the court to allow the Appeal and re-assess the same.
4. The Appeal was argued by way of written submissions. The Appellant’s submissions are dated 23/10/2023. The Respondent did not file its submissions.



5. As a general principle assessment of damages falls within the trial court's discretion and an Appellate Court will only interfere where it is clear that in assessing damages it either took into account an irrelevant factor or left out a relevant factor or that the award is too high or too low as to amount to an erroneous estimate or is not based on any evidence as stated in *Kemfro Africa Ltd t/a Meru Express & Another v. A. M. Lubia and Another* [1982 – 88] IKAR727 as well in *Bashir Ahmed Butt v. Uwais Ahmed Khan* [1982-88]KAR 5.

6. I have perused the trial Magistrates judgment wherein it was stated;

“On quantum the plaintiff suffered fracture injury which I classify as serious based on the medical evidence availed. I shall award the figure at Kshs. 500,000/=.”

There is no evidence that the magistrate considered the parties submissions as to arrive at the above findings, or on what the sum awarded as general damages was based. I with the Appellant that the trial Magistrate failed to consider its submissions on quantum, and I add also the Respondents' submissions as it is evident that the submissions were not analyzed. If that was done then the record does not show such. It is not enough to simply state as the trial Magistrate did that it has considered the injuries.

7. The cited case law by both parties was not considered or analyzed nor were the injuries stated in the medical reports said to be comparable as against the cited case law. Several cases were cited in support of its submission that a sum of Kshs. 150,000/= was sufficient. On the other hand the Respondent had proposed Kshs. 700,000/- in general damages backed by some cited decisions among them *Zacharia Mwangi Njeru v. Joseph Wachira Kanoga* [2014] eKLR wherein for fracture of the Tibia/Fibula a sum of Kshs. 400,000/= was awarded.

8. In this appeal the Appellant proposes an award of Kshs. 300,000/= for general damages and relies on

a. *Gogni Construction Company Limited v. Francis Ojuok Olewe* [2015] eKLR

wherein for injuries – fracture of distal radius and ulna and dislocation of left elbow the Court on appeal awarded Kshs. 350,000/=.

b. In *Jackson Mbaluka Mwangangi v. Onesmus Nzioka v Another* [2021]eKLR on Appeal, the court made an award of Kshs. 600,000/= for comparable injuries.

9. The above awards are not too old to be outdated and are comparable. Damages should not and may not be similar but must be comparable in nature and bear a reasonable measure of similarity. It is on that basis that the court is called upon to exercise its discretion in the assessment of damages.

10. In this regard the trial Magistrate did not rely on any of the decisions cited by both parties hence this court will interfere with its discretion and upon consideration of the cited decisions proceed to reassess the damages based on the injuries the Respondent sustained and comparable past decisions of the Superior Courts.

11. Having done as expected of an Appellate Court I find the award of Kshs. 700,000/= for the Respondent's injuries to be on the higher side hence must be reduced and re-assessed to a reasonable and fair sum of Kshs. 500,000/=.

12. For the foregoing, the Appeal succeeds. The trial court's award of general damages in the sum of Kshs. 700,000/- is set aside and substituted with an award of Kshs. 500,000/=. This award shall accrue interest from the date of the trial court's judgment 9/5/2021 with interest at court rates.

The Appellant shall have costs of the Appeal.



Orders accordingly.

DATED SIGNED AND DELIVERED IN NAIROBI THIS 22ND MARCH, 2024.

J. N. MULWA

JUDGE

