



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mayeki v Nyongesa (Civil Appeal 108 of 2022)
[2024] KEHC 4511 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 4511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 108 OF 2022
REA OUGO, J
MARCH 20, 2024**

BETWEEN

BEN WASIKE MAYEKI APPELLANT

AND

DAVID NYONGESA RESPONDENT

*(An appeal from the judgment and decision of Hon. G.A. Adhiambo Principal
Magistrate in Kimilili PMCC E146 of 2021 delivered on 07/10/2022)*

JUDGMENT

1. The appellant at the subordinate court filed a plaint claiming that on 24th January 2020, he was riding motorcycle registration no. KMEX 977P Tv Star along Kamukuywa- Chesamis road at Sosio area, the defendant's agent negligently drove vehicle reg no KBD 285J and it lost control and caused an accident thereby knocking the appellant who as a result sustained injury. According to his plaint, he sustained a fracture of the left fibula and multiple open wounds on the leg. The parties at the subordinate court agreed on liability in the ratio of 70:30 in favour of the respondent.
2. In the end, the trial magistrate awarded the appellant Kshs 350,000/- as general damages and Kshs 6,000/- as special damages subject to the agreed liability.
3. The appellant is dissatisfied with the judgment and has filed this instant appeal vide the memorandum of appeal dated 3rd November 2022. The appellant's appeal is on quantum and is based on the following grounds:
 1. That the learned trial magistrate erred in law and fact in awarding the appellant a sum for general damages which was not comparable to the injuries suffered by the appellant.
 2. That the learned trial magistrate erred in law and fact and failed to award the appellant a sum comparable to the injuries suffered.



3. That the learned trial magistrate erred in law and fact and awarded the appellants a sum low compared to the injuries suffered in the circumstance.
 4. That the learned trial magistrate erred in law and fact and failed to consider the written submission by the appellant and respondent on damages payable.
 5. That the learned trial magistrate erred in law and fact before she arrived at a wrong decision in relation to damages payable hence miscarriage of justice.
4. At the hearing of the appeal, parties were directed to file written submissions. The appellant filed his submissions dated 6th September 2023. The respondent elected not to file submissions with respect to the appeal.
 5. The appellant in his submissions relies on the submissions of the lower court and cites the case of *Francis Ndungu Wambui & 2 Others v V.K (Minor suing through next friend and mother MCWK)* [2019] eKLR. In that case, the minor suffered similar injuries to the present case and a sum of Kshs 1,000,000/- was upheld in 2019. It was submitted that the award of Kshs 700,000/- was reasonable in the circumstance. He urged the court to set aside the award by the lower court and substitute it with Kshs 700,000/-

Analysis and Determination

6. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. 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.”
7. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:

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 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. (Emphasis added).
8. In the *Francis Ndungu Wambui case (supra)* the respondent thereinsuffered soft tissue injuries to the upper limbs, a compound fracture of the distal tibia fibula shaft and was at risk of secondary stress fractures on the same site. In this case, the appellant did not sustain a compound fracture.
9. The respondent at the subordinate court relied on the decisions of the court in *Rayan Investments Ltd v Jeremiah Mwakulegwa Kasha* [2017] eKLR; *Harun Muyuma Boge v DE. Daniel Atieno Agulu* [2015] eKLR; and *Jitan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR.
10. The trial magistrate in arriving at the award of damages was guided by the decision in *Naomi Momanyi v G4S Security Services Kenya Limited*, Meru HCCA No 145 of 2014 [2018] eKLR where the court



made an award of Kshs 300,000/- as general damages. The subordinate court also considered the aspect of inflation and found that the award of Kshs 350,000/- would be adequate.

11. The trial magistrate in rejecting the decision cited by the appellant noted that the award of Kshs 700,000/- is on the higher side considering the nature of injuries sustained by the appellant. The appellant has failed to show that the trial magistrate considered an irrelevant factor, or left out of account a relevant one in arriving at her decision.
12. In the end, I find that the appeal lacks merit and is hereby dismissed. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 20TH DAY OF MARCH 2024.

R.E. OUGO

JUDGE

In the presence of:

Appellant - Absent

Respondent – Absent; Wikister- C/A

