



REPUBLIC OF KENYA



**Nyota & another v Ndugui (Civil Appeal 66 of 2017)  
[2024] KEHC 3203 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3203 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 66 OF 2017  
J WAKIAGA, J  
MARCH 20, 2024**

**BETWEEN**

**PETER KURIA NYOTA ..... 1<sup>ST</sup> APPELLANT**

**PETER WAINAINA KIRAGU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SUSAN GATWIRI NDUGUI ..... RESPONDENT**

*(Being an Appeal against the judgement and decree of Hon B. Ochieng  
delivered on the 1st day December 2016 in Muranga CMCC NO 310 of 2012)*

**JUDGMENT**

1. By a plaint dated 28<sup>th</sup> September 2012, the Respondent sued the Appellants for general and special damages arising out of a road traffic accident on 2<sup>nd</sup> day of October 2011 involving motor vehicle registration number KAW 220G driven by the Respondent and Lorry registration number KBD 188 G driven by the 1<sup>st</sup> Appellant along Kenol-Murang'a road causing the same to hit another motor vehicle as a result losing control and hitting the Respondent's motor vehicle, thereby occasioning severe injuries to the same.
2. It was pleaded that the said accident and subsequent injuries were caused by the negligence of the 1<sup>st</sup> Appellant and as a result the Respondent suffered severe injuries and special damages amounting to Kshs.191,200.
3. By a defence dated 19<sup>th</sup> May 2013, the Appellants denied the occurrence of the said accident, injuries and special damages and in the alternative stated that the said accident, if occurred was wholly caused and or substantially contributed to by the Respondent's negligence.



4. The cause proceeded for hearing and by a judgement thereon delivered on the 1<sup>st</sup> day of December 2012, the Court entered judgment for the Respondent at Kshs.300, 000 in general damages for pain and suffering, special damages as pleaded, subject to 20% contribution as recorded by consent.
5. Being dissatisfied by the award, the Appellants filed this Appeal and raised the following grounds of Appeal:
  - a. The award was manifestly excessive and high based on the injuries suffered by the Appellants thereby leading to an erroneous award.
  - b. The claim for special damages of Kenya Shillings 191,000 was not proved.
  - c. The trial Court did not take into account the submissions tendered by the Appellants including the relevant presidents.
6. Directions were issued that the Appeal be heard by written submissions. On behalf of the Appellants, it was submitted that the Court failed to consider the submissions by the parties. It was contended that the Respondent did not plead future medical expenses and therefore the same could not be awarded. It was further submitted that the receipts in support of special damages did not comply with the provisions of the *Stamp Duty Act* and as was stated in the case of *Darshan Shah v Roopman Limited & 3 others* {20005} eKLR the Court should have disregarded them.
7. On behalf of the Respondent, it was submitted that the same proved her case through her oral evidence in Court and that her injuries were proved through the evidence of Dr. Osewe and that the award in damages were comparable to those in the cases of *Lynn Kambua Enterprises v Edith Vaati Simon Kasika* [2021] eKLR and *Francis Ochieng & Another v Alice Kajamba* [2015] eKLR where an award of Kshs.350,000 was upheld for similar soft tissue injuries.
8. On the issue of special damages, it was submitted that the same was pleaded and proven through the production of receipts which were produced by consent. It was contended that future medical expenses was pleaded and was properly awarded as was held in the case of *Ibrahim Gikonyo v Geoffrey Nyamwaya Omae* [2021] eKLR.

## **DETERMINATION**

9. From the submissions herein, the following issues are identified for determination in this Appeal;
  - a. Whether the award in general damages was high so as to be interfered with by the Appellant Court.
  - b. Whether the Court was right in awarding social damages and cost of future medical expenses.
10. This being a first Appeal, the Court is required to re-evaluate the proceedings before the lower Court and to come to its own determination thereon. In this matter liability was agreed upon by consent and therefore the issue that was before the Court was the assessment of general and special damages.
11. The Respondent testified as PW1 and stated that her right hand was trapped between tarmac and the car. She produced receipts in respect of her medical expenses and future medical treatment of Kshs.380,000.
12. An appellate Court will only interfere with the lower Court finding on the principles set out in *Selle v Associated Motor Boat Co Ltd* [1968] EA. In this cause the injuries sustained by the Respondent were not disputed, she had a cut wound on the dorsum of the right hand and cut wound on the right middle



finger which developed hypertrophic scar which needed reconstruction at a cost of Kshs.120,000 as per Dr. Wambugu and Kshs. 380,000 as per Dr. Wanjala.

13. It is clear that the award of Kshs.300, 000 in general damages was on the higher side based on the injuries sustained by the Respondent. I have looked at the following cases Baloch Faisal v Elloy Kawira Nthiri [2019] eKLR, and in exercising my powers as the first Appellant Court will reduce the award in damages to Kshs.200,000 having taken into account the rate of inflation.
14. On special damages the same was pleaded and proved and will therefore not interfere with the award thereon. The issue of stamp duty as raised by the Appellant does not affect proof of the expenses on the part of the Respondent.
15. On the cost of future medical expenses, the Respondent pleaded the same and testified thereon. There were however two proposed cost for the same and the trial Court did not give the reason for awarding them with the award thereon by reducing the same to a sum of Kshs.120,000 as proposed by Dr. Wambugu on the basis that an award of damages is not supposed to enrich a claimant but to put it in a position as far as money can.
16. In the final analysis I partially allow the Appeal herein and substitute the trial Court's award as follows:
  - a. General damages ..... Kshs.200,000
  - b. Special damages .....Kshs.191,000
  - c. Future medical expenses ..... Kshs.120,000
  - d. Subject to 20% contribution
  - e. Cost and interest thereon.
17. The Appellant is entitled to cost of this Appeal and it is ordered.

DATED SIGNED AND DELIVERED AT MURANGA THIS 20<sup>TH</sup> DAY OF MARCH 2024

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

Ms Nyamu for Gacheru for Respondent

Ms Rigaga for Ms Achil for the Applicant

Jackline – Court Assistant

TABLE

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