



**Nyakwakwa v Nyakabete (Civil Appeal E373 of 2020)
[2024] KEHC 3024 (KLR) (Civ) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3024 (KLR)

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

CIVIL

CIVIL APPEAL E373 OF 2020

AN ONGERI, J

MARCH 15, 2024

BETWEEN

PAUL ODHIAMBO NYAKWAKWA APPELLANT

AND

ROSE NYAKABETE RESPONDENT

RULING

1. The parties filed written submission on the quantum of damages as follows; the appellant submitted that in Dr. Mwaura's prognosis, the Appellant sustained severe internal and soft tissue injuries involving blunt traumatic injuries of the head, spine, both knee joints, right shoulder and right foot, which injuries had healed leaving residual, persistent headache which may in future complicate to post traumatic epilepsy that would make the Appellant permanently disabled and life dependent on anti-convulsion drugs.
2. The appellant proposed general damages of Kshs 350,000 as adequate compensation and in support cited the following cases;
 - a. *Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] eKLR* In this case the Respondent, who was the Plaintiff in the trial Court suffered multiple soft tissue injuries to wit: blunt injury to the chest, bruises of the lower abdomen, bruises of the right hip joint, bruises of the thigh and bruises on the knee. The Appellate Court, while upholding the Trial Court's award of general damages of Kshs. 350,000 stated that the award was fair bearing in mind the inflation tendencies that had affected the economy and that it struck a balance between the parties' proposed amounts.
 - b. *Francis Ochieng & another v Alice Kajimba [2015] eKLR* — In this case the Appellate Court substituted the Trial Court's award of general damages of Kshs. 500,000 with that of Kshs.



300,000 for the Respondent who had sustained multiple soft tissue injuries and head injuries stating that the amount was reasonable in the circumstances.

3. The respondent alternatively submitted that during cross examination Dr. Mwaura admitted that the appellant had not informed him that he had suffered repeated post traumatic seizures. He also admitted that the appellant did not undergo CT scan. The appellant further admitted that after the accident he worked for 6 months as a watchman and it can be inferred that the appellant had fully healed.
4. The respondent submitted that the appellant sustained soft tissue injuries and indicated that Kshs. 70,000 less 50% would be sufficient and reasonable compensation. In support the respondent cited the following cases;
 - a. Nairobi H.C.C.C. No. 5365 Of 1990 Pauline M. Wangari Anor. vs. Valley Transporters Ltd The Plaintiff aged 54 years at the time of accident, sustained blunt injury to the back of the neck, closed anterior chest injuries, blunt injury to the lower back and bruises on the neck, chest, both upper limbs, back and both lips. The Medical reports indicated that neck and back injuries have worsened with early on-set of Osteoarthritis in the spinal joint. The doctor was further of the opinion that the back pain was aggravated by the plaintiff's age. General Damages for pain, suffering and loss of amenities assessed at Kshs.60,000/-.
 - b. Nairobi H C.C C No.5497 of 1990 Margaret Njeri Njiri vs. Mohamamoud A Mohamed &Anor The Plaintiff aged 41 years and employed as a Secretary sustained soft tissue injuries in a road traffic accident. She sustained, blunt trauma to the left thigh, Multiple bruises in the left forearm, bruises in the left leg, and blunt trauma to the left ankle joint. The thigh and left ankle were swollen and she remained with a scar measuring 8 CM long on the lateral aspect of the left thigh. General damages for pain, suffering and loss of amenities at Kshs. 50,000.
5. The appellant sustained the following injuries
 - i. Severe internal and soft tissue injuries
 - ii. Blunt trauma injuries to the head, spine, both knee joints
 - iii. Blunt injures to the right shoulder and right leg
 - iv. Persistent headaches which may in future complicate to post traumatic epilepsy.
6. I have considered the following similar injuries;
 - a. In *Peter Muvake & another v Agnes Nduku Mutie [2018]* eKLR where the Respondent suffered a fractured mandible, blunt chest injury, multiple cut wounds to face, neck and shoulders, deep cut wound on the right elbow and bruises on the right knee and upon examination by Dr. P.N Mutuku was found to be at risk of suffering neurological conditions later in life. The Court made an award of Kshs. 400,000/- in December 2018
 - b. In *Catherine Wanjiru Kingori & 3 others v Gibson Theuri Gichuri [2005]* eKLR. In this case the 3rd plaintiff suffered multiple soft tissue injuries on the left elbow frame and injuries on both ankles. she was awarded Kshs.350,000.00 as general damages.
7. I award general damages of kshs.400,000 and special damage of ksh.10,430 adding a total of ksh.410,430 less 50% contribution on negligence the amount payable is ksh.208,215.
8. Judgement is entered in favour of the appellant against the respondent in the sum of ksh.205,215 together with costs and interest at court rates from the date of the trial court's judgment until payment in full.



9. Each party to bear its own costs of this appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 15TH DAY OF MARCH, 2024.

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A. N. ONGERI

JUDGE

In the presence of:

..... **for the Appellant**

..... **for the Respondent**

