



**Karanja v Kahuri & another (Civil Appeal E744 of 2022)
[2024] KEHC 4851 (KLR) (Civ) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4851 (KLR)

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

CIVIL

CIVIL APPEAL E744 OF 2022

AN ONGERI, J

APRIL 26, 2024

BETWEEN

STEPHEN NDUCI KARANJA APPELLANT

AND

PETER KIMANI KAHURI 1ST RESPONDENT

KWETU PROPERTIES LIMITED 2ND RESPONDENT

*(Being an appeal from the judgment and decree of Hon. J. Aduke
(Ms) in Milimani CMCC No. 7861 of 20198 delivered on 14/9/2022)*

JUDGMENT

1. The appellant filed Milimani CMCC No. 7861 of 2019 seeking general damages and special damages of Ksh 4,550 for injuries the appellant sustained on 3/2/2019 along Outer Ring Road at Mutindwa when the appellant was driving motor vehicle registration no. KAV 530S when the driver of motor vehicle registration KBK 351Y negligently drove the said motor vehicle and collided with the appellant's motor vehicle.
2. The parties entered into a consent on liability and apportioned the same at 75:25 in favour of the appellant against the respondents.
3. The trial court assessed quantum of damages as follows;
General damages ksh.300,000
Special damages ksh.4,550
4. The trial court also awarded costs of the suit and interest.



5. The appellant has appealed against the judgment of the trial court on the following grounds;
 - i. The learned magistrate erred by awarding an award that was too low.
 - ii. The trial court erred by disregarding comparable awards for comparable injuries.
 - iii. The learned magistrate erred by failing to award lost earnings to the appellant for the period he was recovering.
 - iv. The learned magistrate erred by failing to award special damages incurred by the plaintiff.
6. The parties filed written submissions which I have duly considered.
7. The Appellant submitted that he sustained compound/open fractures of the right radius and olecranon process of the ulna. He still goes for therapy, that he has a big scar on his right hand and had to stop working for a year.
8. The appellant took issue with the fact that the trial court had failed to record his testimony about the surgery he had undergone where metal pins were inserted into his hands. He submitted that this is a case for ordering a retrial.
9. He submitted that the trial court awarded Kshs. 300,000 for a fracture of the Right elbow, for which he claims is too low and prays for enhancement.
10. He further submitted that the trial Court erred in failing to take into account the nature and extent of injuries and that the fractures had not fully healed by the time of trial and further that the trial court did not consider inflation and he asked the court to enhance the award.
11. On the question of lost earning, he submitted that these are special damages yet the trial court had rejected the explanation that a Letter of Employment as proof of earnings was not available for PSV drivers as the sector is informal. He submitted that Kshs, 288,000 was adequate for the year not worked.
12. The Appellant also asked for cost of the Appeal as well as interest from the date of filing the suit.
13. The Respondent submitted that the current Appeal is incurable defective as it was filed without a decree.
14. Counsel for the Respondent further submitted that the award was proper and fair as the Appellant has not demonstrated whether the award was too low in the circumstances taking into account the Appellant's injuries.
15. The Respondent contended that it was not necessary to file submissions in the trial court as the Magistrate was able to assess the Appellant's injuries in the absence of any other contradicting documents or evidence, and was at liberty to exercise her discretion and pronounce a judgement on quantum which she judiciously did.
16. Further, that the judgement referred to the medical report, as well as similar authorities while making the decision. The appellant had not adduced contrary medical evidence to show that the Doctor's opinion had changed which the trial court ignored. Counsel thus submitted that the trial Court properly exercised its discretion when it condemned the Appellant to pay costs.
17. On loss of earnings, Counsel submitted that being a special damage claim, it must be specifically pleaded and strictly proved. Loss of earning capacity can be classified as general damages, but has to be



- proved on a balance of probabilities. He submitted that the trial Magistrate, applied law and evidence on record in rejecting the claim for Loss of earnings.
18. The Respondent concluded that the trial court was fair and its decision should not be disturbed. He urged the Court to dismiss this Appeal with costs to the Respondents.
 19. The sole issue for determination is whether the award of general damages was too low.
 20. The trial court relied on the following cases which the trial court said had comparable injuries
 - i. [*Kweri Peter & 2 others vs Ann Wanjiku Maina*](#) (2017) eKLR
 - ii. [*Patrician Adhiambo Omolo vs Emily Mandala*](#) (2020) eKLR
 21. The appellant sustained the following injuries;
 - i. Open fracture of the right radius
 - ii. Fracture of olecranon process of the ulna
 22. I have considered the following comparable cases;
 - (i) [*James Gathirwa Ngugi v Multiple Hauliers \(EA\) Limited & another*](#) (2015) eKLR where Kshs 1,500,000/= was awarded for compound comminuted fracture of the right tibia, compound fracture of the right fibula, fracture of the left proximal radius, fracture of the left ulna, head injury, deep cut wound of the parietal region about 4 cm, soft tissue injury and bruises of both hands, multiple facial cuts and lacerations and pathological fracturing of the right leg.
 - (ii) In the case of [*Robert Gitau Kanyiri V Charles R Kahiga & 2 Others*](#); Nakuru HCCC NO. 22 of 2009, the Plaintiff sustained fracture of the right radius, fracture of the femur, and head injury. Kshs. 1,000,000 was awarded.
 - (iv) [*Dorcas Wangithi Nderi v Samuel Kiburu Mwaura and Another*](#) [2015]eKLR where the plaintiff sustained multiple soft tissue injuries, blunt injury to the head, failure fracture of the right radius/ulna, compound fracture of the right and left tibia and fibula and was awarded Kshs. 2,000,000.00.
 23. I find that an award of 300,00 is too low in the circumstances of this case in view of the above cases.
 24. I also find that that appellant pleaded loss of earnings for the period he was unable to work due the injuries he sustained.
 25. The appellant said he was not able to work for one year after he was involved in the accident.
 26. The trial court found that the appellant was working as a driver with Embassava sacco and his testimony was not controverted by the respondent and he ought to have been awarded damages for loss of earnings.
 27. The claim for loss of earnings was wrongfully denied in the circumstances.
 28. The trial court ought to have taken cognizance of the fact that not every person earning a daily piece rate in the informal sector can produce evidence of employment.
 29. Many in the informal sector are on a daily payment routine without any written document and they will be disenfranchised if the courts insist on documentary evidence as the only way to prove their employment.



- 30. I find that the evidence of the appellant was not controverted and the trial court ought to have believed it. The appellant said he did not work for one year after the accident and the said evidence was not contested
- 31. I grant the appellant loss of earnings as follows;
1,000 x 6 days x 4 weeks x 12 months = 288,000
- 32. I set aside the judgment of the trial court and replace it with an award of ksh.700,000 in respect of general damages for pain and suffering.
- 33. The award is adjusted as follows;
 - (i) General damages for pain and suffering Kshs. 700,000
 - (ii) Loss of earnings Kshs.288,000
 - (iii) Special damages Kshs.4,550
- 34. The total award is ksh.992,550 less 25% contributory negligence =744,412.50.
- 35. Judgment be and is hereby entered in favour of the appellant against the respondents jointly and severally in the sum of kshs.744,412.50 plus costs and interest from the date of the trial court's judgment until payment in full.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 26th day of April, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

