



REPUBLIC OF KENYA



**Ndege & another v Nyarindo (Civil Appeal E034 of 2023)  
[2024] KEHC 5782 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5782 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E034 OF 2023  
WA OKWANY, J  
APRIL 25, 2024**

**BETWEEN**

**METHUSSELAH NDEGE ..... 1<sup>ST</sup> APPELLANT**

**HAROON YUASA LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOSEPH NAFTAL NYARINDO ..... RESPONDENT**

*(Being an Appeal from the Judgment/Decree of B. Okong'o, Resident Magistrate dated and delivered on 13th July 2023 in the original Nyamira Chief Magistrate's Court Civil Case No. 67 of 2022)*

**JUDGMENT**

1. The Respondent herein was the Plaintiff before the trial court where he sued the Appellants vide Plaint dated 3<sup>rd</sup> March 2022 seeking the following orders: -
  - a. Special Damages at Kshs. 7,050/=
  - b. General Damages
  - c. Costs and incidentals to the suit
  - d. Interest on the above at court rates.
2. The Respondent's case was that he was, on 15<sup>th</sup> day of October 2021, travelling as a lawful passenger aboard the Appellants' motor vehicle Registration No. KCW 678Y along Nyamira Kisii road when near Nyabioto area or thereabouts an accident occurred thus occasioning him serious injuries. The Respondent attributed the accident to the negligence of the Appellants' servant, agent, representative and/or driver.



3. The Appellants filed their Statements of Defence dated 15<sup>th</sup> May 2022 in which they denied the Respondent's claim.
4. The matter proceeded to trial where the Respondent called a total of 5 witnesses. The Appellant did not call any witnesses.
5. At the end of the trial, judgment was entered in favour of the Respondent as follows: -
  - Liability at 100% in favour of the Plaintiff
  - General Damages at Kshs. 300,000/=
  - Special Damages at Kshs. 7,050/=
  - Total= Kshs. 307,050/=
6. Dissatisfied with the decision of the trial court, the Appellants filed the present appeal wherein they enumerated the following grounds of appeal: -
  1. That the Learned Trial Magistrate erred in law and in fact in the assessment of quantum thereby giving an award on quantum on General Damages at Kshs. 300,000/= that was overly excess in the circumstances of the case.
  2. That the Learned Trial Magistrate erred in law and in fact in failing to pay regard to decisions filed alongside the defendants' submission that were guiding in the amount of quantum that is appropriate and applicable in similar injuries as the case he was deciding.
  3. That the Learned Trial Magistrate's exercise of discretion in assessment of quantum was injudicious.
7. The Appeal was canvassed by way of written submissions which I have considered. The main issue for my determination is whether the trial magistrate applied the correct principles in assessing damages.
8. The principles governing circumstances under which an appellate court may interfere with the trial court's award on quantum were discussed in *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v. A.m. Lubia and Olive Lubia* (1982 –88) 1 KAR 727 at p. 730 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 that 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. See *Ilango v. Manyoka*[1961] E.A. 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltd v. Kavoloto*[1970] E.A., 414, 418, 419. This Court follows the same principles.”
9. It is trite that while award of general damages rests on the discretion of a trial court, such discretion must not be exercised whimsically. Courts are required to consider the nature of injuries sustained by a claimant alongside past similar awards in arriving at their determination on quantum.



10. In *Stanley Maore vs. Geoffrey Mwenda* [2004] eKLR it was held thus:-

“Having so considered 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.”

11. The Respondent sustained the following injuries in the accident in question: -

1. Deep cut wounds on the frontal and occipital region of the head.
2. Cut wounds on the face
3. Chest contusion
4. Bruises on the neck
5. Bruises on the face
6. Laceration on the right and left upper limbs
7. Multiple cut wounds on the right knee
8. Laceration on the lower limbs
9. Bruises on the upper limbs
10. Bruises on the lower limbs

12. The Respondent produced the Medical Report by Dr. Morebu (P.Exh2), the Discharge Summary from St. Joseph Christamarianne Mission Hospital (P.Exh3) and the P3 Form (P.Exh4) in support of the said injuries. Dr. Morebu classified the injuries as soft tissue injuries.

13. I have considered past decisions where the claimants suffered similar injuries as follows: -

- i. In *Fast Choice Company Ltd & Another vs. Joseph Wanyiri Mwangi* [2011] eKLR, the court made an award of Kshs. 150,000/= for soft tissue injuries to the head, chest, left thigh & wrist and upper gum, broken left incisor jaw, loose incisor teeth on the upper jaw.
- ii. In *Kiwanjani Hardware Ltd & Another vs. Nicholas Mule Mutinda* [2008] eKLR, an award of Kshs. 50,000/= was upheld for blunt injury to the head without loss of consciousness, blunt injury to the neck, a cut to the throat, blunt injury to the left shoulder and back, blunt injury to the chest, blunt injury to the right forearm, deep penetrating wound on the left leg with cuts and bruises on the same leg.
- iii. In *Matunda (Fruits) Bus Services Ltd vs. Agnes Chemngeno Tuiya* [2021] eKLR, the Respondent sustained deep cut wound on the scalp, cut wound on the right temporal region of the scalp, deep cut wound on the right shin, blunt injuries to the neck, loose two upper incisor teeth, loose two lower incisor teeth and cut wound on the lower lip. The court on appeal substituted an award of Kshs. 390,000/= with Kshs. 250,000/= in general damages.
- iv. In the case of *Justine Nyamweya Ochoki & another vs. Prudence Anna Mwambu* [2020] eKLR, the Respondent suffered loss of upper front incisor tooth, deep cut on the chin, cut on the lip, loosening of the upper teeth, injury to the right forearm and loss of consciousness. The Court on appeal substituted the award of Kshs. 650,000/= with Kshs. 300,000/=



- v. In *Patel vs. Mose & another [2022] KEHC 11109 (KLR) (Civil Appeal 45 of 2019)*, the claimant suffered deep cut wound on the occipital region of the scalp & mandibular region, had three loose lower teeth, blunt injury to the neck & chest and soft tissue injuries on both knee and wrist joints. The court on appeal substituted the award of Kshs 700,000/= in general damages with Kshs 320,000/=.
14. The above cases indicate that the nature of injuries the Respondent sustained attract awards ranging from Kshs. 50,000/= to Kshs. 390,000/=. I find that the trial court applied the correct principles and correctly exercised its discretion in assessing quantum at Kshs. 300,000/=. I find no reason to disturb the trial court's award.
15. On Special Damages, it is trite that the same must be specifically pleaded and strictly proved. The record contains receipts for the Medical Report in the sum of Kshs. 6,500/= and Motor Vehicle Search Records from NTSA for Kshs. 550/=. I find that the Special Damages were adequately proved. I therefore uphold the same.
16. In the final analysis, I find that the Appeal lacks merit and I therefore dismiss it with costs to the Respondent.
17. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF APRIL 2024.**

**W. A. OKWANY**

**JUDGE**

