



REPUBLIC OF KENYA



**Ntongai v Mutuma (Civil Appeal E029 of 2023)
[2024] KEHC 4733 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E029 OF 2023
TW CHERERE, J
APRIL 25, 2024**

BETWEEN

SHADRACK NTONGAI APPELLANT

AND

JOSHUA MUTUMA RESPONDENT

*(Being an appeal from the Judgment in Maua CMCC NO.
51 OF 2019 by Hon. T. Gesora (CM) on 13th April, 2022)*

JUDGMENT

Background

1. On 03rd August, 2018, an accident occurred involving motor vehicle Appellant's M/KBR 919N (accident motor vehicle) as a result of which the Respondent who was a lawfully walking off the road suffered bodily injuries.
2. Respondent filed suit for damages against the Appellant and at the conclusion of the trial, the learned trial magistrate found the accident motor vehicle was driven negligently. Appellant was found liable at 100% and judgment was entered for the Respondent as follows:
 1. General damages KES. 300,000/-
 2. Special damages KES. 5,000/-
 3. Costs
 4. Interest

The Appeal

3. Appellant dissatisfied with the lower court's decision preferred this appeal only on quantum.



Analysis and Determination

Quantum

4. An undated medical report by Dr. Kubai J.Wendo reveals that Respondent suffered the following injuries:
 - i. Pain on chest extending to lumbar region and sub-coastal tenderness
 - ii. Bruises right upper limb next to the join
 - iii. Bruises left hip joint healing with skin hyperpigmentation
 - iv. Multiple bruises right lower limb
 - v. Swollen right ankle extending to the foot
5. At the time of examination, the injuries had healed with a 6 cm scar on left knee and pain on left iliac.
6. At the hearing, Respondent prayed for KES. 350,000 and cited *Catherine Wanjiru Kingori & 3 others v Gibson Theuri Gichubi* [2005] eKLR where the Court awarded the 1st Plaintiff Kshs 300,000 for injury on the left ankle, injuries on the legs and injuries on the chest and *Habiba Abdi Mohamed V Peter Maleve* [2000] eKLR where the Court awarded the Plaintiff Kshs 400,000 for injury on the left arm, head and face.
7. Appellant on the other hand offered KES. 60,000/- and cited the following authorities:
 - i. *HB (Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & another* [2021] eKLR where the court upheld an award of Kshs. 60,000/- for blunt object injury to the head and neck, thorax, abdomen and limbs.
 - ii. *Kipkere Limited vs Peterson Ondieki Tai* [2016] eKLR where an award of KES. 100,000/- was reduced on appeal to Kshs 30,000/- for deep cut wound on the left leg, chest contusion and bruises on the left shoulder.
 - iii. *Buds and Bloom Ltd Vs Lawrence Emusugut Obwa*(2016) eKLR where the sum of KES. 70,000/- was on appeal enhanced reduced to KES. 50,000/- for deep cut wound on the left leg and soft tissue injuries on the leg.
8. 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).
9. Looking at the cases cited before the trial court, I find that the one cited by Respondent relate to comparable injuries to the ones suffered by the Respondent in this case.
10. From the foregoing, I find that Appellant has not been demonstrated that the trial court proceeded on wrong principles or that it misapprehended the evidence or that the award Kshs. 300,000/- is excessive in the circumstances of the injuries sustained by the Respondent.
11. In the end, the appeal is found to be unmerited and it is dismissed with costs to the Respondent.



DATED AT MERU THIS 25RD DAY OF APRIL 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Appellant - Mr. Njuguna for Kimondo & Gachoka Advocates

For Respondent - Ms. Asuma for Mutembei & Kimathi & Co. Advocates

