



**M & another v HAA (A Minor Suing Through the Next Friend and Father HIR)  
(Civil Appeal E209 of 2020) [2024] KEHC 6095 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6095 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E209 OF 2020  
HI ONG'UDI, J  
MAY 30, 2024**

**BETWEEN**

**SKM ..... 1<sup>ST</sup> APPELLANT**

**WJ ..... 2<sup>ND</sup> APPELLANT**

**AND**

**HAA (A MINOR SUING THROUGH THE NEXT FRIEND AND FATHER  
HIR) ..... RESPONDENT**

*(Being an appeal from the Judgment of Miss E. Wanjala Senior Resident Magistrate delivered on 28th September, 2017 in Nairobi Milimani Civil Suit No. 6352 of 2015)*

**JUDGMENT**

1. HIR the respondent filed suit on behalf of his minor daughter HAA claiming damages for injuries suffered when the 2<sup>nd</sup> Appellant's motor vehicle registration KAS xxxM driven by the 1<sup>st</sup> appellant knocked the minor down along Eastleigh Seventh Street. The accident occurred after the 1<sup>st</sup> appellant lost control. As a result, the minor suffered injuries for which the respondent claimed damages. The appellants denied the claim blaming the minor vide their defence dated 21<sup>st</sup> April, 2016.
  2. At the close of the defence case the parties entered a consent on liability in the ratio of 75:25 in favour of the respondent. The learned trial magistrate made the following awards:
    - a. General damages – Ksh 300,000/=
    - b. Special damages – Ksh 2,000/=Less 25% 75,500/=
- Net award Ksh 226,500/=



- (c) Costs to the respondent
  - (d) Interest from date of Judgment.
3. Being dissatisfied with the judgment the appellants filed this appeal on the following grounds:
- i. The learned Magistrate erred in fact and in law in making an award of Ksh 300,000 as general damages against injuries which were only soft tissue injuries.
  - ii. The learned Magistrate erred in fact and in law in relying on extraneous circumstances not supported by the evidence on record.
  - iii. The learned Magistrate erred in fact and in law in considering injuries which were not proved by the respondents and disregarding DW-1 evidence in regards to the alleged dislocation, hence arriving at an erroneous assessment of damages.
  - iv. The learned Magistrate erred in fact and in law in failing to consider appellants' submissions on quantum and attached authorities as well as conventional awards in similar matters thereby making an erroneous award.
4. The respondent called two witnesses PW1 Dr. Antony Obiero Wandugu who examined the minor on 8/10/2015 and found him to have suffered dislocation, right hip joint trauma to left knee joint. He had chronic pains and permanent weakness left leg and right arm. He charged Ksh 2,000 for the report (PEXB 1 (c)). In cross examination he said he extracted information from the P3 form and treatment notes.
5. PW2 – HIR the minor's father testified of the accident. He produced the minor's birth certificate PEXB2. He said the child injured her left-hand shoulder and right hip joint. He took her to hospital (Al Amin Nursing Home) PEXB 3. A report was made to the Pangani police station from where he was issued with a P3 form (PEXB 4) and a police abstract P. EXB 5). He produced the motor vehicle search (PEXB 6(a) and receipt for the search for Ksh 1,000/= (PEXB 6 (b)).
6. He told the court that the child still feels pain in the affected areas especially when it's cold. It was his evidence that the child still went for check ups but he did not have the documents to confirm that.
7. The appellants called one witness DW1 – Dr. Jenepher Kahuthia. She produced the minor's medical report by Dr. Leah Wainaina. It showed that the child was sent to the radiologist whose report was that she had no fracture or dislocation. The report is dated 9/2/2016. She explained that the child only suffered soft tissue injuries from the examination by the Radiologists. She further said the treatment notes is the principal document as it's done on the date of incident.
8. Despite the period given for filing of submissions the appellant did not comply.

### **Respondent's submissions**

9. These were filed by Maina Kagura & Co. advocates and are dated 9<sup>th</sup> October, 2023. While relying on the case of *Butt V Khan* (1977) 1KAR counsel submitted that there was no error made by the trial court to make this court interfere with the decision appealed against. He urged the court to dismiss it.

### **Analysis and determination**

10. Having carefully considered the grounds of appeal, record of appeal, the respondent's submissions, and the law I find the only issue for determination to be whether this court should interfere with awards made by the trial court.



11. This being a first appeal, this court has a duty to re-evaluate and re-consider the evidence and come to its own conclusion. This is what was stated in *Selle V Associated Motor Boat Company Ltd & others* (1968) E.A 123. Also see *Mwana Sokoni V Kenya Bus Services Limited* (1982 - 1988) 1 KAR 78 and *Kiruga V Kiruga* (1988) KLR 716.
12. Both parties fully participated in the hearing before the trial court. There is no dispute that the minor was injured. Both parties produced Medical reports (P EXB 1 (c) & DEXB 1). The respondent produced the treatment notes, (PEXB 3) & the P3 Form (P EXB 4). The P3 form shows that the minors left shoulder had tenderness and there was dislocation of the left hip joint.
13. Further that the hip joint had tenderness. The 2<sup>nd</sup> Medical report by the appellant's witness confirmed that the minor had been treated for dislocation of the left shoulder and soft tissue injuries on the pelvic region. DW1 confirmed that a dislocation can heal soon after reduction.
14. The accident occurred on 26/9/2015; PW1 examined the minor on 8/10/2015 while Dr. Leah Wainaina examined her on 9/2/2016. This explains why the report which was done almost five (5) months after the accident and after the Radiologists report did not reveal the dislocation of the hip joint. Secondly the 2<sup>nd</sup> medical report (EXB1) did not make reference to the P3 Form which was a noted omission.
15. In assessing the damages, the learned trial Magistrate referred to two cases cited by both parties namely:
  - i. *Catherine Wanjiru Kingori & 3 others V Gibson Theuri Gichuki* (2005) eKLR where an award of between Ksh 100,000/= to Ksh 350,000/= was made for soft tissue injuries on 1/7/2005.
  - ii. *Samuel Ndirangu V Lucy Wambui Wachira* (2013) KLR where the respondent sustained a fracture of the right radial – ulna & dislocation of the right hip joint and the court awarded Ksh 250,000/= in general damages on 15/3/2013 after reducing it from Ksh 380,000/=.
16. The appellants herein therefore proposed an award of Ksh 120,000/= in general damages. The appellants did not however file submissions to support their proposal of Ksh 120,000/=.
17. A perusal of the said cases shows that the said decisions were made in 2005 and 2013 respectively. The learned trial Magistrate considered the nature of the injuries suffered by the minor herein and arrived at the award she made.
18. I am in total agreement with the trial court after considering the nature of the injuries, the pain the child went through and even the healing process. I have no reason to make this court to interfere with the award made in terms of both general and special damages.
19. I therefore find the appeal to lack merit and I dismiss it with costs. The Lower court Judgment is hereby upheld.
20. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF MAY, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**  
**JUDGE**

