



**Maina v Maina (Civil Appeal E071 of 2021) [2024] KEHC 6054 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6054 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E071 OF 2021**

**J WAKIAGA, J**

**MAY 29, 2024**

**BETWEEN**

**VIOLET CATHERINE MUTHONI MAINA ..... APPELLANT**

**AND**

**JOSEPH NGATIA MAINA ..... RESPONDENT**

*(Being an appeal from the judgement by Hon. Agade SRM delivered  
on 10th day of November 2021 in Kigumo PMCC NO 219 of 2017)*

**JUDGMENT**

1. This appeal rises from the judgement delivered on the 10<sup>th</sup> day of November 2021, in which she found in favour of the Respondent as follows:
  - a. Special damages Kshs 257,615.00
  - b. General damages Kshs. 600,000.00
  - c. Future medical expenses Kshs. 175,457.00
  - d. Subtotal Kshs. 1,033,072.00
  - e. Less 20%. Kshs. 206,614.40
  - f. Grand total Kshs. 826,557.60
2. Being aggrieved by this award, the Appellant who was the Plaintiff at the trial Court filed this appeal and raised the following grounds of appeal:
  - a. The award was manifestly low.
  - b. The Court acted on wrong principles of law and or took into account irrelevant factors.



- c. The learned Court did not take into consideration the medical evidence tendered and or the relevant cases submitted in support of the Appellants submissions on quantum.

### Submissions

3. Directions were issued on the determination of the Appeal by way of written submissions. On behalf of the Appellant, it was submitted that the injuries sustained by the Appellant were captured in the two medical reports by Doctors P.K. Mwangi and Maina Ruga which were produced by consent to be a) fracture of the right tibia bone b) segmental fracture of the right humerus bone, c) soft tissue injuries of the right thigh and upper arm and that the injuries were extremely serious and therefore the award of Kshs. 600,000 was too low to be interfered with by this Court on appeal.
4. It was contended that an award of Kenya shillings two million would have been appropriate and in support thereof reference was made to the following cases:
  - a. Naivasha civil Appeal No E 102 of 2022 Joseph Ngigi Mwangi v Milton Siloma & Another where general damages on appeal was assessed at Kshs. 1,200,000
  - b. Jessica Kaari Mutwiri Mwangi v Fara Said Hassan [2009] e KLR where the Plaintiff who sustained fracture of the right and left femur was awarded Kshs.1,500,000
  - c. Zachary Kariithi v Jashon Otieno Ochora [2016] eKLR an award of Kenya shillings 1,500,000
  - d. Malindi High Court Civil Case No 30 of 2015 an award of Kshs 1,800,000.
5. On behalf of their Respondent Ms. Kamau supported the trial Court determination and submitted that the finding was well reasoned both on fact and evidence and that the award was very reasonable, which should not be interfered with by this Court of appeal.
6. This being a first appeal, the Court is under a duty to re-evaluate the proceedings before the trial Court and to come to its own determination thereon, while giving allowance to the fact that unlike the trial Court, it did not have the privilege of seeing and hearing witnesses.
7. In this matter, the parties recorded consent judgement on liability at 20%: 80% in favour of the Appellant and to prove her case on quantum the Appellant testified as PW1 and adopted her witness statement. The Respondent did not call any witness.
8. In reaching her determination on quantum, the trial Court had this to say

“I have considered the submissions by the parties and the injuries sustained by the Plaintiff. I must say that the defence has sampled cases where Claimants with two fractures were awarded sums between Kshs.500,000 and 300,000. The Plaintiff only relied on one case. I am persuaded by the cases relied upon by the defence since the injuries in those cases are proximate to what the Plaintiff suffered”

### Determination

9. From the proceedings and submissions herein, there is only one issue for determination on this appeal, that is, whether the award by the trial Court was so lower so as to be interfered with by this Court?
10. The principles upon which an appellate Court may interfere with an award in general damages are now well settled in our jurisprudence, as was stated by the Court of Appeal in *Gitobu Imanyara & 2 others v AG* [2016] e KLR that the Court will be disinclined to disturb the finding of the trial judge as



to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum.

11. The Court stated that in order to justify reversing the trial Court on the question of the amount of damages it will be necessary to be convinced that either the judge acted upon some wrong principles of law or that the amount awarded was so extremely high or so very low as to make it, in their judgement an entirely erroneous estimate of the damage to which the Plaintiff is entitled.
12. The other generally acceptable principle on the assessment of damages was also stated by the Court of appeal in *Odinga Jackton Ouma v Moureen Achieng Odera* [2016] eKLR that comparable injuries should attract comparable award.
13. Did the award the trial Court amount to affair assessment of damages? From the judgement as set out herein I am satisfied that the same took into account all the relevant authorities submitted by both the Appellant and the Respondent and therefore the Appellants submissions that the Court did not take into account her submissions and authorities has no merit.
14. Is the award so low? To answer this question I have looked at the following case of comparable injuries, *Mbae v Kinya* [2024] KEHC 2285 where the High Court reduced an award of Kshs.1,700,000 to Kshs.600.000 to the Plaintiff who sustained more severe injuries than those sustained by the Appellant herein.
15. In the case of *Daneva Heavy Tracks & Another v Chrispine Otieno* [2022] eKLR wherein the Plaintiff who sustained fractures of the pelvis and left tibia and fibula was awarded Kshs.800,000 on appeal.
16. It is therefore clear and I hold that the award by the trial Court were within the acceptable range support by similar cases and will therefore not interfere with the Courts exercise of discretion on the award herein. It therefore follows that the appeal has no merit and is therefore dismissed, the award by the trial Court is affirmed, with no order as to cost. The Appellant is entitled to the cost of the lower Court.
17. For avoidance of doubt I affirm the following award
  - (a) Special Damages - Kshs.257,615.00
  - (b) General damages - Kshs.600,000.00
  - (c) Future Medical expenses - Kshs. 175,457.00Total - Kshs.1,033,072.00  
Less 2% liability - Kshs. 206,614.00  
Total award - Kshs. 826,457.00
18. And it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 29<sup>TH</sup> DAY OF MAY 2024.**

**J. WAKIAGA**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**



**In the presence of :**

Ms. Kamau Beth for the Respondent

Mr. Kamau for the Appellant

Jackline – Court Assistant

