



**Chania Travellers Sacco Ltd & 2 others v Kinungu (Civil Appeal  
E24 of 2023) [2024] KEHC 7714 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7714 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E24 OF 2023**

**H NAMISI, J**

**JUNE 28, 2024**

**FORMERLY KIAMBU HCCA NO. E280 OF 2022**

**BETWEEN**

**CHANIA TRAVELLERS SACCO LTD ..... 1<sup>ST</sup> APPELLANT**

**KELVIN MAOSA ..... 2<sup>ND</sup> APPELLANT**

**SABINA WANJIRU IRUNGU ..... 3<sup>RD</sup> APPELLANT**

**AND**

**JOYCE WANJIKU KINUNGU ..... RESPONDENT**

*(Being an Appeal from judgement by Hon. C.K. Kisiangani, SRM  
delivered on 7th October 2022 in Ruiru CMCC No. 460 of 2021)*

**JUDGMENT**

**Introduction**

1. The Appellants, being dissatisfied by the judgement of Hon. C. K. Kisiangani, SRM dated 7th October 2022 filed a Memorandum of Appeal dated 13th November 2022 on the following grounds:
  - i. That the learned Magistrate erred in fact and in law in failing to consider the Defendant's evidence on quantum hence awarding a highly exorbitant award which is erroneous comparable to the evidence on record;
  - ii. That the learned Magistrate erred in fact and in law in awarding the Respondent Kshs 250,000 for general damages, Kshs 8,550 for special damages with costs and interest, which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent;



- iii. That the learned Magistrate erred in law and in fact in failing to consider the Appellants' evidence on points of law and facts with regard to quantum based on the injuries sustained by the Respondent;
  - iv. That the learned Magistrate erred in law and in fact in failing to consider the evidence of the defence doctor in terms of injuries exaggerated;
  - v. That the learned Magistrate's decision was unjust, against the weight of the evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
  - vi. That the learned trial Magistrate erred in law and in fact in failing to pay regard to submissions and decisions filed alongside the defendant's submissions that were guiding in the amount of quantum and liability that is appropriate and applicable on similar injuries as the case she was deciding;
  - vii. That the learned Magistrate erred in fact and in law in awarding damages that were too high in view of the injuries suffered by the Plaintiff.
2. On 6th May 2024, directions were given to parties to file their written submissions. Counsel for the Appellants sought 14 days to do so. On 5th June 2024, the Appellants were granted leave to file their submissions by close of business. By the time of writing this judgement, the Appellants were yet to file their submissions. The Respondent's submissions are dated 25th March 2024.

### **Brief Facts**

3. The Respondent instituted proceedings against the Appellants, seeking general damages, special damages, costs and interest thereon, following a road traffic accident at Kahawa Barracks along Thika Superhighway involving motor vehicle registration number KCD 218Z. The Respondent was travelling as a passenger in the said motor vehicle at the time the accident occurred. The Appellants were sued in their capacity as registered and/or beneficial owners of the motor vehicle.
4. The Appellants entered appearance and filed their Statement of Defence denying the Respondent's claim.
5. At the hearing on 15th June 2022, the Respondent called 2 witnesses. PW1 – Police Constable Maurice Okoth Awot of Kahawa Sukari Police Station produced a Police Abstract confirming the accident. The Respondent then adopted her witness statement as her evidence in chief and produced various documents including a medical report. The Appellants did not call any witnesses.
6. The trial court entered judgement in favour of the Respondent as follows:
  - i. General Damages for pain and suffering Kshs 250,000
  - ii. Special Damages Kshs 8,550
  - iii. Costs and Interest

### **The Evidence**

7. It is not in dispute that an accident occurred on 23rd July 2021 involving two motor vehicles, one of which was KCD 218Z, in which the Respondent was travelling as a passenger. The accident was confirmed by PW1 who produced a Police Abstract and further testified that the Investigating Officer had found the motor vehicle KCD 218Z to blame for the accident.



8. The Respondent testified that following the accident, she sustained injuries. She was assisted by good Samaritans and sought medical attention at the Lifeline Group of Hospitals. On examination, she sustained chest injury with tenderness and bruises on the left lower leg. The Respondent produced a Medical Examination Report (P3 Form) confirming the injuries sustained. Additionally, the Respondent produced the treatment notes from Lifeline Group of Hospitals, Medical Report by Dr. C.O. Okere dated 28th September 2021, a copy of the Respondent's National Identity Card, Demand Notice, Copy of Statutory Notice to the Insurance Company, copies of motor vehicle records for the motor vehicle registration number KCD 218Z and KBY 970X and bundle of receipts in proof of the special damages.
9. On their part, the Appellants filed a Statement of Defence denying the claim. Although the Appellants presented a list of witnesses, they did not call any to testify, neither did they adduce any evidence to rebut the Respondent's claims.

### Issues for Determination

10. I have considered the Memorandum of Appeal, Record of Appeal as well as submissions by the Respondent. The issue for determination in this appeal can be summarised as: Whether the quantum of damages awarded was exorbitantly high;

### Analysis

11. On the issue of quantum of damages, the Court of Appeal in *Odinga Jacktone Ouma -vs- Moureen Achieng Odera* [2016] eKLR stated that "comparable injuries should attract comparable awards."
12. Further, in the Court of Appeal's decision in the case of *Gitobu Imanyara & 2 Others -vs- Attorney General* [2016] eKLR, the Court held that:

"...it is firmly established that this Court will be disinclined to disturb the finding of a 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. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that: 'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.' (Emphasis my own).

13. From my re-evaluation of the evidence, I find that the trial magistrate made reference to the relevant evidence on record. The trial magistrate further analysed the authorities relied upon by both parties in their submissions, noting that those of the Appellants were old cases, while those relied upon by the Respondent referred to injuries that were more serious than those sustained by the Respondent. In arguing for general damages of Kshs 600,000/-, the Respondent relied on the case of *Ahmed Mzee Famau t/a Njaa Coach Ltd -vs- Veronica Nguui Muiya* [2017] eKLR. On the other hand, the Appellants



submitted that Kshs 70,000/- would suffice and relied on the case of Mokaya Mochama -vs- Julius Momanyi Nyokwoyo [2013] eKLR.

14. In this case, the Respondent did not plead any permanent incapacity and the Medical Report by Dr. Okere classified the Respondent's injuries as harm. In awarding the Respondent general damages of Kshs 250,000/-, the trial Magistrate relied on the case of Francis Ochieng & Another -vs- Alice Kajimba [2015] eKLR. In her submissions herein, the Respondent has relied on several cases. Notably, the Respondent has relied on the case of Catherine Wanjiru Kingori & 3 Others vs Gibson Theuri Gichubi [2005] eKLR, in which the 3rd plaintiff, having suffered multiple soft tissue injuries, injury to the left elbow joint and soft tissue injuries on both ankles, was awarded Kshs 350,000/= as general damages.
15. In dealing with an appeal on quantum, I am guided by the decision of the Court of Appeal in Bashir Ahmed Butt -vs- Uwais Ahmed Khan [1982-88] KAR 5, where the court held that:

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”
16. In view of the foregoing, I am not persuaded that the award made by the trial magistrate was exorbitantly high in comparison to comparable awards. Hence, I see no need to interfere with the award of the trial court, which is reasonable and adequate to compensate for the injuries sustained in this case.
17. On special damages, I find that the Respondent had clearly proven the amount pleaded and as such I find no reason to vary the trial Magistrate's decision on that.
18. Accordingly, and for reasons stated, the appeal fails. The Respondent shall have costs of the appeal.

**DATED AND DELIVERED AT THIKA THIS 28 DAY OF JUNE 2024.**

**HELENE R. NAMISI**

**JUDGE**

Delivered on virtual platform In the presence of:

..Njuguna..... for the Appellant

..Ogowe..... for the Respondent

