



**Namaposa v Manyara (Civil Appeal E028 of 2024)  
[2024] KEHC 7728 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7728 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E028 OF 2024  
RE ABURILI, J  
JUNE 28, 2024**

**BETWEEN**

**DAMARIS NAMAPOSA ..... APPELLANT**

**AND**

**SIMON MAINA MANYARA ..... RESPONDENT**

*(An appeal arising out of the Judgment of the Honourable G.C. Serem in the Small Claims Court at Kisumu delivered on the 1st February 2024 in Kisumu SCC No. E440 of 2023)*

**JUDGMENT**

**Introduction**

1. The appellant was sued by the respondent for general damages of Kshs. 1,000,000 for injuries sustained following an accident that occurred on the 15.9.2023 involving the claimant's motor vehicle registration no. KCH 964W that collided with the respondent's motor vehicle registration no. KDK 652L.
2. The respondent in his defence denied the claim and negligence attributed to her and contended that the accident was as a result of the appellant's negligence and put him to strict proof. The parties entered a consent on liability in the ratio 85:15 in favour of the respondent against the appellant. There was no dispute between the parties as to the nature of injuries sustained by the respondent being a fracture to the tibia and fibula as well as soft tissue injuries.
3. The trial court awarded the respondent Kshs. 800,000 as general damages. Aggrieved by the said decision, the appellant filed a memorandum of appeal dated 9<sup>th</sup> February 2024 challenging the trial court's award on quantum based on the following grounds:



- a. That the learned magistrate/adjudicator erred in law by awarding general damages of Kenya Shillings Eight Hundred Thousand (800,000) in general damages which was excessively high in the circumstances.
  - b. The learned magistrate/adjudicator erred in law in failing to consider the respondent's submission on quantum.
  - c. The learned magistrate/adjudicator erred in law by failing to apply the relevant and pertinent judicial principles, precedents and trends regarding the award of quantum.
4. The parties canvassed the appeal by way of written submissions.

### **The Appellants' Submissions**

5. It was submitted that an award of Kshs. 300,000 would be sufficient for general damages as the respondent sustained soft tissue injuries and a fracture with no permanent incapacity and had since fully recovered.

### **The Respondent's Submissions**

6. It was submitted that the trial court's award of Kshs. 800,000 for general damages was within the range of the awards granted by the courts in comparable matters cited in the submissions and that therefore this court ought not to interfere with the same. The respondent further prayed for costs and interest at 14% from the date of judgement should the instant appeal fail.

### **Analysis and Determination**

7. As the first appellate Court, my role is to revisit the evidence on record, evaluate it and reach my own conclusion in the matter. (See the case of *Selle & Anor. v Associated Motor Boat Co. Ltd* [1968] EA 123). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni v Kenya Bus Service Ltd.* [1982-88] 1 KAR 278 and *Kiruga v Kiruga & Another* [1988] KLR 348).
8. I have considered the submissions tendered together with the authorities cited by the parties. As the Respondents did not cross-appeal against the findings and conclusion of the trial magistrate, I think the issue is simply whether the award was too high or too low as contended by the Appellant.
9. General damages are damages at large whose purpose is to compensate the injured to the extent that such injury can be assuaged by a money award. It has been stated that money cannot renew a physical frame that has been injured and crushed hence the courts can only award sums which must be viewed as giving reasonable compensation. Awards ought to be reasonable and must be assessed with moderation bearing in mind that the large and inordinate awards may injure the body politic. Furthermore, it is desirable that so far as possible, comparable injuries should be compensated by comparable awards considering the current prevailing economic circumstances including inflation (see *Tayab v Kinanu* [1983] KLR 114 and *West (H) & Son Ltd v Shephard* [1964] AC 326, 345).
10. It is not in dispute that the respondent was injured, hence the question is what was the nature and extent of the injuries and what award should they attract In his statement of claim filed on the 21st December 2023, the respondent pleaded that he sustained the following injuries:
- i. Neck Tenderness



- ii. Chest Tenderness
  - iii. Backaches
  - iv. Tenderness on the shoulder joints
  - v. Fracture of the right lower limb at the Tibia Fibula
11. The said injuries were confirmed in the P3 form and treatment notes attached to the respondent's claim. In essence, the respondent sustained a fracture of the right tibia fibula as well as soft tissue injuries to the neck, chest, back and shoulder. The Adjudicator accepted the P3 form to be sufficient medical report prepared by a licensed medical practitioner. I agree. However, the P3 form does not state the extent of those injuries or their residual effect in as much as it assessed the degree of injury to be grievous harm. No degree of permanent incapacity was given, there is nothing to show that the fractures did not heal without any complication.
  12. I have considered the authorities relied on by both parties herein in their submissions and I find that those relied on by the appellant were from almost a decade ago and in those relatively recent ones cited, the said cases did not have comparable injuries to those sustained by the respondent. On the other hand, the cases relied on by the respondent contain more serious injuries than those he sustained.
  13. In *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] eKLR this court reduced an award of Kshs. 600,000 to Kshs. 400,000/= for compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with cut wound on the nose and blunt chest.
  14. In the case of *Nabson Nyabaro Nyandega v Peter Nyakweba Omboga* [2021] eKLR where the respondent suffered fractures of the tibia/fibula and soft tissue injuries and the trial court awarded the award of Kshs. 900,000, the appellate court found the same to be inordinately high and substituted them with an award of Kshs. 650,000/=
  15. In the case of *Herbert Otara Marube v Dankan Ochora* [2022] eKLR, Kisii High Court awarded Kshs 450,000/- to a plaintiff who sustained fracture of right tibia, right ankle dislocation, chest contusion, laceration and cut wounds on the right lower limb.
  16. Although no case is like the other, it is my finding that as it was not demonstrated that the fractured sites developed any complications such as mal-union, I find that an award of Kshs. 800,000 was on the higher side, even taking into account inflation and time lapse since the cited cases were decided and therefore the award warrants this court's interference with the trial court award. On the other hand, I find that the amount of Kshs 300,000 suggested by the appellant is inordinately low compared to similar awards or similar injuries. In the premises, I set aside the award of Kshs 800,00 general damages and substitute it with an award of Kshs 600,000 less 15% contribution which sums will earn interest at court rates from the date of judgment in the lower court until payment in full.
  17. Accordingly, this appeal succeeds to the extent stated above. I order that each party bear their own costs of this appeal.
  18. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF JUNE, 2024**

**R.E ABURILI**

**JUDGE**

