



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wahinya v Laborex Kenya Limited (Civil Appeal E254 of 2021)  
[2024] KEHC 7676 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7676 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E254 OF 2021**

**H NAMISI, J  
JUNE 28, 2024**

**BETWEEN**

**STEPHEN WAHINYA ..... APPELLANT**

**AND**

**LABOREX KENYA LIMITED ..... RESPONDENT**

*(Being an Appeal from the judgement of Hon. E. Ominde, Chief Magistrate  
delivered on 23rd November 2021 in Kiambu CMCC No. 452 of 2017)*

**JUDGMENT**

1. This appeal arises out of an accident that occurred on 2nd November 2016 involving the Appellant, who was riding motorcycle registration number KMDV 480U, and the Respondent's motor vehicle registration no. KBY 511K. The accident occurred at Kirigiti/Riabai Road in Kiambu from which the Appellant sustained the following injuries:
  - i. Bruises on the forehead
  - ii. Contusion of the chest
  - iii. Contusion of bilateral legs
  - iv. Contusion of the abdomen
2. By Complaint dated 6th September 2017, the Appellant instituted proceedings against the Respondent, seeking general damages for pain and suffering, special damages of Kshs 3,000/-, costs of the suit and interest.
3. The Respondent filed a Statement of Defence dated 16th October 2018.



4. On 27th July 2021, parties recorded a consent on liability in the ratio 75:25 in favour of the Appellant. It was also agreed that the two Medical Reports by Dr. J. N Muiru dated 21st February 2021 and Dr. Modi M.Y would be produced without calling the makers. Parties then proceeded to file their written submissions on the issue of quantum.
5. In his submissions dated 16th August 2021, in submitting an award of Kshs 350,000 for general damages, the Appellant relied on 3 cases, namely *Joyce Wanjiru -vs- Duncan Mwaura Gicheru*, HCCC No, 3854 of 1986; *Fransisca Mumbee Kitundu -vs- Kenneth Tghuo Njonjo* HCCC No 3281 of 1984 and *Denys Mabwaka -vs- Mawingo Bus Services* HCCC No. 2707 of 1990.
6. On their part, the Respondent argued for a sum of Kshs 80,000 for general damages, and relied on 5 cases, including *Mutisya Muthangya -vs- Oaul Mnundu Musili* [2018] eKLR.
7. The trial court then delivered the impugned judgment as follows:
  - i. The plaintiff is to bear 25% liability and the Defendant bear 75%;
  - ii. The plaintiff is awarded general damages of Kshs 70,000/- for pain and suffering less 25% liability and this comes to a sum of Kshs 52,500/-
  - iii. The plaintiff is awarded special damages of Kshs 3,000 less 25% liability comes to Kshs 2,250/-.
  - iv. The plaintiff is awarded costs of the suit and interest at court rates.
8. The Appellant, being dissatisfied by the judgement of filed a Memorandum of Appeal dated 20th December 2021 on the following grounds:
  - i. That the learned Magistrate erred in law and fact by failing to take into account the Appellant's cited authorities when considering the award of damaged in general damages;
  - ii. That the learned Magistrate erred in law and fact in not considering the severity of the degree of injuries sustained by the Appellant;
  - iii. That the learned Magistrate erred in law and fact in not properly analysing the Medical Reports by Dr. Muiru and Mr. Madhiwalla who both assessed the injuries as harm;
  - iv. That the learned Magistrate erred in law and fact by failing to take into account the submissions of the Appellant and Respondent thereby awarding damages lower than submitted by both the Appellant and Respondent;
  - v. That the Learned Magistrate erred in law and facts in awarding damages which were significantly so low in the circumstances and in economic times
9. Directions were given to canvass the appeal by way of written submissions. Both parties filed their respective submissions on 3rd June 2024.
10. I have considered the Memorandum of Appeal, Record of Appeal as well as submissions by the parties. This appeal relates only to the issue of the quantum of damages assessed by the trial court.

### **Analysis & Determination**

11. This being the first appeal, it is this court's duty under Section 78 of the *Civil Procedure Act, Cap 21* of the Laws of Kenya, to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion, taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v*



*Associated Motor Boat Co. Ltd* (1968) EA 123 cited by the appellants where Sir Clement De Lestang (V.P) stated that, “An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally”.

12. In an appeal on quantum, the court must be careful not to interfere with the trial court’s discretion unless certain conditions are met. These conditions were set out in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR* thus:

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

13. On the issue of quantum, 2 Medical Reports were produced by consent in the trial court. Medical Report dated 20th June 2017 prepared by Dr. J. N. Muiro which is attached to the List of Documents dated 6th September 2017 appears to be incomplete. The same does not give details of the medical examination or the medical opinion formed by the doctor. Therefore, this court only has the benefit of the opinion stated in the second medical report by Dr. Ashwin Madhiwala dated 12th February 2021 that is at page 12 of the Record of Appeal.
14. In the Medical Report, the opinion given is that the Appellant suffered from the injuries stated, which injuries have healed well and left no permanent disability. The injury sustained is assessed as ‘harm’.
15. Turning to whether the general damages awarded by the trial court were exceedingly low, I am guided by the principle in the assessment of damages that an award must reflect the trend of previous, recent and comparable awards. In the case of *Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR*, the Court of Appeal held:

“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.”

16. I have looked at various cases for comparable awards. In *Michael Okello -vs- Priscilla Atieno HCCCA No. 45 of 2019*, the Court awarded Kshs 250,000 for soft tissue injuries.
17. In *Joseph Mwangi Kiarie & Another -vs- Isaac Otieno Otieno HCCA No. 30 of 2018*, the award of Kshs 300,000/- was reduced for Kshs 180,000/- for soft tissue injuries.
18. In *Michael Odiwuor Obonyo -vs- Clarice Odera Obunde HCCA No. 01 of 2020*, the award of Kshs 500,000 was reduced to Kshs 200,000/= for soft tissue injuries.



19. In *Mokaya Mochama -vs- Julius Momanyu Nyonkwoyo, HCCA No. 101 of 2010*, the court awarded Kshs 70,000/- as general damages where the plaintiff had sustained minor soft tissue injury, but suffered a concussion for a few minutes coupled with a head injury.
20. In view of the foregoing, I am persuaded that the award by the learned trial magistrate fell on the lower side in comparison to comparable awards. However, I am not persuaded that the sum proposed by the Appellant is reasonable and fair, in light of the injuries suffered.
21. Upon considering the damages awarded in the authorities i have just cited, and their age, I find that an award of Kshs 200,000/= to be reasonable and adequate to compensate for the injuries suffered in this case.
22. Accordingly, I allow the appeal and set aside the award of Kshs 70,000/- by substituting it with Kshs 200,000/-. Each party shall bear its own costs.

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

**HELENE R. NAMISI**

**JUDGE**

Delivered on virtual platform In the presence of:

.....N/A..... for the Appellant

.....N/A..... for the Respondent

