



REPUBLIC OF KENYA



KENYA LAW
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**Cheruiyot & another v Onyisi (Civil Appeal E012 of 2021)
[2024] KEHC 9684 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E012 OF 2021**

**RL KORIR, J
JUNE 27, 2024**

BETWEEN

STANLEY KIPKOECH CHERUIYOT 1ST APPELLANT

DANIEL CHEGE NGUGI 2ND APPELLANT

AND

ANNA KEMUNTO ONYISI RESPONDENT

*(Being an Appeal from the Judgment of the Senior Resident Magistrate,
Omwange J. at the Magistrate's Court at Sotik, Civil Suit Number 114 of 2019)*

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellants (then Defendants) for general and special damages that arose from a road traffic accident involving Motor Vehicle Registration Number KCA 176Z in which she was a passenger and Motor Vehicle Registration Number KCP 318R.
2. The trial court conducted a hearing where the Respondent presented her case and presented one witness. The Appellants neither testified nor presented any witnesses in aid of their case.
3. In its Judgment delivered on 27th April 2021, the trial court awarded a total of Kshs 307,900/= as general and special damages to the Respondent (then Plaintiff).
4. Being aggrieved with the Judgment of the trial court on quantum, the Appellants filed their Memorandum of Appeal dated 3rd April 2023 and relied on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact in the assessment of quantum thereby giving an award on quantum on general damages of Kshs 300,000/= that was overly excessive in the circumstances of the case.



- ii. That the learned trial Magistrate erred in law and in fact in failing to pay regard to the decisions filed alongside the Defendants' submissions that were guiding in the amount of quantum that is appropriate and applicable in similar injuries as the case he was deciding.
 - iii. That the learned trial Magistrate's exercise of discretion in the assessment of quantum was injudicious.
5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.

The Plaintiff's/Respondent's case.

6. Through her Complaint dated 5th August 2019, the Respondent stated that on 2nd July 2019 while aboard Motor Vehicle Registration Number KCA 176Z, the said motor vehicle was carelessly driven causing a road traffic accident with Motor Vehicle Registration Number KCP 318R which resulted in her suffering injuries.
7. It was the Respondent's case that the 1st Appellant who was the driver of Motor Vehicle Registration Number KCA 176Z was negligent in causing the accident. The particulars of the negligence were stated in paragraph 5 of the Complaint. It was the Respondent's further case that the said motor vehicle was owned by the 2nd Appellant.
8. The Respondent stated that as a result of the accident the Appellant suffered the following injuries:-
 - i. Cut wounds on the right leg.
 - ii. Bruises on the right leg.
 - iii. Chest contusion.
 - iv. Blunt trauma to the left temporal region.
 - v. Blunt trauma to the right elbow.
 - vi. Blunt trauma to the right shoulder.
 - vii. Bruises on the left knee.
 - viii. Bruises on the left leg.

The Defendants/Appellants' Case.

9. Through their Statement of Defence dated 27th February 2020, the Appellants denied the occurrence of the road traffic accident on 2nd July 2019 and the 2nd Appellant further denied that that he was the registered owner or driver of Motor Vehicle Registration Number KCA 176Z. The 1st Appellant also denied being negligent in the causing the road traffic accident.
10. It was the Appellants' case that if the accident occurred then it was caused by negligence of the driver of Motor Vehicle Registration Number KCP 318R. The particulars of negligence were contained in paragraph 7 of the Defence.
11. On 18th March 2024, this court directed that the Appeal be heard by way of written submissions.



The Respondent's Submissions.

12. In her submissions dated 18th April 2024, the Respondent submitted that the award on general damages by the trial court was reasonable and was not inordinately high.
13. It was the Respondent's submission that the Appellants did not avail any medical documents to dispute the injuries she suffered. That the trial court correctly relied on her evidence and the documents she produced.
14. The Respondent submitted that for this court to interfere with the damages awarded by the trial court, the Appellants had to demonstrate that the trial court had awarded the damages based on the wrong principles. She relied on *Mutungi v David Muasya Ndeleva* (2015) eKLR and *Joseph Kyalo Maundu v Moses Musau Mulela & another* (2019) eKLR.
15. It was the Respondent's submission that the assessment of damages for personal injuries was guided by previously decided cases to secure uniformity and that courts needed to take into account the current inflation rates.
16. It was the Respondent's submission that there was no error by the trial court to warrant interference by this court in the awarding of general damages. That the award by the trial court was fair, reasonable and took into account the injuries she suffered. The Appellant asked this court to dismiss the Appeal with costs.
17. Despite being granted time extension to file their written submissions, the Appellants failed to comply.
18. I have perused and considered the Record of Appeal dated 8th November 2021 and the Respondent's written submissions dated 18th April 2024. The only issue that arose for my determination was whether the award on quantum was inordinately high.
19. The trial court awarded the Appellant Kshs 300,000/= as general damages.
20. As per the Plaintiff, the Respondent suffered the following injuries:-
 - i. Cut wounds on the right leg.
 - ii. Bruises on the right leg.
 - iii. Chest contusion.
 - iv. Blunt trauma to the left temporal region.
 - v. Blunt trauma to the right elbow.
 - vi. Blunt trauma to the right shoulder.
 - vii. Bruises on the left knee.
 - viii. Bruises on the left leg.
21. In proving the said injuries, the Respondent produced treatment notes from Kaplong Mission Hospital and Sotik Health Centre as P.Exh 2 and P.Exh 3 respectively. Further a Medical Report by Dr. Morebu Peter Momanyi was produced by the Respondent as P.Exh 8a. I have carefully gone through the treatment notes and Medical Report and they confirm the injuries sustained by the Respondent. The Medical Report further stated that the Respondent was in the process of healing and required the use of analgesics when in pain.



22. It is salient to note that the nature of the injuries suffered by the Respondent was not disputed through cross examination. Further, the Appellants failed to tender any evidence that would controvert the testimony and evidence produced by the Respondent (then PW1).
23. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Fredrick Masagbwe Mukasa v Director of Public Prosecutions & 3 others* (2019) eKLR and *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros v Augustine Munyao Kioko* (2006) eKLR.
24. In the present case, the Respondent submitted that the award of Kshs 300,000/= as general damages was fair considering the nature of injuries she suffered. She implored this court to uphold the award.
25. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. I have found the following cases quite helpful in terms of comparison:-
- i. In *Kenya Power & Lighting Co. Ltd v Mary Akinyi*, HCCA No. 72 of 2007, the court upheld the award of Kshs. 350,000/- as general damages for a deep cut wound on the calf muscles of the left leg, laceration on the right knee and right shoulder and contusion on the chest.
 - ii. In *Poa Link Services Co. Ltd & Another v Sindano Boaz Bonzemo* (2021) eKLR, the court upheld the general damages of Kshs. 350,000/- for the plaintiff, who had sustained blunt injury to the chest, bruises to lower abdomen, bruises of the right hip joint, bruises of the thigh; and bruises on the knee.
 - iii. In *Samuel Martin Njoroge Kamunyu v Mildred Okweya Barasa* (2020) eKLR, the plaintiff sustained; two deep cut wounds on the forehead horizontally, bruises and lacerations on the right cheek, blunt injury to the shoulder and chest, blunt injury to the pelvis, deep cut wounds on right and left legs. The High Court awarded of Kshs 300,000/= as general damages.
 - iv. In *Marube & another v Nyamboga* (Civil Appeal E011 of 2023) [2024] KEHC 3395 (KLR) (12 March 2024) (Judgment), the court upheld the award of Kshs 350,000/= for the following injuries; blunt trauma to the neck, chest contusion, bruises on the right upper limb, bruises on the left upper limb, bruises on the left lower limb, bruises on the right lower limb and cut wounds on the right lower limb
 - v. In *Veronicah Mkanjala Mnyapara v Charles Kinanga Babu* (2020) eKLR, the court upheld an award of Kshs. 300,000/= for the plaintiff who had sustained a deep cut wound on the forehead, chest contusion, bruises on the face, bruises on both hands, dislocation of the left wrist joint, bruises on both ankle joints and dislocation of the left ankle joint.
26. Having considered the authorities above and the nature of the injuries suffered by the Respondent, it is my finding that the Kshs 300,000/= awarded as general damages by the trial court was reasonable and I so uphold.
27. With regards to the Special Damages, the Respondent particularized them as follows:-
- Treatment Expenses Kshs 850/=
- Medical Report Kshs 6,500/=
- Copy of records Kshs 550/=



28. It is trite law that special damages ought to be specifically pleaded and proved. I have looked at the trial court file and found that the Respondent produced receipts for treatment expenses, the Medical Report and motor vehicle search as P. Exh 5, P.Exh 8b and P.Exh 9a respectively all totalling to Kshs 7,900/=.
29. It is my finding that the trial court correctly awarded Kshs 7,900 as special damages, an award which I uphold.
30. In the final analysis and having considered the Record of Appeal in its entirety, it is my finding that the trial court arrived at the correct figures when assessing and awarding the general damages and special damages and there was no reason for this court to interfere with the same.
31. In the end, the Appeal dated 17th May 2021 is dismissed with costs to the Respondent. The costs in the original suit remain as awarded by the trial court.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 27TH DAY OF JUNE, 2024.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the absence of the parites. Siele(Court Assistant)

