



REPUBLIC OF KENYA



**Modern Coast Coaches Limited v Moseti (Civil Appeal E069 of 2021)
[2022] KEHC 15621 (KLR) (23 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E069 OF 2021
GMA DULU, J
NOVEMBER 23, 2022**

BETWEEN

MODERN COAST COACHES LIMITED APPELLANT

AND

PHILIP KENNY MOSETI RESPONDENT

(Being an Appeal from the judgment of Hon. C.A Mayamba (P.M) in Kilungu Principal Magistrate's Court Civil Case No.161 of 2020, delivered on 3rd September, 2021)

JUDGMENT

1. In its judgment the magistrate's court found in favour of the respondent who was the plaintiff in the trial court, and concluded as follows –
 - a) Liability 80% to 20%
 - b) General damages Kshs 250,000/=
 - c) Special Damages Kshs 11,550/=
 - d) Less 20% (52,310) Kshs 209,240/=
 - e) Costs and interest
2. Dissatisfied with the decision of the trial court, the appellant has come to this court on appeal through counsel Wambua Kilonzo on the following grounds –
 - 1) That the learned magistrate erred in law and facts in assessing general damages at an inordinate high sum of Kshs 250,000/= which was not commensurate with injuries sustained.



- 2) That the learned magistrate erred in law and fact in failing to take into account that the plaintiff only sustained soft tissue injury.
 - 3) That the learned magistrate erred in law and in fact in failing to take into account authorities cited by the defendant in relation to similar soft tissue injuries .
 - 4) That the learned magistrate erred in law and in fact in failing to consider or have any or any sufficient regard to the submissions filed on behalf of the defendant.
 - 5) In all circumstances of the case, the learned magistrate failed to do justice.
3. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by Wambua Kilonzo & Company for the appellant and Achieng Owuor & Company for the respondents.
4. This is an appeal against the quantum of damages awarded by the trial court as liability was recorded by consent of the parties. I am reminded of the legal principles to be applied by an appellate court in deciding whether to interfere with the award of damages by a trial court. Many court cases have highlighted the said principles, which were applied by the Privy Council in the case of *Nance v British Columbia Electric Railway Co Ltd* [1951] AC 601 and 613, and the local case of *Mbogo v Shah* [1968] EA 93 in which the Court of Appeal stated –
- “ A Court of Appeal shall not interfere with the exercise of the discretion of a Judge unless it is satisfied that he misdirected himself in some matter and as a result arrived a wrong decision, or unless it is manifest from the case as a whole that the Judge was clearly wrong in the exercise of his discretion and that as a result there has been injustice”.
5. I observe from the trial court record, that it is not in dispute that liability was agreed at 80% to 20%. With regard to assessment of quantum of damages the consent entered into was as follows –
- “ On liability, plaintiff’s list of documents to be admitted without calling makers. Parties to file written submissions on quantum.”
6. Thus no oral evidence was tendered by any of the parties through calling witnesses.
7. In assessing quantum of damages, the magistrate considered the submissions of the appellant’s counsel including the case of *Easy Coach Ltd v Emily Nyangasi* – HCCA No 20 of 2015 Kisumu, as well as the submissions of the respondent’s counsel. The magistrate noted in the judgment that the respondent’s counsel asked for general damages of Kshs 350,000/= while the appellant’s counsel asked for general damages of Kshs 60,000/=.
8. The injuries suffered were not contested. They were described in the judgment of the trial magistrate as follows -
- “ Soft tissue injuries on the face, blunt injury to the lower back, deep cut on the right leg, soft tissue injury on the right arm and blunt injury to the left knee joint. The injuries were soft tissue with no permanent incapacitation foreseeable, though scars were still visible.”
9. In my view, considering the uncontested injuries suffered by the respondent as described above, it cannot be said that the trial magistrate misdirected himself in assessing damages, or that the damages



awarded herein are inordinately high. The amount of damages awarded in my view, were not outside the scope of comparable awards made by the courts.

10. I thus find that the appeal herein on the quantum of damages lacks merits, as the award of damages herein is reasonable. I will thus uphold the same.
11. Consequently, and for the above reasons, I dismiss the appeal, and uphold the award of damages made by the trial court. The appellant will pay the respondent's costs of appeal as well as interest.

DELIVERED, SIGNED & DATED THIS 23RD DAY OF NOVEMBER, 2022, VIRTUALLY AT MAKUENI.

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GEORGE DULU

JUDGE

