



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CIVIL APPEAL NO.70 OF 2018**

**PURITY WANGUI KING'ORI.....APPELLANT**

**VERSUS**

**PAUL WANDIO KARIUKI.....1<sup>ST</sup> RESPONDENT**

**SAMUEL KING'ORI IRUNGU.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This is an appeal arising out of part of the Judgment of Hon. Nelly W. Kariuki (SRM) delivered on 30/11/2018 in Nyeri CMCC No. 178 of 2017.

2. The cause of action arose out of a Road Traffic Accident that occurred on 9<sup>th</sup> February, 2017 involving motor vehicle registration number KBY 798U and the appellant along Nyeri-Kamakwa Road.

3. The Respondents though duly served failed to enter appearance and file a defence and therefore, interlocutory judgment was entered against them; the matter then proceeded for formal proof and judgment was delivered in the following terms:-

- Damages for Pain and suffering = Kshs.170,000/=
- Special damages – Kshs.3,000/=

4. The appellant being aggrieved by the award on general damages instituted this Appeal and listed three (3) grounds of appeal as summarized hereunder;

- (i) The trial court wholly misapprehended the principles applicable in assessing quantum of damages;
- (ii) The trial court awarded an inordinately low amount in light of the injuries sustained by the appellant;
- (iii) The trial court failed to give reasons for arriving at the amount awarded for damages.

5. The appellant was directed to canvass the appeal by filing written submission; hereunder is a summary of the submissions.

**APPELLANT'S SUBMISSIONS:**

6. The appellant submitted that the trial Court misdirected itself in making the award on general damages; it was counsel's submission that the trial Court did not give reasons for disregarding the appellant's prayer for Kshs.700,000/= and awarding Kshs.170,000/=, instead; the award given was inordinately low and prayed that this Court do award the sum of Kshs.700,000/= as damages.

7. In support of the submissions, the appellant cited the renowned case of **Butt vs Khan (1977) 1KAR** in which Law JA stated that:-

***“An appellate court will not disturb an award for damages unless it is 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 arrived at a figure which was either inordinately high or low.”***

8. The appellant also cited the case of **Vincent Mbogholi v Harrison Tunje Chilyalya [2017] eKLR** in support of the proposed award of Kshs.700,000/= as general damages.

## **ISSUES FOR DETERMINATION**

9. Upon reading the written submissions this court has framed only one issue for determination;

- (i) Whether the trial court awarded an inordinately low amount in light of the injuries sustained by the appellant;

## **ANALYSIS**

10. As rightly put by the appellant, for this Court to interfere with quantum of damages awarded by the trial magistrate's court, it would have to be in line with the principles set out in the case of **Butt vs Khan** (supra).

11. Similarly in the case of **Kenya Breweries Ltd [1991] eKLR** it was held that,

***“...It is now well established that this Court can only interfere with a trial judge's assessment of damages where is it is shown that the judge has applied wrong principles or where the damages awarded are so inordinately high or low that an application of wrong principles must be inferred....”***

## **Whether the trial court awarded an inordinately low amount in light of the injuries sustained by the appellant:**

12. The appellant herein sustained the following injuries from the accident:-

- Fracture of the medial malleolus of the left ankle;
- A cut wound over the lateral side of the left ankle;
- Bruises on the dorsum of the left foot;
- Friction injury to both forearms.

13. These injuries have been confirmed by the Medical Report of Dr. Muchai Mbugua dated 10<sup>th</sup> May, 2017. The Report indicates that the appellant has recovered from her injuries though she still complains of pain and swelling. The appellant at the trial of the matter adopted her witness statement which also indicate that she still suffers from pain and swelling when she walks for too long.

14. Taking into account that the appellant has recovered from her injuries with no permanent degree of incapacity – as per her Doctor's Report, this court finds an award of Kshs.350,000/= would be adequate recompense.

15. In the case cited by the appellant, **Vincent Mbogholi v Harrison Tunje Chilyalya [2017] eKLR**, the respondent did suffer a fracture of the left medial malleolus however on re-examination, he was found to have also suffered a fracture of the left tibia leg bone; his injuries were therefore more severe than the appellant herein;

16. This court is satisfied that the trial court's award for general damages was inordinately low that an application of wrong principles can be inferred; and finds good reason to interfere with the trial courts award; hence this award of Kshs.350,000/=;

17. This ground of appeal has merit and is hereby allowed.

## **FINDINGS AND DETERMINATION**

18. For the forgoing reasons this court makes the following determination;

- (i) The appeal found to have merit and it is hereby allowed;
- (ii) The trial Court's award on general damages of Kshs.170,000/= is hereby set aside and substituted with an award of Kshs.350,000/=;
- (iii) The appellant shall have costs of the Appeal.

It is so Ordered.

**Dated, Signed and Delivered at Nyeri this 30<sup>th</sup> day of April 2020**

**HON.A.MSHILA**

**JUDGE**