



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 2 'A' OF 2016**

**NAFTAL ONSARE MANG'ERA.....APPELLANT**

**VERSUS**

**G4S SECURITY SERVICES KENYA LTD.....RESPONDENT**

**{Being an Appeal from the Judgement and Decree of Hon. N. Kahara – SRM dated and delivered on the 22<sup>nd</sup> day of January 2016 in the original Keroka Principal Magistrate's Court Civil Case No. 227 of 2013}**

**JUDGEMENT**

This is an appeal on the quantum of general damages awarded to the appellant as liability was agreed between the parties. The appellant sustained: -

- (a) Tender swollen upper lip.
- (b) Hyperemic gums with traumatic extraction of two upper incisor teeth.
- (c) Blunt injury on the chin.
- (d) Blunt injury on the lower limbs.

He was awarded Kshs. 120,000/= as general damages and the proven special damages of Kshs. 29,500/=. These awards were subject to his agreed contributory negligence of 20%.

The grounds of appeal are: -

- “1. THAT the Learned Magistrate erred in law and in fact in awarding damages that are so low as to amount to an erroneous estimate of the damage suffered by the Appellant.**
- 2. THAT the Learned Trial Magistrate erred in law and in fact in not considering the Appellant's submissions.**
- 3. THAT the Learned Trial Magistrate erred in law and in fact in awarding the Appellant an ordinally low award in respect of general damages.”**

In *Sophinaf Company Limited & Another Vs. Daniel Ng'ang'a Kanyi* [2006] eKLR, the Court of Appeal observed: -

***“The assessment of damages for personal injuries is a difficult task. The court is required to give a reasonable award which is neither extravagant nor oppressive. And while the judge is guided by such factors as the previous awards for similar injuries and the principles developed by the Courts, ultimately, what is a reasonable award is an exercise of discretion by the trial judge and will invariably depend on the peculiar facts of each case.”***

As for the role of this court, it is now settled that it can only interfere with the exercise of discretion by the trial court if that court: -

- “(a) Took into account an irrelevant factor or***
- (b) Left out of account a relevant factor or,***

*(c) The award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.” –*

**Paul Kipsang Koech & Another Vs. Titus Osule Osore [2013] eKLR and Kiwanjani Hardware Ltd & Another Vs. Nicholas Mule Mutinda [2008] eKLR.**

Counsel for the appellant has urged this court to increase the award to Kshs. 2,000,000/= given the prevailing economic circumstances, the diminishing value of the Kenya Shillings compared to other major world currencies and the nature of the injuries sustained by the appellant. Counsel submitted that whereas the trial magistrate relied on a case where the plaintiff had suffered more or less injuries and had been awarded Kshs. 120,000/= the trial magistrate failed to consider that the case was 25 years old. Counsel disclosed that in the lower court the appellant had proposed an award of Kshs. 700,000/=. In a report prepared on 18<sup>th</sup> December 2013 about a month after the accident, Dr. Zoga Ogando while confirming the injuries pleaded in the plaint concluded as follows: -

***“Following the road accident, Naftal sustained soft tissue injuries which have healed well”.***

In **Paul Kipsang Koech & Another Vs. Titus Osule Osore [2013] eKLR** the court reduced an award of Kshs. 300,000/= to Kshs. 200,000/= for injuries which though somewhat similar to those of the plaintiff were more serious. I am persuaded in this case that although the award is not inordinately low as to amount to an erroneous estimate of the damage sustained by the appellant, the trial magistrate did not take into account the issue of inflation. The trial magistrate considered the nature of the injuries sustained by the appellant but did not consider the passage of time. I am persuaded therefore that there is good reason to disturb the award and I do so by enhancing it to Kshs. 250,000/=. The special damages shall remain undisturbed. The entire award shall be subjected to the agreed ratio of contribution and the appellant shall get the costs of this appeal. It is so ordered.

**Signed, dated and delivered in Nyamira this 29<sup>th</sup> day of March 2019.**

**E. N. MAINA**

**JUDGE**