



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 45 OF 2014**

**KAGWANA WAMBA.....APPELLANT**

**VERSUS**

**STELLAMARIES KANINI MUTUA.....RESPONDENT**

*(Being an appeal against the judgment of Hon. C. Obulutsa Ag Chief Magistrate delivered in Nairobi CMCC No. 7723 of 2010 on 18<sup>th</sup> February, 2014)*

**JUDGMENT**

The lower court gave judgment in favour of the respondent herein in the sum of Kshs. 800,000/= general damages, plus Kshs. 222,893/= special damages giving a total of Kshs. 1,022,893/=. The appellant was aggrieved by the judgment and filed the present appeal.

From the Memorandum of Appeal the appellant appears to have been aggrieved by the award of Kshs. 800,000/= awarded by way of general damages for pain and suffering which it is said is excessive, and amounts an erroneous estimate of damages payable to the appellant. Since this is the only issue taken up by the appellant, I shall not address any other issue.

There are three medical reports which are to guide the court in assessing general damages. Two were prepared by Dr. Wokabi on 13<sup>th</sup> September, 2010 and 20<sup>th</sup> November, 2012 respectively, and the other by Dr. Modi dated 6<sup>th</sup> October, 2011. The respondent sustained fracture of the right radius, fracture of the right ulna and massive contusion of both legs.

The 2<sup>nd</sup> report by Dr. Wokabi noted that the right forearm had reasonably been rehabilitated with moderate restriction and disability. Permanent disability was assessed at 18%. Dr. Modi on the other hand observed that the respondents wrist joint was reduced and she could not make a fist with the right hand and the grip was reduced. There was an estimated cost of Ksh. 60,000/= to remove the plate fixed.

In assessing general damages, the lower court observed that the authorities referred to gave similar awards for comparable injuries with slight variations. Taking into consideration the degree of permanent incapacity an award of Kshs. 800,000/= was given. The lower court judgment was delivered about 5 years ago.

The appellate court may interfere with the award of the lower court if it is shown that it is manifestly excessive or inadequate so as to reflect application of wrong principles or misapprehension of the evidence. Each case however depends on its own facts.

I have considered the authorities cited by both counsel in their written submissions, the nature and degree of injuries sustained by the respondent. Some of the authorities cited cannot be said to be comparable to the injuries cited by the respondent herein.

I have looked at **Akamba Public Road Services Limited Vs. Rosemary Amoiti (2018) e KLR** see also **Justice Shimuli Namiinda vs. Kenneth Kimgetich Cheriot & Another (2005) e KLR, Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko (2006) e KLR.**

Guided by the authorities I am persuaded that an award of Kshs. 800,000/= was on the higher side. Accordingly, it has attracted the interference of this court and therefore I reduce the same to Kshs. 700,000/= general damages. To that extent only this appeal succeeds. The respondent shall however have the costs of the suit, both in the lower court and in this appeal.

***Dated, signed and delivered at Nairobi this 10<sup>th</sup> Day of April, 2019.***

**A. MBOGHOLI MSAGHA**

**JUDGE**