

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CIVIL APPEAL NO. 13 OF 2018

RUTH MOSOTA MOMANYI.....APPELLANT

VERSUS

REUBEN MOSOTA MOMANYI.....RESPONDENT

Being an appeal against the Judgement of the Hon. B. M. Kimtai – SRM

in Keroka PMCC No. 103 of 2017 dated and delivered on the 12th day of June 2018

JUDGEMENT

By a judgement delivered on 12th June 2018 the lower court awarded the appellant general damages in the sum of Kshs. 250,000/= for the following injuries: -

- Fracture of the left tibia fibula.
- Bruises on both hands.
- Blunt trauma on the chest.
- Bruises on the face.

This appeal is premised on grounds that; firstly, the award is inordinately low and constitutes an erroneous estimate of the injuries sustained and secondly that the trial Magistrate disregarded the authorities cited by counsel for the appellant without giving any reason.

The appeal was canvassed by way of written submissions which I have fully considered.

In **Kemfro Africa Limited t/a Meru Express Service Vs A.M.M. Lubia & Another (1982 – 88) 1KAR 777** it was held: -

“The principles to be observed in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant fact or left out of account a relevant one, or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

Applying the above principles to this appeal I find there is nothing to warrant this court to interfere with the award of the trial Magistrate. There is nothing to suggest that the Magistrate applied a wrong principle or took into account an irrelevant fact or ignored a relevant one. Time and time again the courts have been exhorted to be consistent in the awards they give and are guided by the principle that similar injuries ought to attract similar awards. The appellant herein sustained injuries that were almost identical to those of the plaintiffs in the two cases that the trial Magistrate relied upon while the plaintiff in the authority cited by counsel for the appellant had suffered injuries that were much more serious and hence not comparable to those of the appellant. Therefore, the trial Magistrate took into account relevant factors and this appeal has no merit and is dismissed with costs to the respondent.

Signed, dated and delivered in Nyamira this 23rd day of May 2019.

E. N. MAINA

JUDGE