



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MURANG'A

CIVIL APPEAL NO. 80 OF 2013

ROSE NYAMBURA GICHUHL.....APPELLANT

VERSUS

P. N. MASHRU LIMITED.....RESPONDENT

[Appeal from the judgment of J. Wekesa, Resident Magistrate,

in Murang'a CMCC No. 71 of 2011 delivered on 13th June 2012]

JUDGMENT

1. This appeal is on *quantum of damages* only.
2. The disputants recorded *consent* in the lower court on *liability* in the ratio of 80% to 20% in favour of the appellant.
3. The learned trial magistrate assessed general damages for *pain and suffering* at Kshs 50,000; and, *special damages* at Kshs 22,837. The net award came to Kshs 58,270. The appellant was also granted interest and costs.
4. The appellant is aggrieved. Her memorandum of appeal raises *four* grounds. They can be compressed into *one*: That the learned trial magistrate employed *wrong principles* in assessing damages.
5. Learned counsel for the appellant relied on the written submissions filed on 12th November 2018. Learned counsel submitted that in view of the injuries suffered by the appellant, the award was *inordinately low* as to disclose an *error of principle*.
6. The appeal is contested by the respondent. The respondent's submissions were filed on 10th June 2019. In a synopsis, learned counsel contended that the award was commensurate with the injuries suffered by the appellant. In his view, there is no basis for the appellate court to interfere with the *discretion* of the learned trial magistrate.
7. This is a first appeal to the High Court. It is an appeal on both *facts* and the *law*. I have *re-evaluated* the evidence and reached independent conclusions. I am cognizant that I neither saw nor heard the witnesses. ***Peters v Sunday Post Limited*** [1958] E.A 424, ***Selle v Associated Motor Boat Company Ltd*** [1968] E.A 123.
8. As a general rule, an appellate court will *not* interfere with quantum of damages unless the award is *so high* or *inordinately low*; or, founded on *wrong* principles. ***Butt v Khan*** [1982-88] KAR 1, ***Arkay Industries Ltd v Amani*** [1990] KLR 309.
9. At paragraph 6 of the *plaint*, the appellant pleaded *five* injuries: Cut wound to the wrist measuring 3 cm; friction burns to both gluteal muscles 7% (R, L); friction burns right knee; bruised left knee; and, a cut wound on right little toe.
10. Those injuries are confirmed in a medical report by Dr. Karanja dated 25th February 2011 (Plaintiff's exhibit 8). When she took to the stand, the plaintiff established the injuries save to add that she was hospitalized for *ten days*; and, that she received some *stitches* on her right leg.
11. Clearly, the appellant suffered *minor soft tissue injuries* which have *healed*. There was *no* permanent injury. The treatment given comprised of cleaning and stitching of the wounds, intravenous fluids and analgesics.
12. I have studied the authority in ***Patrick Mwiti M'Imanene & Another v Kevin Nkunja***, High Court, Meru, Civil Appeal 147 of 2006

[2013] eKLR cited the appellant's counsel. There, the lower court awarded Kshs 170,000 for soft tissue injuries. An appeal on quantum of the damages was dismissed by the High Court.

13. I have perused some other precedents: In *Peter Kahugu & another v Ongaro*, High Court, Nairobi, Civil Appeal 676 of 2000 [2004] eKLR, Kshs 80,000 was awarded for multiple soft tissue injuries. In *Timsales Ltd v Penina Omondi*, High Court, Nakuru, Civil Appeal 192 of 2008 [2011] eKLR, the respondent suffered a deep cut wound on the left index finger and severe soft tissue injuries. The High Court reduced the general damages to Kshs 60,000.

14. I *may* have granted slightly higher damages but I *cannot* say that the general damages awarded by the lower court were *inordinately low*; or, that the award was founded on *wrong principles*. I will accordingly *not* disturb it.

15. The special damages were *specifically* pleaded; and, *strictly* proved. I concur with the learned trial magistrate that the appellant *proved* the sum of Kshs 22,837 being *medical expenses* and the *cost* of the *medical report*.

16. The upshot is that the entire appeal is devoid of merit. It is *dismissed*.

17. Costs follow the event and are at the *discretion* of the court. I grant the appellant costs and interest in the *lower court*. In the interests of justice I order that each party shall bear its *own* costs in the *appeal*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 25th day of June 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:-

Mr. Munga for the appellant instructed by S. N. Ngare & Company Advocates.

No appearance counsel for the respondent.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.