



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 32 OF 2017**

**KEBIRIGO TEA FACTORY LTD.....APPELLANT**

**=VRS=**

**ELIZABETH NYABETA MORARO.....RESPONDENT**

**{Being an Appeal from the Judgement and Decree of Hon. E. K. Nyutu – PM dated and delivered on the 10<sup>th</sup> day of October 2017 in the original Nyamira Principal Magistrate’s Court Civil Suit No. 185 of 2013}**

**JUDGEMENT**

This appeal is against the quantum of damages awarded to the respondent as liability was agreed by the parties.

The respondent was awarded general damages in the sum of Kshs. 300,000/= (subject to 30% contribution) for the following injuries: -

- Contusion on the neck posteriorly.
- Blunt trauma to both shoulders and lower back.
- Bruises on the left arm and hand.
- Contusion on the chest.
- Bruises on the right knee posteriorly.
- Contusion on the left midleg.
- Subluxation of the left ankle.

It is the appellant’s submission that the damages awarded are inordinately high. Counsel for the appellant has proposed an award of Kshs. 70,000/= and has cited the following cases: -

- 1. Johnson Mose Nyaundi (minor suing through next friend and father Wilfred Wadibe Nyaundi Vs. Petroleum Industries Ltd [2014] eKLR where the plaintiff was awarded Kshs. 180,000/=.**
- 2. Mwita Jonathan Vs. Silvia Onunga [2017] eKLR where an award of Kshs. 1,000,000/= was substituted with Kshs. 400,000/= for injuries that were according to Counsel much more severe than those of the respondent.**
- 3. Ndungu Dennis Vs. Ann Ndirangu Wainaina & Another [2018] eKLR where the award of Kshs. 300,000/= was reduced to Kshs. 100,000/=.**
- 4. Godwin Ireri Vs. Franklin Gitonga [2018] eKLR where again the award was reduced from Kshs. 300,000/= to Kshs. 90,000/=.**

The appeal is opposed. Relying on the case of **Patrick Mudava Kweyu Vs. Pan Africa Chemical Ltd [2016] eKLR** Counsel for the respondent submitted that the damages awarded were not inordinately high. Counsel submitted that the award took into account comparable injuries, inflation and the severity of the injuries and that the damages were on the lower side.

It is trite law that in awarding damages a court must take into consideration awards in cases with comparable injuries so as to ensure consistency. That said this court can only interfere with the trial court’s discretion on quantum if it is satisfied that the trial court took into account an irrelevant factor or left out a relevant factor or the award was too low or too high as to amount to an erroneous estimate of the damage – see **Butt Vs. Khan [1981] KLR 349**.

The injuries suffered by the respondent herein were multiple soft tissue injuries which according to Dr. Zoga’s report dated 5<sup>th</sup> August 2013

were in the process of healing and no permanent disability was expected. Considering the respondent's injuries to those of the plaintiffs in the cases cited by both sides, I am persuaded that the award was on the higher side and that an award of Kshs. 180,000/= is adequate. Accordingly the award of Kshs. 300,000/= is set aside and substituted with Kshs. 180,000/=. The special damages shall remain undisturbed as shall be subject to the agreed contribution ratio of 30%. The costs of this appeal shall be borne by the respondent. It is so ordered.

**Signed, dated and delivered in Nyamira this 20<sup>th</sup> day of June 2019.**

**E. N. MAINA**

**JUDGE**