



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 16 OF 2018**

**NEVILLE MONINGA SIRO.....APPELLANT**

**=VRS=**

**1. PETER THRAO KURIA.....1<sup>ST</sup> RESPONDENT**

**2. KURIA SAMUEL MWANGI.....2<sup>ND</sup> RESPONDENT**

**{Being an Appeal against the Judgement of Hon. B. M. Kimtai – SRM dated and delivered on the 7<sup>th</sup> day of August 2018 in the original**

**Keroka PMCC No. 126 of 2017}**

**JUDGEMENT**

By its judgement delivered on 7<sup>th</sup> August 2018 the trial court awarded the appellant general damages in the sum of Kshs. 500,000/= for fracture injuries of lumber 1 spine: paraplegia and pelvis. Liability was consented to in the ratio 25%:75% in favour of the appellant against the respondent.

This appeal is against the quantum of damages only and the gist of the appeal is that the award is inordinately low and not commensurate to the injuries and awards in other comparable cases. Counsel for the appellant urged that it be enhanced to Kshs. 1.2 million.

The appeal was opposed and was canvassed through written submissions. I have considered the submissions and also re-evaluated the evidence in the trial court so as to arrive at my own conclusion.

Counsel for the parties are in agreement with the principle that this court cannot interfere with the award unless it is so inordinately low or high as to represent an entirely erroneous estimate or it is based on some wrong principle or on a misapprehension of the evidence. The onus to prove this being upon the appellant.

In awarding damages, a court is guided by defined legal principles among them consistency – comparable awards for comparable injuries and inflation – **see Kiwanjani Hardware Ltd & Another Vs. Nicholas Mule Mutinda [2008] eKLR**. In this case the trial magistrate took those principles into consideration. He based the award on two cases where the plaintiffs had sustained somewhat similar injuries. An examination done on 18<sup>th</sup> January 2017 at Kisii Medical Diagnostic and Imaging Clinic showed that the appellant's pelvis was normal and when Dr. Ogando Zoga reviewed him on 20<sup>th</sup> March 2017 there was no permanent disability. The doctor's prognosis was that it was expected.

At the hearing the appellant stated that he only had pain in his back. Counsel for the appellant did not cite any case to support his submission that the award should be enhanced to Kshs. 1.2 million. In the case of **Antony Keriga Mogesi Vs Florence Nyomenda Tumbo [2012] eKLR** which Counsel cited the court set aside the Kshs. 1,500,000/= awarded by the trial court and substituted it with Kshs. 600,000/=. The respondent in that case had suffered:-

- Cut wound on the left upper eyelid.
- Open book fracture of pelvic bones;
- Weak lower limbs.

In that case the doctor described the injuries sustained by the plaintiff as severe injuries which had completely disabled her and also left her disfigured. Given the award in that case I find therefore that the award in this case was not inordinately low and there is no reason to disturb the award. The appeal is dismissed with costs to the respondent.

**Signed, dated and delivered in Nyamira this 26<sup>th</sup> day of July 2019.**

**E. N. MAINA**

**JUDGE**