



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL APPEAL NO. 23 OF 2017**

**KISIMA FARM LTD.....APPELLANT**

**VS**

**ZACHARY MUNAMU.....RESPONDENT**

**JUDGMENT**

Kisima Farm Ltd prepared appeal herein on the ground the award made in favour of the Respondent in Meru CMCC No. 332 of 2014 in judgment delivered on 24<sup>th</sup> February 2017 was manifestly excessive. In the circumstances and did not reflect the demand of awards for injuries sustained by the Respondent.

The other ground was that the Learned Trial Magistrate erred in facts and law in making manifestly high in view of the inquires pleaded and the evidence adduced in proof thereof as to amount to erroneous estimate of damages and loss suffered by the Respondent.

It was alleged that the trial magistrate erred in disregarding the defendant's submission and authorities cited on quantum and thus led to a manifestly high award of general damages to Respondent.

The appellant sought that the appeal be allowed.

The Respondent said that they were harvesting wheat using combined harvester and he climbed to make the wheat level, the driver of the combine harvester started the engine before he could climb down, he was injured toes and the little toe was affected.

When matter came up for defence hearing on 17<sup>th</sup> Dec 2012 Counsel for parties recorded consent on liability on the ratio of 90:10 in favour of the Respondent.

The defendant/appellants didn't therefore call any witness.

I have gone through the proceedings which where only the Respondent testified. The trial magistrate analysed both the Respondents list of authorities. For instance at page 16 reference to the authority of Terry Kanyaa Marangu in which the trial magistrate found the injuries were much more serious than those of the Respondent and could not therefore be held upon an award of damage in instant case.

At paragraph 11 the trial magistrate said "as regards the suggested award injuries in the Ogatu were rather minor compared to the present case".

This court in consideration of the fact that the trial magistrate had an opportunity to listen to the witness who testified and the fact that evidence entered is analysed and a conclusion make out of the said analysis, I do find that it would not be proper to interfere with the findings of the trial magistrate where consent on liability was recorded by the parties herein.

The appeal is therefore dismissed with costs.

**HON. A.ONG'INJO**

**JUDGE**

**JUDGMENT SIGNED, DELIVERED AND DATED THIS 29<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence:**

C/A:- Kinoti

N/A for Appellant

N/A for Respondent

Ms Kiome Advocate for Respdent – N/A

**Order**

DR to issue Notice that judgement delivered.

**HON. A.ONG'INJO**

**JUDGE**