

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 96 OF 2013

J.M. MUINGAIAPPELLANT

VERSUS

CHARLES MUCHIRI NG'ANG'A . .1ST RESPONDENT

PHILIP GITONGA 2ND RESPONDENT

THE HON. ATTORNEY GENERAL3RD PARTY

*(Being an appeal from the Judgment and Order of the Resident Magistrate Milimani Hon. P.T. Nditika
(Mr) dated 30th January, 2013)*

JUDGMENT

The appellant herein was the 1st defendant in the lower court, while the 1st respondent was the plaintiff. The 2nd respondent was the 2nd defendant in the lower court. The suit in the lower court related to a road traffic accident that took place on 12th June, 2001 along Sagana Nyeri road, between motor vehicle registration No. KZN 051 owned and being driven by the 1st respondent herein and motor vehicle registration No. KXE 375 owned by the appellant herein and driven by the 2nd respondent at the time of the accident.

After the trial the 1st respondent was awarded 1,500,000/= for pain suffering and loss of amenities, Kshs. 850,374/= special damages, costs and interest This appeal followed the said judgment. The 1st respondent filed a cross appeal for Ksh. 330,000/= being the pre accident value of his motor vehicle damaged during that accident. Counsel have filed submissions and cited some authorities. The parties having recorded a judgment on liability at 75% against the appellant and 25% against the 1st respondent, this appeal relates to quantum of damages only.

The amended plaint dated 8th November, 2012 viewed against documentary evidence presented by the 1st respondent, clearly confirmed the special damages awarded. Going by the principle that special damages must be specifically pleaded and strictly proved, the 1st respondent met that threshold and there is no room to dispute the said award. The trial court was therefore correct in awarding special damages as pleaded.

On general damages thirteen years after the accident, the 1st respondent is still unable to walk. The injuries had extremely devastating effects to his body frame and this cannot be underestimated. I agree that no monetary award can replace his body frame. Going by the medical reports which the trial court addressed, and the authorities cited, I have no reason whatsoever to interfere with the award of Kshs. 1,500,000/=.

Liability had been agreed by consent. The 1st respondent's pleadings included a claim for pre accident value of his motor vehicle damaged as a result of the accident. It follows therefore that that judgment on liability extended to the material claim he raised against the appellant. It was an omission by the lower court not to have awarded that to the 1st respondent. The cross appeal therefore succeeds.

I have seen no reason to disturb the judgment of the lower court and therefore the appeal is hereby dismissed while the cross appeal is allowed. The 1st respondent shall have the costs and interest at court rates of the appeal under the cross appeal.

Orders accordingly.

Dated and delivered at Nairobi this 26th Day of April, 2017

A. MBOGHOLI MSAGHA

JUDGE