

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 280 OF 2012

SECURITY GROUP KENYA LIMITED.....APPELLANT

VERSUS

JOSEPH MWANGI HARUN.....RESPONDENT

**(Being an appeal from a Judgement and decree of Nairobi Chief Magistrate's Court at Milimani
CMCC No. 3945 of 2009 before Hon. L Arika (Mrs) and delivered on 6th May, 2012)**

JUDGMENT

The respondent was an employee of the appellant as a security guard. He was injured in the course of his employment when unknown people attacked their patrol car after going out to answer an alarm raised by one of the appellant's clients. He blamed the appellant for not providing him with the necessary protective gear in the form of bullet proof vest when undertaking his duties.

Following his injuries he sued the appellant for damages. The appellant denied the respondent's claim. The lower court after hearing evidence from both sides found the appellant liable to the degree of 100%. On quantum, the trial court assessed the injuries and related the same to comparable awards in decided cases. An award of Kshs. 600,000/= was deemed to be adequate. The respondent had received a sum of Kshs. 265,000/= from the appellant under the Workman's Compensation Act, which the trial court deducted from the award of general damages.

The appellant was aggrieved by the said judgment and filed this appeal. The summary of the grounds of appeal is that negligence was not established against the appellant during the trial and in any case there was evidence that the respondent was shot by Administration police officers who mistook his team for criminals. Further, the appellant submitted that the amount of money paid under the Workman's Compensation Act was enough for the injuries sustained by the respondent.

I have assessed and evaluated the evidence adduced in the lower court. There was evidence that the respondent suffered gunshot wounds following an attack while he was on duty. There is conflicting evidence as to whether he was shot by thugs or Administration police officers. If he was shot by police officers, no charges were ever levelled against such officers, and if the appellant lays any blame on such officers, third party notices should have been filed to join either the relevant Ministry or the Attorney General. This was not done.

What remains is that the respondent was injured in the cause of his employment with the appellant. He could have escaped injury had he been provided with the right gear. That is to say a bullet proof vest. There was evidence that such cases do occur from time to time, yet such vests were not provided to the respondent. The circumstances under which he respondent sustained the injuries lead to the conclusion that the appellant was solely to blame for such injuries. The trial court was correct in finding the appellant 100% to blame.

I have looked at medical reports produced in evidence. Comparable injuries attract comparable awards. The appellate court would rarely interfere with the award made by the lower court unless it is inordinately high or low so as to reflect an erroneous application of principles.

The award made by the lower in the instant case, going by the medical reports and the sited authorities,

cannot be said to be on the higher side or too low so as to attract an interference by this court. I have no reason therefore to interfere with the same. The trial court was correct to take into account the sum paid under the Workman's Compensation Act. I find no fault whatsoever in that regard.

The end result is that this appeal is hereby dismissed with costs to the respondent.

Orders accordingly.

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

A. MBOGHOLI MSAGHA

JUDGE