



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**CIVIL APPEAL NO. 64 OF 2015**

**BETWEEN**

**ALPHONCE ODERO AUGO .....APPELLANT**

**AND**

**SINOHYDRO CORPORATION LIMITED.....RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. B.M. Kimtai, SRM dated 18<sup>th</sup> June 2015 at the Principal Magistrates Court at Nyando in Civil Case No. 333 of 2013)*

**JUDGMENT**

1. The trial magistrate awarded the appellant Kshs. 60,000 as general damages for injuries he sustained while working for the respondent on 27<sup>th</sup> November 2010. The appellant's case was that he stepped on grease, fell on glass and sustained a cut on the left side of the hand. The issue of liability was determined at 80:20 in favour of the appellant.
2. It is the award of damages that has precipitated this appeal whose grounds are set out in the memorandum of appeal dated 14<sup>th</sup> July 2015 as follows:
  1. *The Learned Magistrate erred in law and in fact in awarding damages that were manifestly low in favour of the appellant in total disregard of the injuries sustained by the appellant.*
  2. *The Learned Magistrate erred in law and fact in basing her finding on irrelevant matters.*
3. The parties agree that the extent to which an appellate court may interfere with an award of damages is well settled. It must be shown that the trial court, in awarding of the damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied (see **Butt v Khan [1981] KLR 349**).
4. The injuries sustained by the respondent were not in dispute. According to the medical report prepared by Dr Ezekiel Ogango Zoga on 9<sup>th</sup> March 2011, the appellant was treated at the respondent's clinic after sustaining a cut wound and bruises on the left hand. At the time of examination the appellant complained of an occasional burning sensation. The doctor observed that the hand had scars. He concluded that the appellant sustained serious soft tissue injuries which had healed without permanent disability.
5. In awarding Kshs. 60,000/- as general damages, the trial magistrate accepted the doctor's report that the injuries had healed without permanent disability. He classified them as soft tissue injuries and taking

in account the sick off days, he did not consider the injuries that serious. The trial magistrate also considered the cases cited by the parties. The appellant proposed Kshs. 250,000/- and relied on ***Douglas Mwirigo Francis and 2 others v Andrew Miriti* MERU HCCA No. 34 of 2005 (UR)** where the respondent sustained cuts on the face and head, cuts on the hands and cuts on the lower limbs which had healed by left unsightly scars. The court affirmed an award of Kshs. 150,000/- in 2008. The respondent submitted that Kshs. 50,000/- was sufficient to compensate the appellant based on the case of ***Gilbert Odhiambo Owuor v Nzoia Sugar Company* BGM HCCA No. 46 of 2010 [2012]eKLR** where the appellant sustained a swollen and tender left foot and ankle with severe pain while resulted in limited movement for some time. He was awarded Kshs. 50,000/- in 2012.

6. This appeal concerns the award of general damages. General damages are damages at large and the court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed by the Court of Appeal in ***Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR** that:

*Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.*

7. *In addition, the current value of the shilling and the economy have to be taken into account and although astronomical awards which must be avoided, the court must ensure that awards make sense and result in fair compensation (see ***Ugenya Bus Service v Gachoki* NKU CA Civil Appeal No. 66 of 1981 [1982]eKLR** and ***Jabane v Olenja* [1986] KLR 661**).*

8. *The gulf between the cases the parties cited was too wide. The case cited by the appellant had admittedly more serious injuries while that cited by the respondent had minor injuries. In my view, the decisions were not particularly helpful in that regard and the counsels must take the blame for failing to assist the court arrive at a fair decision. As I have noted, the respondent is entitled to fair compensation having regard to the duty of the court to ensure consistent awards across the board.*

9. I allow the appeal to the extent that I set aside the award of general damages and substitute it with an award of **Kshs. 90,000.00** subject to contribution by the appellant before the trial court. The said sum shall accrue interest at court rates from the date of judgment in the subordinate court.

10. The appellant shall have costs of the appeal which I assess at Kshs. 25,000/-.

**DATED and DELIVERED at KISUMU this 10<sup>th</sup> day of April 2017.**

**D.S. MAJANJA**

**JUDGE**

Mr Ogari instructed by B. N. Ogari and Company Advocates for the appellant.

Mr Taremwa instructed by L.G. Menezes and Company Advocates for the respondent.