



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 189 of 2013

JOSPHAT MUCHINA KARIUKI..... APPELLANT

VERSUS

NDUATI NJUGUNA NGUGI 1ST RESPONDENT

SAMUEL MUIGAI 2ND RESPONDENT

PETER MURIUKI MACHARIA 3RD RESPONDENT

JUDGEMENT

Before me is the appeal filed by **JOSPAHT MUCHINA KARIUKI** (hereinafter referred to as ‘the Appellant’) against the award of general damages made by the learned trial magistrate in his judgment delivered on this matter on 24/9/2013. In the case before the lower court which was a claim arising from injuries sustained during a motor-vehicle accident which occurred on 30/7/2010, the parties entered into a consent with respect to liability.

The consent provided that liability would be determined at 80:20 in favour of the Appellant.

The trial magistrate then proceeded to award to the Appellant a sum of Ksh 900,000/= as General Damages and Ksh 134,980, as special damages. Deducting the 20% liability imposed on the Appellant, he was awarded a final sum of Ksh 827,984 as total damages. The Appellant was dissatisfied with the amount awarded as general damages and filed this appeal. The single ground for the appeal is **“That General Damages as assessed are inordinately low”**

I have carefully perused the record of the trial before the lower court. I have also taken into consideration the written submissions filed on behalf of both parties. In the case of **BASHIR AHMED BUTT – VS UWALS AHMED KHAN 1982 - 88 KAR** the Court of Appeal restating the decision in **BUTLER VS BUTLER CA No. 49 OF 1983**, held as follows:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that we misapprehended the evidence in some material respect and so arrived at a figure which was inordinately high or low”

Further in the case of **KEMTERO AFRICA t/a MERU EXPRESS SERVICE GATHOGO KANINI – VS- AM LUBIA and OLIVE LUBIA [1982 – 1985] KAR 727** it was held that an Appellate Court will

not disturb the quantum of damages assessed by the trial court unless the appellant is able to demonstrate that the court in reading the figure, took into account an irrelevant factor **or failed to consider a relevant factor** or that, short of this gave an award that was so inordinately low or inordinately high that it was a wholly erroneous estimate of the injury suffered.

In this case the figure arrived at for general damages was Ksh 900,000/=. The Appellant had asked for an award of Ksh 2,000,000/= whilst the Respondent recommended a sum of Ksh 420,000/= as a fair award.

In such cases *ie* where an award for accident injury is being considered the court must look at the nature and degree of injury suffered by the plaintiff and the court must also consider precedent *ie* the sums awarded to plaintiffs in previous case with similar injuries.

There is one other crucial factor a court must consider which I will allude to later. I have perused the judgment of the trial court and I note that the trial magistrate at Page 63 stated the factors he had put into consideration when deciding upon the amount to award as general damages. The Hon. Magistrate stated:

“I have considered the submissions by both counsels for the plaintiff and the defendant. It is not disputed that the plaintiff indeed suffered the injuries as listed in the plaint which indeed are serious I have also considered the authorities cited by both counsels and I also have in mind recent comparable awards. Doing my best and having in mind the evidence adduced herein, the submissions and cited authorities I will award the plaintiff Ksh 900,000/= (nine hundred thousand) as general damages for pain and suffering”

The third crucial factor which the trial magistrate failed and/or neglected to put into consideration was the rate of inflation. He did not address inflationary trends at all in coming up with the award. This though I find that there was no misapprehension of law or facts by the learned trial magistrate, I do find that he failed to consider a crucial relevant factor being inflation and for this reason I am inclined to interfere with his award.

The injuries suffered by the plaintiff were as follows:

- Head injury with amnesia
- Severe injuries to the chest haemophenmothorax and fracture of ribs on left side.
- Posterior dislocation of left hip joint
- Bruises on the legs

These injuries were not disputed by the Respondents and in a medical report dated 2/6/2011 prepared by **Dr. Wellington Kiamba** permanent disability was assessed to be 30%.

A look at a case where similar injuries were sustained is the case cited by the Appellants behalf in the trial being **NAOMI WANGUI RUNAMO –VS- ALICE WANJIKU KIMANI & ANOTHER NBI HCCC 233 of 1996** where the court awarded for somewhat similar injuries general damages in the amount of Ksh 1,350,000/=. The Respondent have on their submissions have cited the case of **LABAN BUYOLE NAMBOLEO –VS- RIFT VALLEY TEXTILES HCCC No. 59 OF 1996** in which a claimant who was assessed to have sustained 60% disability was awarded Ksh 650,000/= as general damages. I am guided by both cited cases which I note were determined in the 1990's several years **before** this present case was filed. I am also guided by the principles set out in the case of **RAHIMA TAYAB & ANOTHER –VS- ANNA MARY KINARU 1982-1998 KAR 90** where it was held that the courts should ensure as far as reasonably possible that comparable injuries are compensated by comparable awards. I note that in the **Naomi Rumano Case** the plaintiff suffered a loss of limb due to the above elbow amputation of her arm. The plaintiff in this case did not suffer such a permanent disabling injury. Thus taking all factors into consideration and also taking into consideration the element of inflation I am of the opinion that a sum of Ksh 1,200,000/= (1.2million) would be fair compensation as general damages.

Based on the forgoing I do allow this present appeal. I hereby set aside the award made by the trial

magistrate of Ksh 900,000/= and instead award the sum of Ksh 1,200,000/= as general damages. The award made by the trial court of Ksh 134,980/= as special damages will not be interfered with. Thus the final award will be computed as follows:

• General Damages	-	1,200,000
• Special Damages	-	<u>134,000</u>
		1,334,980
• Less 20% Liability	-	266,996
Total Award		<u>1,067,984</u>

I therefore enter Judgment in favour of the Appellant in the amount of Ksh 1, 067,984/= (One Million sixty-seven thousand, nine Hundred and Eighty Four only) plus costs and interest at current court rates.

Dated in Nakuru this 30th day of June 2015.

Mr. Ngure for Respondent,

Mr. Otieno holding brief for Mr. Juma for Appellant.

M. A. ODERO

JUDGE

30/6/2015