



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 68 OF 2010**

WARIDI LIMITED .....APPELLANT

VERUS

CHARLES ADWOGO KIDAGA .....RESPONDENT

**JUDGMENT**

The respondent herein was employed by the appellant when he was injured in the cause of his employment. He sued the appellant for damages and after a full trial he was awarded Kshs. 400,000/= general damages while special damages were agreed at 2,000/=. Liability had already been agreed at 70% as against the appellant while the respondent was to shoulder 30% thereof.

Two medical reports were produced by consent without calling the makers. The first report was by Dr. Wokabi dated 16<sup>th</sup> June, 2006 while the second one was by Dr. Wambugu dated 30<sup>th</sup> November, 2007. The injuries observed by Dr. Wokabi and contained in the said medical report were left cornea opacity; the left eye was also blind. That blindness is irreversible and he assessed disability at 33%. The doctor observed that the respondent was in a precarious situation in that he will be vulnerable to blindness should the other eye become damaged from any cause.

On the other hand Dr. Wambugu also found that the left eye was blind but it was difficult to clearly point out why the eye was blind. He suggested an ophthalmological examination in order to assess the posterior pole of the left eye to establish the cause of blindness. This examination was never carried out.

The cases cited by counsel are not included in the judgment but the learned trial magistrate was alive to those authorities and had alluded to them in her judgment.

This court being an appellate court is guided by the evidence on record and all the material before it in order to make an independent evaluation. It matters not whether it could have awarded less or more damages with regard to the injuries sustained. It is supposed also to examine whether or not the award was too low or too high to call for its intervention.

Going by the material before me and the cited authorities, I am not satisfied that I should disturb the award made by the learned trial magistrate. It was within acceptable limits. It was not too high so as to call for any interference. This appeal is therefore dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 25<sup>th</sup> Day of November, 2015.**

**A.MBOGHOLI MSAGHA**

**JUDGE**