



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL APPEAL NO. 541 OF 2003**

**ANTHONY MWANGI KIMANI ..... 1<sup>ST</sup> APPELLANT**

**MUCHIRA PETERSON .....2<sup>ND</sup> APPELLANT**

**VERSUS**

**WILSON KIRIMI KOOME.....RESPONDENT**

*(An appeal from the judgment of the Hon. G.H. Odour (Mr), Senior Principal Magistrate delivered on 12<sup>th</sup> September, 2013 in Limuru SPMCC NO. 183 OF 2011)*

**JUDGMENT**

The appellants were defendants in the lower court where the respondent was the plaintiff. The respondent had been injured in a road traffic accident that took place on 12 July, 2011 along Limuru- Banana road at Kentmere. The respondent was a passenger in Motor Vehicle registration No. KAQ 032 Z which collided with Motor Vehicle registration No. KBC 208 V.

The record shows that parties agreed and filed a consent on liability whereby 80% was attributed to the appellants while 20% was assigned to the respondent. There was also judgment on special damages at Kshs. 2,636/= subject to apportionment of liability. Medical reports by Doctor G.K Mwaura and Doctor Maina Ruga were admitted by consent without calling the makers.

Parties also agreed to file submissions on general damages within two weeks for the court to assess the same attaching the said original reports. Counsel also agreed that the case would then be mentioned to set the date for judgment.

Indeed the learned trial magistrate went ahead and assessed general damages and from the judgment on record he awarded Kshs. 700,000/= for pain suffering and loss of amenities which was reduced by 20% leaving a balance of Kshs. 560,000/= The figure of Kshs. 2635/= Special damages was also reduced by 20% leaving a balance of Kshs. 2,108/=. The total award in favour of the plaintiff amounted to Kshs. 562,108/=.

The appellants were aggrieved by that award and filed this appeal. In the memorandum of appeal they have complained that the learned trial magistrate erred in law and in fact by writing a judgment without hearing any testimony or evidence presented in court. He is faulted for delivering a judgment in the absence of testimonies needed by the plaintiff and expert witnesses. It is contended that he failed to take into account the appellants' submissions in considering the judgment. Further that he erred in law and

fact in failing to apply proper legal principles regarding quantum of damages, and also that he made an award on general damages which was manifestly excessive and inordinately high.

The appeal was argued by way of written submissions which I have on record. There are also some cited authorities by both parties. The decision to dispense with oral evidence was made by the advocates appearing for the parties herein. This is clearly shown in the letter dated 23<sup>rd</sup> July, 2013 addressed to the executive officer, Limuru Law. courts and signed by both counsel.

The learned trial magistrate therefore cannot be faulted for proceeding to assess damages the way he did because, that was in compliance with the spirit, tenor and context of the letter aforesaid. In fact, the learned trial magistrate went ahead and made an order following the said letter which is captured very well in the court record.

On the issue of general damages the appellate court is guided by the lower court record and the cited authorities. The appellate court rarely interferes with the orders made by the trial court unless the trial court applied wrong principles in arriving at the awards made. It matters not that the High Court would have awarded a higher figure or a lower figure in the circumstances of the case.

The learned trial magistrate in making the award that he made was guided by the medical reports and the authorities cited by the parties. I have looked at the said medical reports and also the cited authorities. With respect, the learned trial magistrate applied the correct principles and also used comparable authorities to reach the decision that he did. He cannot be faulted in arriving at the award that he made.

I see no reason whatever to interfere with the same and accordingly find that this appeal lacks merit and is hereby dismissed with costs to the respondent.

Orders accordingly.

**Dated and delivered at Nairobi this 15<sup>th</sup> Day of December, 2015.**

**A.MBOGHOLI MSAGHA**

**JUDGE**