



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NO.75 OF 2004

ANN CHEBET CHERUIYOT - PLAINTIFF

VERSUS

SAMWEL KIPKURUI BORE - DEFENDANT

JUDGMENT

Ann Chebet Cheruiyot, the Plaintiff herein, filed the plaint dated 19th July 2004 whereof she asked for judgment against Samuel Kipkirui Bore, the Defendant as follows:

- a. General Damages for pain, suffering and loss of amenities.
- b. Special Damages aforesaid.
- c. Interest on (a) and (b) above at court rates
- d. Any other or further relief that this court may deem fit and just to gain.

The Plaintiff's claim arose out of an alleged assault visited on her by the Defendant on 9th August 2001 at Litein Township. The Defendant admitted in paragraph 5 of his defense that a fight between them arose on the aforesaid date and that both parties were injured as a result. The Defendant alluded that the Plaintiff is the aggressor who attacked him first when he went to make inquiries about his workers at Litein market.

The Plaintiff's case is supported by the evidence of five witnesses. It is the evidence of the Plaintiff that on 9th August 2001 she was going on with her daily chores when the Defendant without any iota of provocation attacked her causing her severe bodily harm. She reported the incident to Litein Police Station. A charge of assault was preferred against the Defendant. The Defendant was tried and convicted vide Kericho RM Criminal Case number 2422 of 2001. Proceedings and judgment relating to the above mentioned Criminal Case were produced as an exhibit in evidence before this court. The Defendant testified alone in support of his defence. The defendant basically explained the events that took place on the material day. He claimed that on that date he learnt that his driver who was driving his Pick-up matatu registration number KZR 072 Toyota had been arrested and placed in custody by the police on the basis of a complaint lodged by the plaintiff who is her neighbour. He stated that he approached the Plaintiff to inquire but the Plaintiff became sarcastic and abusive to him. The Defendant said he got furious prompting the Plaintiff to flee and in the process she fell down and got injured in a pool of water. This line of defence contradicted the averments the Defendant made in paragraph 5 of his defence in which he said the Plaintiff attacked him and a fight ensued and as a result both parties got injured. In

cross-examination the Defendant admitted that he was convicted for the offence of grievous harm contrary to Section 234 of the Penal Code in which he was ordered to pay a fine of Ksh.10,000/= on 31st October 2002. The Defendant also admitted that he did not appeal against the decision.

At the close of evidence, learned counsels appearing in this suit were invited to file written submissions. I have considered the evidence and the rival written submissions plus the authorities relied upon. Two issues have commended themselves for determination. First is the question of liability and secondly is the question on quantum. On liability, I have carefully considered the evidence tendered by both sides. There is no dispute that the Plaintiff was injured on 9th August 2001 at Litein Township. The Defendant admits in his defence that he fought with the Plaintiff. He claims he was provoked when the Defendant abused him. I am satisfied that on a balance of probabilities, the plaintiff has proved that she was assaulted by the Defendant. There was no justification at all for the Defendant to assault the Plaintiff. I find the Defendant wholly liable. This court's finding is also buttressed by the fact that the Defendant was convicted in a criminal trial before the Principal Magistrate's Court, Kericho. The Plaintiff has also tendered cogent and credible evidence that as a result of the defendant's assault. She sustained the following injuries:

- Perforation of the left ear drum
- Aspiration Pneumonia
- Soft tissue injuries to the neck and lower back
- Contact dermatitis to the body

The Defendant's defence appears to be an afterthought. The same cannot be believed.

On quantum, the Plaintiff proposed an award of Ksh.1,000,000/= as general damages plus Ksh.483,316/= as special damages. The Defendant on his part asked this court to reject the prayer for damages. He alleged that the prayer for special damages was not proved. No figures were suggested by the Defendant on both general and special damages. I have carefully looked at the documents which were tendered to establish the special damage which are basically the expenses the Plaintiff incurred on treatment and medical related costs. I am convinced the plaintiff has strictly proved her claim on special damages as pleaded. Consequently I award her Ksh.483,316/= as special damage.

On General damages, I have considered awards on near similar injuries. It is clear from the authority submitted *i.e.* Katheri Dairy Co-operative Society & Anor. -vs- M'marete Miguah, Nairobi HCCA No.131 of 2008, that this court made an award of Ksh.500,000/= as general damages. The aforesaid decision was recently concluded and I think I am persuaded to adopt the award as a fair assessment. On general damages therefore I award the Plaintiff Ksh.500,000/=.

In the end judgment is entered in favour of the Plaintiff and against the defendant in the following terms:

- i. General damages - Ksh.500,000
- ii. Special damages - Ksh.483,316/=

Net - Ksh.983,316/=

iii. Costs

iv. Interest at court rates from date of judgment until full payment.

Dated, signed and delivered in open court this 24th day of July 2014.

J. K. SERGON

JUDGE

In the presence of:

N/A for Mitei for Plaintiff

K. Bett for Defendant