



**REPUBLIC OF KENYA**

**High Court at Malindi**

**Civil Appeal 20 of 2006**

**MALINDI MANAGEMENT STRATEGY T/A MALINDI CASINO .....PLAINTIFF**

**VERSUS**

**STEFANO SHCIAPPACASE.....DEFENDANT**

**JUDGMENT**

1. This appeal arose from an award of general damages in the Lower Court in respect of injuries sustained by the Respondent on 16th January, 2005 while on the appellant's property. Liability was agreed upon at 70:30 in favor of the Respondent. The Lower Court awarded a sum of shs. 200,000/- as general damages for the respondent's injuries consisting of:

two vertical lacerations of the left shin "3 x ½" and 2" x ½"

The lacerations healed without incident although the process was retarded by the respondents pre-existing allergic dermatitis.

2. The appellant complains the award is excessive. For this part the respondent asserts that it was fair. The respondents have cited the case of **Kukenya Y. A. Ranching & Farming Co-operative Society Ltd vs Karoloto 1920)EA 414** in support of the proposition that the appellate court will only interfere with such that an award where

***"the judge or magistrate in assessing the damages applied a wrong principle of the law (as by taking into account irrelevant factors or leaving out of account some relevant one) or ...the amount awarded was so inordinately low on ...high that it must be a wholly erroneous estimate of damages..."***

3. Reviewing the medical evidence tendered in the Lower Court, the submissions made, as well as authorities relied on, I am not persuaded that the award in this case was inordinately high. True the respondents chronic dermatitis may have slowed the healing process but a tort reason must take his victim as he finds him. There is no proper basis demonstrated upon which this court can interfere with the award of the Lower Court and the appeal must therefore fail. It is dismissed with costs.

4. On the question of interest, it is admitted that the appellants duly sent out a cheque for the entire decretal sum to the respondent's advocates, which however was not deposited in interest earning account as ordered by the Lower Court. The respondent's advocate it seems is now deceased. Surely, the appellant is not to blame for the default on the part of the respondent's advocate.

No interest is therefore payable by the appellant on the decretal sum from the date of delivery of the cheque payment to date. However the decretal sum will continue to earn interest from the date of this judgment until the date of full payment.

Delivered and signed this **24th** day of **October, 2012** in the presence of Ms Njebiu for the Respondent.

Appellant absent.

Court clerks – Leah and Evans.

**C. W. Meoli**  
**JUDGE**