



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 655 of 2008

**AKAMBA PUBLIC ROAD SERVICES
LTD.....APPELLANT**

VERSUS

**MARGARET MODANI
MUSALIA.....RESPONDENT**

(From the judgment and decree of Hon. Mokaya A. G Principal Magistrate in Milimani CMCC No. 11799 of 2006)

J U D G M E N T

This appeal by the Defendant in the lower court suit to this court, arose from a judgment in which consent on liability had been filed by both parties. Only quantum of damages was left to the trial magistrate.

The Plaintiff/Respondent had suffered the following injuries: -

- a) Fracture of the radius and ulna***
- b) Deep degloving injuries of the right elbow***
- c) Laceration wounds of the scalp.***
- d) Laceration wounds of the left cheek***
- e) Laceration wounds of the right trunk.***
- f) Bruised left hand***
- g) Bruised anterior abdominal area.***
- h) Cut wound of the lower lip.***
- i) Pains, blood loss and soft tissue injuries.***
- j) There was permanent disability between 20% and 30%.***

Having considered the above injuries, the trial court awarded Ksh.600,000/- as general damages for pain and suffering and loss of amenities. The court also awarded Ksh.1600/- as special damages, pleaded and proved. The defendant who was aggrieved about the award of general damages aforementioned, appealed

on the main ground that the sum of Ksh.600,000/- was too high and manifestly excessive.

I have carefully perused the submissions of both parties including the comparative awards in the cases cited by them. I am aware that awards granted in such cases must be within limits set by other decided cases before and must also be within limits Kenyans can afford. It is also true to say that large awards inevitably pass a heavy burden to the members of the public who are poor and cannot afford the burden which eventually comes up in form of higher insurance premiums, costs and fees. However, this court will be guided by awards in similar cases, keeping the above issues in mind.

In the case of **George Mathenge Muhingo Vs M. D Patel, Nairobi HCCC No. 2216 of 1993** the plaintiff had suffered the following injuries: -

- a) Compound fracture of right radius and ulna*
- b) Fracture of the right thumb Proximal Phalanx.*
- c) Fracture of the right tibia and fibula*
- d) Extensive lacerated wound forearm distally and posteriorly and also on right leg shin.*
- e) Cuts and bruises on both eyelids.*
- f) Loss of lower left 1st incisor tooth.*
- g) Sprain right knee, ankle joint and big toes.*

The injuries of the above cited case are in my view, closest in similarity to those in the case before the court. All other cases cited by the appellant show far less injuries and are not suitable comparisons.

In the above case Osiemo J, awarded general damages of Ksh.600,000/- in the year 2000, a period of nine years before the trial court awarded a similar amount of Ksh.600,000/- in this case. The shilling had obviously undergone serious pounding and the court should have taken that into account. Had it done so, it could have possibly awarded almost one and half or double the sum awarded. It, however, did not enhance the level of damages which can now be done by this court, which has the right and power to re-evaluate the whole judgment.

I have considered the issues and legal principles in play. I observe that the respondent did not cross-appeal on damages, for enhancement. In the circumstances, this court has no basis for possible enhancement and all it can now do and hereby does, is to dismiss this appeal as having no merit. The costs are to the Respondent, here and below. Orders accordingly.

Dated and delivered at Nairobi this 12th day of October, 2012.

D A ONYANCHA
JUDGE