

compensated. The assessment is therefore done by the court in exercise of its discretion. An Appellate court will very reluctantly interfere with the exercise of discretion by the subordinate court particularly when dealing with assessment of quantum of damages unless it is clear that in arriving at the award, the trial court acted on the wrong principles, failed to consider some relevant materials or considered some extraneous matters that affected the said assessment. This point was very succinctly expressed by sir clement De Lestang V.P. in Mbogo & Another V Shah (1968) E.A 93 where he said;

“.....I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into account and consideration and in doing so arrived at a wrong conclusion”

In this case, I note that the learned magistrate concluded and rightly so that the Appellant had only suffered superficial injuries and he had recovered well without any permanent physical disability. The relevant authorities that were cited to her for soft tissue injuries by he defendant herein were in the range of Ksh30,000/-. The ones cited by counsel for the plaintiff were in the range of Ksh150,000/-. The learned trial magistrate did consider these authorities at page 10 of her judgment and found them to be for more serious injuries than those sustained by the Appellant herein. She therefore struck a balance between the Kshs.150,000 and Kshs.30,000. She even made a concession for the inflation factor and arrived at the figure of Kshs. 60,000. Having considered the said injuries and the authorities in question, I cannot fault her decision. My finding is that she exercised her discretion judicially and fairly. She did not act on the wrong principles of law. I find no reason to interfere with the said Judgment. I find this Appeal devoid of merit. The same is dismissed with costs to the Respondent.

**W. KARANJA
JUDGE**

Signed by the above but dated and delivered at Embu this 15th day of March, 2011.

**M. WARSAME
JUDGE**