



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL APPEAL NO. 80 OF 2010

MOSES OGUTU OMWONO.....APPELLANT

VERSUS

SHILOAH INVESTMENT LTD.....RESPONDENT

JUDGMENT

The appellant's appeal herein is founded on three (3) grounds namely:-

- (1) That the learned trial magistrate erred in law by failing to properly analyse the documentary evidence on record as regards the extend of the appellants injuries and thereby arrived at an erroneous estimate of the quantum of damage.
- (2) That the learned trial magistrate awarded an extremely low quantum of damages as to constitute an injustice to the appellant.
- (3) That the learned trial magistrate in assessing quantum of damages awardedable to the appellant failed to take into consideration all germane factors.

At the hearing of this appeal the parties agreed to rely on their written submissions. The duty of this court and its mandate on appeal is clear. In the case of **Butt =vs= Khan [1982] 1 KAR. 5** the court correctly said:- **“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low”**.

The substance of the Appellant's appeal is basically on quantum. The report of **Dr. Nyamogo** stated that the appellant sustained the following injuries:-

- (a) **Head: He sustained bruises to the right periorbital region.**
- (b) **Thorax: He suffered blunt injuries with generalized tenderness.**

(c) Upper limbs: He suffered blunt injuries to the shoulders with tenderness on movement.

Present complaints frequent headaches. He complains of pain in the above injured area. The report was made about three (3) weeks after the incident. His conclusion was that “**he suffered soft tissue injuries to the face, chest and shoulder which are improving**”.

At the hearing of his case on 23rd October 2008 the appellant said”.....**My head still pains. My eyesight is affected**”.

I have read the trial court’s judgment and especially the portion regarding the injuries. A part from mentioning the same, the trial court failed to evaluate the injuries. The court ordinarily should have given a thought on the nature of the said injuries and even if they were soft tissue injuries whether or not the appellant had recovered from them.

My analysis therefore is that the injuries were indeed soft but nevertheless the appellant at that moment and especially at the time of trial was still experiencing some pain as quoted above.

For the above reason I shall allow the appeal by enhancing the general damages from Kshs. 40,000 to Kshs. 60,000. I believe that the sum of Kshs. 40,000 was manifestly low in the circumstances. I have also taken into consideration the authorities cited by both parties and that they are far apart. The above award is reasonable in the circumstances. The appellant shall have the costs of the appeal.

Orders accordingly.

Dated, signed and delivered this 2nd day of November 2011.

**H. K. CHEMITEI
JUDGE**

HKC/aao