



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 126 of 2006

KITHOKA YOUTH POLYTECHNIC PLAINTIFF

VERSUS

LUCY KITHIRA RIUNGU DEFENDANT

(An appeal from a judgment of G. Oyugi, R.M. Tigania

on 13th December 2006)

JUDGMENT

The issue in this appeal is with regard to general damages of Kshs. 200,000/= awarded to the respondent by the lower court in respect of injuries sustained as a result of a traffic road accident.

In **Zablon W. Mariga V. Moris Wambua Musila**, Civil Appeal No. 66 of 1982 (unreported), the Court of Appeal stated that the assessment of damages is an exercise of a discretion by the trial court, which the appellate court should be slow to reverse. It can only be reversed if it is shown that the trial court either acted on wrong principles or awarded so excessive or so little damages that no reasonable court would or that the trial court took into consideration matters it ought not to have considered or it failed to take into account those matters it ought to have considered and that as a result it arrived at the wrong decision. See also **Butler V. Butler** (1984) KLR 225.

It is also important to note that in awarding damages for personal injury claims the courts must strive to maintain a degree of uniformity by paying regard to recent awards in comparable cases in local jurisdiction.

As I have noted the bone of contention in this appeal is the award of Kshs. 200,000/= in general damages. While the appellant maintains that that award was excessive and without basis the respondent thinks that in fact it was lower than what was actually sought.

The respondent was involved in a road traffic accident with a motor vehicle belonging to the appellant. The particulars of injuries as outlined in the plaint amended on 13th February 2006 were:-

- (a) bruises on the right shoulder
- (b) cut wound on the right forearm at the wrist

(c) bruises on the right gluteus and

(d) bruises on the right leg

In his written submissions the respondent claimed Kshs. 300,000/= in general damages relying on two authorities, namely **Catherine Wanjiru Kingori and 3 others V. Gibson Theuri Gichubi**, Nyeri HCCC No. 320 of 1998 where Kshs. 300,000/= was awarded for multiple soft tissue injuries and **Shankat Abdul Razaka V. Salim Mohamed**, Civil Appeal No. 6 of 1990, Msa, where a similar sum for similar injuries as those in **Catherine Wanjiru** Case (supra) was awarded.

The appellant on the other hand proposed Kshs. 40,000 relying on **Benson M. Mulandi v. Machakos Ranching Co. Ltd** HCCC No. 302 of 1999 where Kshs. 80,000 was awarded and **Peter Mutiso V. Machakos Ranching Co. Ltd and Francis Munyao V. Machakos Ranching Co. Ltd**, where in both cases Kshs. 50,350/= was awarded.

Unfortunately, all the authorities cited, except **Catherine Wanjiru** (supra) are only extracts without the full decision and therefore it is uncertain what the actual injuries were. It is a common practice particularly in accident claims for counsel to rely on such extracts, the authenticity of which are not clear. Counsel should strive to obtain the actual decision.

Be that as it may the court is not bound to limit itself only to the authorities relied on by counsel. The injuries sustained by the respondent have been described by Dr. Stephen Warui as soft tissue injuries.

The trial magistrate considered these injuries as well as the cases cited but did not strike a balance between the injuries suffered by the plaintiffs in those cases and the matter before him. He seemed to have been swayed by the decision in the **Shankat** case which the respondent relied on before him.

In that case, the victim had suffered fairly severe injuries compared to those suffered by the respondent in this appeal. The victim in the **Shankat** case suffered fracture of three (3) right ribs with contusion of the right lung, a fracture of the right clavicle and coronoid process, contusion of the pelvis and an injury to the urethra, together with multiple soft tissue injuries.

I wish, on my part, to rely on the Court of Appeal decision in **Stanley Maore V. Geoffrey Mwenda**, Civil Appeal No. 147 of 2002 which was an appeal from the decision of this court (Tuiyot, J) where Kshs. 300,000/= was awarded by Tuiyot, J in general damages for soft tissue injuries similar to those in this appeal. On appeal, the Court of Appeal held that the award of Kshs. 300,000/= for soft tissue injuries amounted to a misdirection by the trial court and reduced the same to Kshs. 100,000/=. In arriving at this decision, the court cited the case of **Arrow Car Ltd V. Elijah Shamalla Bimomo and others**, Civil Appeal No. 344 of 2001 (unreported) in which the court said:-

“What about the injuries sustained by the respondents in this appeal? We have indicated that taking into account the fact that comparable injuries should be compensated by comparable awards and as the 1st and 3rd respondents herein suffered what the doctors described as soft tissue injuries the award of Kshs. 350,000/= for such injuries as made by the superior court are in our view high as to warrant our interference.....”

The court continued:-

“We must now consider what we think ought to have been awarded in respect of each respondent. Taking into account other decided cases on soft tissue injuries, we think that the 1st respondent’s injuries should have attracted an award of Kshs. 150,000/= as general damages We therefore, award him that sum.”

The injuries sustained by the respondent herein were even less serious than those in the above quoted case. In view of that I allow the appeal and enter judgment in the sum of Kshs. 100,000/= in general damages in favour of the respondent. Since the appellant has succeeded by half, I award half the costs of

this appeal to the appellant.

Orders accordingly.

Dated and delivered at Meru this 15th day of February 2008.

W. OUKO

JUDGE