



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Civil Appeal 103 of 2002

DWA SISAL ESTATE:.....APPELLANT

VERSUS

SADOK ODHIAMBO NYANGUN:.....RESPONDENT

**(Appeal from the judgment in Makindu Resident Magistrate's Court Civil Case No. 114 of 2001
by Mr. O.J. Ochako, R.M. on 19.9.2002)**

JUDGMENT

1. This Appeal is limited to the quantum of damages payable to the Respondent arising out of an injury that he suffered on 16.5.2001 while he was working as an employee of the Appellant. In the Complaint dated 11.7.2001 and filed on 12.7.2001, the Respondent indicated the injury suffered as “*a penetrating wound to the right knee*”. In the evidence before the subordinate court, the Respondent stated as follows:-

“On 16.5.2001 I was on duty cutting sisal for the defendant when I was pricked by a sisal thorn at the knee (right).”

2. In his P. Exhibit 1, a medical attendance record, it is indicated that the injury was a “*sisal thorn prick on the right knee.*” In P. exhibit 2, a Notice to employer under the Workmen's Compensation Act, the injury is “*right knee pricked*” while cutting green sisal leaves. In P. exhibit 3, a medical report prepared by Dr. C.P. Okere, the injury was said to be “*a penetrating wound to the right knee*” and treatment was “*cleaning and dressing the wound.*”

3. Parties on 1.8.2002 agreed that judgment on liability would be at the ratio of 85%: 15% in favour of the Respondent and in the judgment delivered on 19.9.2002, O.J.Ochako, Esq., Resident Magistrate based his quantum on Dr. Okere's medical report which also had a line to the effect that the Respondent's knee required analgesics and physiotherapy. That therefore an award of Kshs. 80,000/= was adequate compensation according to the learned magistrate.

4. In submissions before me, Mr. Mulwa for the Appellant argued that Kshs. 80,000/= for a thorn prick was way too high and that the learned magistrate by awarding that amount misdirected himself. He referred me to the decision of Wendoh, J. in DWA Sisal Estate Ltd vs Monica Komu-HCC.A 61/2001 where for a thorn prick, Kshs. 40,000 was awarded as damages.

5. Mr.Onguti for the Respondent saw no error in the subordinate court's judgment and made the point that the Respondent had more than just a thorn prick because according to Dr. Okere's report, the wound was penetrating into the knee and therefore the injury was quite serious.

6. I have carefully read P. exhibit 1, P. exhibit 2 and P. exhibit 3 and whatever other words may be

used, the Respondent suffered a thorn prick to the right knee which required only cleaning and dressing. P. exhibit 1 in fact had an entry made on 15.9.2001 that there was “full recovery” and “zero percent disability” and therefore the injury cannot be said to be a serious one. I am also alive to the principles applicable where quantum of damages is challenged by way of an appeal. In Shabani vs City Council of Nairobi [1985] KLR 516 it was held that “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 based on some wrong principle or on a misapprehension of the evidence.”

7. Further, in assessing damages payable, it was held in Jabane vs Olenga [1986] KLR 661 that comparable past decisions should attract comparable awards subject to the element of time and inflation.

8. In the present case, the only comparable award I have seen is the one in DWA Sisal Estate where Wendoh ,J. on 23.2.2005 was persuaded that Kshs. 40,000/= was a proper amount to award. My own view is that whereas Kshs. 80,000/= is slightly high for a thorn prick, Kshs. 40,000/= is too low in view of inflation and the rise in the cost of living. I also note that there has been contribution on the part of the Respondent, and my view on the whole is that general damages should be reduced to Kshs. 60,000/= and since liability was agreed at 85% to 15% in favour of the Respondent, the Respondent shall be paid Kshs. 51,000/= as damages.

9. Because the Appellant has only partly succeeded, it will have ¼ costs of the Appeal but costs of the lower court case shall be paid to the respondent.

10. Orders accordingly.

Dated and delivered at Machakos this 25th day of June 2008

Isaac Lenaola

Judge

In the presence of: Mr. F.M. Mulwa for Appellant

No appearance for Respondent

Isaac Lenaola

Judge