



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Appeal 16 of 2008

KIWANJANI HARDWARE LTD. 1ST APPELLANT

NGWILI NZIOKA 2ND APPELLANT

VERSUS

NICHOLAS MULE MUTINDA RESPONDENT

JUDGMENT

1. This Appeal is limited to the question of quantum of damages payable since parties had agreed at the subordinate court that judgment on liability at 90% be entered in favour of the Respondent.
2. In submissions before me, Mr A.B. Shah, lead counsel for the Appellants, urged the point that the award of Kshs.150,000/= for soft tissue injuries was inordinately high and that the reasonable award in damages should have been Kshs.60,000 – Kshs. 80,000/=. That in any event, the court is enjoined to uphold the policy of the law that compensation for injuries suffered is not akin to punishment of the opposite party. In any event that there is a need for courts to restrain themselves from granting run-away awards in damages.
3. Learned counsel pointed me to the following decisions on soft tissue injuries and the awards given;-
 - i. **Harrison Mbogo vs A-G, H.C.C.C 2610/1993 (Nairobi)** where Ang’awa J. awarded Kshs.60,000/= for concussion, multiple cut wounds on left hand and scalp as well as soft tissue injuries on multiple areas and where the plaintiff was unconscious for 5 days.
 - ii. **Pamela Ombiyo Okinda vs Kenya Bus Services Ltd. H.C.C.C 1309/2002 (Nairobi)** where Ang’awa J. awarded Kshs.50,000/= for blunt head injury with loss of consciousness, deep cut on forehead and on both legs, soft tissue injury to the neck, blunt trauma to the hip and right eye.

iii. **Oyugi vs Hassan, H.C.C.C 4150/91** where Ang'awa J. awarded Kshs.20,000/= for traumatic osteothesis to the elbow, multiple injuries to the right elbow, and trauma.

4. Mr Wambua, learned counsel for the Respondent saw no fault in the award and said that no plausible reason had been given as to why this court should interfere with the same. Further, that the authorities cited are merely persuasive and are not binding on this court which should instead dismiss the Appeal and uphold the award. He pointed me to the following decisions:-

i. **Kalenjin Auto Hardware Ltd. vs Phillip Wakaba, H.C.C.A 75/2003 (Eldoret)** where Ibrahim J. upheld an award of Kshs.220,000/= for head injury, bruises to the scalp and face, blunt trauma to the chest, dislocation of the right shoulder joint and blunt trauma to the abdomen.

ii. **George Obare vs Francisca Mbuvi, H.C.C.A 89/2007 (Machakos)** where this court upheld an award of Kshs.200,000/= for a cut wound on left ear pinna posteriorly, cut on the right side of the head, long cut on the chest and left cheek, blunt injury to the chest, left leg, right hip joint, and upper back and bruises to the left leg.

5. As I understand it, a court in awarding damages exercises discretion and each case must be looked at in its peculiar circumstances. This is more so in road traffic accident cases where it is near impossible for persons to suffer the same and exact injuries in separate accidents. This is why there is great legal sense in the holding in **Shabani vs City Council of Nairobi (1985) KLR 516** 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 legal principle or on a misapprehension of the evidence.”

6. In applying the above principle, I should begin by restating the injuries allegedly suffered by the Respondent in the accident which was said to have occurred on 10/10/2005 along Machakos-Kitui Road. They were particularized at paragraph 5 of the Complaint as being:-

- a. blunt injury to the head without loss of consciousness;
- b. blunt injury to the neck;
- c. a cut to the throat;
- d. blunt injury to the left shoulder and back;
- e. blunt injury to the chest;
- f. blunt injury to the right forearm;
- g. deep penetrating wound on the left leg with cuts and bruises on the same leg.

7. The injuries are not disputed but I should only note that two doctors examined the Respondent; Dr. M.N. Kuria examined him on 11/7/2007 and at that time his opinion was that the Respondent was still experiencing some pain and had not fully healed. Dr. R.P Shah examined him on 29/8/2007 and found no serious post-accident complications. Both doctors agreed and it was clear in any event that the injuries were all soft tissue injuries.

8. I have considered the submissions tendered and have taken into note the injuries suffered. As regards the decisions cited, as I understand it, comparable injuries should attract comparable awards subject to the question of inflation and rising cost of living amongst other peripheral considerations. I have endeavoured above to show the injuries suffered in the decisions cited and the awards given. Clearly, the injuries in **Kiwanjani** (supra) and **Obare** (supra) were multiple and slightly more serious than those suffered in this case and therefore can be distinguished. On the other hand, those in **Mbogo** and **Oyugi**

are near comparable but also less serious. The lower court awarded kshs.150,000/= and I would think that taking the injuries into account, the element of inflation and the high cost of living, the award is neither inordinately low nor inordinately high. On the other hand, I take the view that it represents a reasonable and fair award in the circumstances of this case. That being the case, I see no reason whatsoever, why I should interfere with the award which is neither against the policy of the law generally nor is it a run-away award.

9. In the event, the Appeal is dismissed with costs to the Respondent.

10. Orders accordingly.

Dated and delivered at Machakos this 25th day of **September** 2008.

ISAAC LENAOLA

JUDGE

In presence of: **Miss Katunga holding brief for Mr Wambua for Respondent**

N/A for Appellant

ISAAC LENAOLA

JUDGE