REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 137 of 2005

UCHUMI MATTRESSES LTD…….....APPELLANT

VERSUS

ZABLON SHIROYA……RESPONDENT

JUDGMENT

This is an appeal against the judgment of the Senior Resident Magistrate delivered on 12th July 2005 in Nakuru CMCC No.976 of 2004 in which she assessed general damages for pain and suffering at Kshs.250,000/-.

Mr. Mahida for the Appellant basing his argument on the memorandum of appeal, submitted that the learned trial magistrate erred in law in failing to comply with the provisions of **Order 20 Rule 4** of the **Civil Procedure Rules** by failing to give a concise statement of the case viz-a-viz injuries suffered by the Respondent, the points for determination and the reasons for her finding on the injuries. He also submitted that the learned trial magistrate ignored both Dr. Malik's medical report on the Respondent's injuries and his submissions and awarded a sum which was inordinately high. In his view, the Respondent was entitled to an award of only Kshs.130,000/-. He therefore urged me to reduce the award to that sum which has already been paid to the Respondent.

Mr. Wamasa for the Respondent does not think highly of this appeal. In his view an appellate court can only disturb an award if it is so inordinately high or low that it amounts to an erroneous estimate. He said that is not the case in this appeal and submitted that the authority of Ruth **Kadide Mwakuwanda Vs Danida /PIV PROJECT & Another HCCC No. 64 of 1993 Mombasa** relied upon by counsel for the appellant was decided in 1994 and cannot therefore provide a proper guide in the present appeal. He concluded that given the inflation since then, the sum of Kshs.250,000/- awarded in this case was reasonable and urged me to dismiss this appeal.

I have considered these submissions. Liability was an issue before the lower court, the parties having apportioned it at 15/85% against the Appellant. The only issue before the magistrate was the assessment of damages. Whereas I agree with Mr. Mahida that the learned trial magistrate did not set out the injuries that the Respondent suffered, I nonetheless find that she considered them in making the award. Her judgment cannot therefore be said to have fouled **Order 20 Rule 4** of the **Civil Procedure Rules**. As stated in the case of **Kitavi V Coastal Bottlers Limited [1985] KLR 471**, an appellate court can only disturb an award of damages when the trial court has taken into account a factor it ought not to have taken into account or failed to take into account something it ought to have taken into account or if the award is so high or so low that it amounts to an erroneous estimate. Save that the award in this matter was inordinately high, Mr. Mahida for the Appellant does not allege any of these things. The contention that the trial court should have relied on the case of **Kadide Mwakuwanda Vs Danida /PIV PROJECT & Another HCCC No. 64 of 1993 Mombasa** which had similar injuries like the ones suffered by the Respondent in this appeal and awarded a sum of Kshs.130,000/- has, with respect no merit. That case was decided over 14 years ago. Given the inflation since then I find the sum of Kshs.250,000/- awarded by the learned trial magistrate in this case to be reasonable. In the circumstances I find no merit in this appeal and I accordingly dismiss it with costs.

DATED and delivered at Nakuru this 16th day of October, 2008.

D. K. MARAGA

JUDGE