



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Civil Appeal 903 of 2003**

**DONALD MWANGI & WAGUTHU FARMERS.....APPELLANTS**

**VERSUS**

**ALICE WANJIKU WAWERU..... RESPONDENT**

**J U D G M E N T**

On 24/12/04, the appellant herein moved to this court, by way of an appeal against the Judgment of the Kiambu Principal Magistrate, dated 12/11/2003, in civil Case No. 97 of 2000, on the following grounds of appeal.

1. **The Learned Magistrate erred in law in failing to consider the appellants submissions.**
2. **The Lower Court erred in law in failing to analyse the two Medical Reports before it.**
3. **The Learned Magistrate erred in law in awarding an exorbitantly high award, notwithstanding that the Respondent had completely recovered from the injuries.**
4. **The Learned Magistrate erred in law in awarding KShs.100,000/- as general damages for pain suffering and loss of amenities when no evidence of pain, suffering and loss of amenities was produced before him.**
5. **The Trial Magistrate erred in law in awarding K.Shs.100,000/- for each of the Respondents in Civil Cases Nos. 94/00; 95/00; 96/00 and 97/00 when no two Respondents had sustained similar injuries.**
6. **The Learned Magistrate erred in law and in fact in refusing to be guided by recent court awards thus arriving at unconscionably high awards**
7. **The Learned Magistrate failed to exercise his discretion judicially thus arriving at an unfair award and a wrong decision.**
8. **The Trial Magistrate demonstrated a bias against the appellants thus ignoring the evidence before him;**
9. **The Lower Court's findings were against the weight of the evidence.**

Wherefore the appellants pray that the appeal be allowed with costs and the Judgment of the lower court be set aside and the case be retried before a different court.

At this stage, it must be pointed out that this appeal arises from the same facts and cause of action as C.A.

No. 900/03 whose judgment this court delivered on 23/1/06. The facts and the grounds of appeal are the same. The only difference, between this appeal and the other three, namely C.A. Nos. 900/03; 901/03; and 902/03 is what is captured in ground of appeal No. 5, the gist of which is that the four Respondents did not receive similar injuries, and that is the basis of challenging the K.Shs.100,000/- general damages awarded to each, as if the injuries were similar.

Accordingly, all the findings; conclusions and holdings in C.A. No. 900/03 are hereby adopted, except as regards the nature, degree and permanency or otherwise, of the injuries sustained by the Respondent herein. To that end, the judgment in C.A. 900/03 is hereby appended to this judgment, and the rest of the judgment in this appeal is confined to the differences or similarities, if any, between the Respondent herein, and the Respondent in C.A. No. 900/03, and the impact of that on the general damages awarded by the Learned Trial Magistrate.

At pages 7 – 8 of the judgment in C.A. No. 900/03, the Medical Report with regard to the Respondent therein, is as follows:-

***“The Respondent was given tetanus vaccine; nine months after the accident the Respondent still complained of pain of the right leg; experienced pain and suffering from the injuries sustained; she was incapacitated for a duration of 4 weeks; the pain was nagging but should subside with time”.***

That was the Medical Report by Dr. J.N. Muiru.

More than 3 years later, the second Medical Report, by Dr. J.M. Ikonya, stated as follows:-

*“the Respondent still complained of painful neck; headache and backache; had painful neck on movement.”*

Apart from the above, Dr. Ikonya (the second Medical Report) concurred and confirmed every aspect of Dr. Muiru’s Report.

The foregoing were the injuries, as captured in the Medical Reports touching on the Respondent in C.A. No. 900/03.

In the current C.A. No. 903/03, the Respondent, ALICE WANJIKU WAWERU, sustained the following injuries; as per the Medical Report of Dr. Muiru, dated 20/4/99;

***“strain of the neck; bruises on the palms; contusion of the left leg. She was given tetanus vaccine. She was put on analgesics and dressed. She complains of neck pain, and tender rotational movements.***

On prognosis, the Report says:

*“Alice experienced pain from the injuries sustained and was incapacitated for a duration of 4 weeks. She has myalgia of the neck which is nagging. The pain will subside with time. She needs analgesics meanwhile.”*

When Dr. J.M. Ikonya examined Alice, on 8/12/01, which was more than 2 ½ years later, his Report states as follows:

*“Alice sustained soft tissue injury on the neck; soft tissue injury of the left leg and bruises on the palms. She was given tetanus vaccine, analgesics and antibiotics. She complained of neck pain and headache. She had painful neck movement.”*

On prognosis, the Report says:

*“Alice experiences pains after the injuries, has post traumatic pains, which will subside with time. She needs analgesics on and off.”*

Comparing the Medical Reports of the two Respondents, and without re-stating the obvious that whereas no two injuries are exactly similar; for the purposes of comparing the awards of general damages in the two cases, it is clear to me that there is a very close similarity in the injuries: the duration of incapacitation – 4 weeks in each case – and the degree of permanency or lack of it, in both cases.

I have considered the submissions and the authorities relied upon by the learned counsels for both sides. As stated earlier, each of these were exhaustively analysed and dealt with in the appended judgment in C.A. No. 900/03 and the only critical issue is the differences or otherwise, of the injuries sustained from the same facts and cause of action, by the respective Respondents.

Doing the best I can, I have shown that there were no significant differences in the quantity and quality or seriousness of the injuries sustained by the two Respondents. Indeed, objectively, there are more similarities than difference with these two Respondents than with any of the other two Respondents – that is in C.A. Nos. 901/03 and 902/03.

Accordingly, I have found no reason to interfere with the judgment and the sum awarded for general damages by the lower court.

I uphold and confirm the sum of K.Shs.100,000/- awarded as general damages, less the 20% apportionment of liability against the Respondent. In real terms, this translates to K.Shs.80,000/-.

All in all, and for the above reasons, the appeal is hereby dismissed with costs against the appellants and in favour of the Respondent.

I would, before concluding, wish to observe that the four appeals should have been consolidated and dealt with as one case given that they all arose from the same facts and same cause of action. This should be factored into the costs and taxation of the same in the interest of justice and fairness to the parties.

DATED and delivered in Nairobi, this 30<sup>th</sup> Day of January, 2006

O.K. MUTUNGI

JUDGE