



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 901 Of 2003**

**DONALD MWANGI & WAGUTHU FARMERS LTD..... PLAINTIFFS**

**VERSUS**

**NDUNGU MUNGAI KAMAU..... RESPONDENT**

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

On 24/12/04, the Appellant herein, Donald Mwangi & Waguthu Farmers Limited, moved to this court, by way of an appeal against the Judgment of the Resident Magistrate, Kiambu, dated 12/11/03, in SPMCC No. 96 of 2000 on the following grounds of appeal:

1. **That Learned Magistrate erred in law in failing to consider the appellant's submissions;**
2. **The Learned Magistrate erred in law in failing to analyse the two medical reports before him;**
3. **The lower court erred in law in awarding an exorbitantly high award – not withstanding that the Plaintiff had completely recovered from the injuries.**
4. **The lower court erred in law in awarding KShs.100,000/- as general damages for pain and 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 KShs.100,000/- for each of the Plaintiffs in SPMCC 94/00, 95/00, 96/00 and 97/00 when no two Plaintiffs had sustained similar injuries.**
6. **The trial Magistrate erred in law and in fact in refusing to be guided by recent court awards thus arriving at unconscionably high awards.**
7. **The trial magistrate failed to exercise his discretion judicially thus arriving at an unfair and wrong decision.**
8. **The trial magistrate demonstrated a bias against the Defendant/Appellants, thus ignoring the evidence before him.**
9. **The trial magistrate's findings were against the weight of the evidence.**

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

At this early stage, it is important to point out that this appeal arises from the same facts and cause of

action as C.A. No. 900/03 and C.A. No. 902/03 whose judgments this court delivered on 18/1/06 and 23/1/06 respectively. The facts and the grounds of appeal are the same. The only difference, between this appeal and the other two above, namely C.A. Nos. 900/03; 902/03; is what is captured in ground of appeal No. 5, the gist of which is that the three respondents did not receive similar injuries, and that is the basis of challenging the KShs.100,000/- general damages awarded to each, as if the injuries were similar.

Accordingly, all the findings; conclusions and holding in C.A. No. 900/03 are hereby adopted, except as regards the nature, degree and permanence or otherwise, of the injuries sustained by the Respondent herein. To that end, the Judgment in C.A. 900/03 is hereby appended and attached 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/, 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. 901/03, the Respondent – NDUNGU MUNGAI KAMAU – sustained the following injuries, as per the medical Report of Dr. Muiru, dated 8/2/2000

*“strain and contusion of the neck. He was put on analgesics and discharged home on the same day. He complained of pain of the neck.”*

On prognosis, the Report says: “He experienced pain and suffering from the injuries sustained; he could not attend to his daily chores for a duration of 1 (one) week. He needs analgesics, but the pain will subside with time.”

Dr. J.M. Ikonya examined the Respondent, more than

1½ years later, on 8/12/01, and his Report states;

*Respondent sustained “strain and contusion of the neck; was attended to at Thika District Hospital as an Out-Patient and put on analgesics; complains of painful neck on and off; experiences pain from the injuries sustained; could not attend to his duties for 1 (one) week; requires analgesics. The pain will subside with time.”*

Comparing the level and degree of the injuries sustained by the Respondent herein, vis-à-vis those sustained by the Respondent in C.A. 900/03, and doing the best I can, I hold that the Respondents injuries, and hence the general damages awardable, are 25% those in C.A. 900/03, inclusive of the apportionment of 20% liability. This translates to K.Shs.25,000/- less 20% contribution to the liability,

which in real terms, amounts to K.Shs.20,000/-.

Accordingly, the appeal is hereby dismissed with costs to the Respondent and against the appellant, save that the general damages awarded to the Respondent by the lower court are reduced from K.Shs.100,000/- to 25,000/- inclusive of the 20% apportionment of liability against the Respondent.

DATED and delivered in Nairobi, this 25<sup>th</sup> Day of January, 2006.

O.K. MUTUNGI

JUDGE