



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

**Civil Appeal 118 of 2002**

**GEORGE KINGOINA MARANGA.....1<sup>ST</sup>  
APPELLANT**

**SAMMY KINYANJUI.....2<sup>ND</sup>  
APPELLANT**

**VERSUS**

**LUCY NYOKABI NDAMBUKI.....  
RESPONDENT**

**JUDGMENT**

This appeal is against the quantum of general damages awarded by the trial court, judgment on liability having been agreed upon by consent. The plaintiff raised two grounds of appeal and they were as follows:

- 1. That the court erred in law in making an award of general damages which is manifestly excessive in the circumstances.**
- 2. That the award of general damages made does not accord with the injuries sustained and on decided authority and is totally unreasonable.**

When the advocates for the parties were recording the consent on liability they also agreed by consent that the respondent's treatment notes from the Provincial General Hospital, Nakuru be produced as exhibit No.1, the medical Report by Dr. Kiamba as exhibit No.2, the one by Mr. D'cunha as Exhibit No.3 and a Receipt for kshs.2000/= paid to Dr. Kiamba for preparation of the medical report as exhibit No.4. Thereafter written submissions were filed and the court assessed **general damages at Kshs.420,000/=** and **special damages at kshs.2000/=**.

The handwritten treatment notes made at the Provincial General Hospital, Nakuru, though not quite legible, are dated 17/7/2001 and showed that the respondent sustained injury to the right hand and to the right side of her face. There was also swelling on the right wrist. Plaster of Paris was applied to the right wrist and that is an indication that there may have been a fracture.

The medical report by Dr. Kiamba showed that the respondent was aged 32 years and was a farmer. The injuries which he noted were as follows:

1. Dislocation of the right wrist joint.

2. Fracture of the right radius in the distal one third.
3. Fracture of the styloid process of the right ulna.
4. Injury to the forehead resulting into swelling on the left side of the face.

He examined her on 31/8/2001 and the date of the accident was 17/7/2001. The respondent had been x-rayed on the right wrist joint and it revealed the above mentioned fractures and dislocation. As at the time of examination, the fractures had united but the joint was painful on execution of movements and she could not lift any heavy object with the right arm. He awarded a temporary disability of three months. Mr. D’Cunha examined the respondent on 21/11/2001. According to his report, the x-rays taken on 17/7/2001 showed that the respondent suffered Colle’s fracture of the right wrist, comminuted fracture lower end of the right radius with lateral displacement and dorsal rotation of the distal fragment. There was also an associated fracture of the right styloid process of the ulna. At the time of examination, the respondent complained of injury to the central incisor teeth on the lower jaw.

Mr. D’Cunha noted that the respondent required dental attention and added that she was likely to develop osteoarthritis at the right wrist due to the proximity of the fracture to the joint. He awarded her a temporary disability of nine weeks and permanent disability of 5%.

Mr. Kisila for the appellant submitted that the award of Kshs.420,000/= was manifestly high saying that an award of Kshs.100,000/= was reasonable. He criticised the medical report by Dr. Kiamba saying that it included other injuries apart from those noted in the primary treatment notes. He said that the medical report reproduced the particulars of injuries in the plaint. On the other hand, he commended the medical report by Mr. D’Cunha saying that his findings were consistent with the initial treatment notes; except the injuries to the teeth which were not pleaded. He submitted that the trial magistrate should only have awarded damages for Colle’s fracture and soft tissue injuries.

He reiterated the principles of making awards in personal injury claims as were laid down by the Court of Appeal in **CECILIA W. MWANGI VS RUTH MWANGI** Nyeri C.A. No.251 of 1996 (unreported) where the court stated as follows:

***“It has been quite often pointed out by this court that awards of damages must be within limits set by decided cases and also within limits that Kenyans can afford. Large awards inevitably are passed on to members of the public, the vast majority of whom cannot afford the burden, in the form of increased costs for insurance cover or increased fees.”***

Mr. Gekonga for the respondent opposed the appeal and submitted that the two medical reports by Dr. Kiamba and Mr. D’Cunha showed injuries which were consistent with those stated in the plaint. He said that Dr. Kiamba relied on x-ray report and treatment notes made at the Provincial General Hospital, Nakuru immediately after the accident. He further submitted that there was no basis for disturbing the award made by the trial court. He cited inter alia the Court of Appeal decision in **KEMFRO AFRICA LIMITED t/a Meru Express Services (1976) & ANOTHER VS LUBIA & ANOTHER** (No.2) [1987] K.L.R. 30 where it was held that the principles to be observed by an appellant court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were that; it must be satisfied that judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

I have already reproduced the salient contents of the documents which the trial magistrate was obligated to consider in his assessment of the damages payable to the respondent. While it is true that the 4 injuries shown in the report by Dr. Kiamba dated 31/8/2001 are word for word with those stated under paragraph 10 of the plaint which was drawn on 7/8/2001 and filed on 10/8/2001, that medical report and the one by Mr. D’Cunha showed more or less the same injuries that the respondent suffered and both made reference to the initial treatment notes. If anything, the report by Mr. D’Cunha contained greater details than those shown in Dr. Kiamba’s report. Mr. D’Cunha stated that the respondent was likely to develop

osteoarthritis at the right wrist joint and went on to award 5% permanent disability which was not the case in the medical report by Dr. Kiamba.

The trial magistrate considered all the submissions that were made before him and that included all the relevant authorities that were cited by the respective counsel and awarded a sum of Kshs.420,000/= as general damages. It has not been shown that the trial magistrate took into account an irrelevant factor or left out of account a relevant one neither has it been demonstrated that the sum awarded is so inordinately high to constitute an erroneous estimate of the damage. In the circumstances, I have no reason for interfering with the lower court's judgment and consequently this appeal is dismissed with costs to the respondent.

DATED, SIGNED and DELIVERED at NAKURU this 31<sup>st</sup> day of March, 2006.

**D. MUSINGA**

**JUDGE**

**31.3.2006**

Judgment delivered in the open court in the presence of Gekonga for the respondent and Mr. Nyangweso holding brief for Mr. Kisila for the appellant.

**D. MUSINGA**

**JUDGE**

**31.3.2006**