



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

**Civil Appeal 127 of 2002**

**ROSELINE KANYUA .....**  
**APPELLANT**

**VERSUS**

**LAWRENCE MBWIRIA ..... 1<sup>ST</sup> RESPONDENT**

**MAGATI DAIRY FARMERS CO-OPERATIVE SOCIETY LTD.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Appellant had preferred 4 grounds of Appeal in his Memorandum of Appeal dated 8.11.2001 but during the hearing, Mr. Ringera Advocate for the Appellant abandoned 3 of them and argued this one point;

“That the award of general damages is manifestly low and not commensurate with the injuries sustained by the Appellant.”

2. The argument in support of this point is that the learned trial magistrate disregarded the evidence on record as regards the injuries suffered by the Appellant and awarded a very low and unreasonable figure in general damages.
3. Mr. Kiogora for the Respondent supported the findings of the lower court and asked that the Appeal be dismissed with costs.
4. I note that the suit arose from an accident on 3.3.2000 along Meru –Nkubu road involving M/V Reg. No. KAH 008 R Isuzu Canter and the Appellant who was a pedestrian on the said road at the time that M/V Reg. No. KAH 008 R hit her.
5. In her plaint she pleaded the following particulars of injuries;
  - i) injury to the head
  - ii) injury to the chest
  - iii) injury to the legs
6. In evidence, Dr. Jonathan Barasa said that he examined the Appellant on 12.9.2000. His report indicated that the Appellant suffered the following injuries;

- i) head injury – concussion and depressed fracture of the right temporal bone
- ii) soft tissue injury to the right pinna

7. Although Dr. Barasa examined the Appellant six months after the accident it was his view that the headaches and fatigue still experienced by the Appellant were as a result of the accident and that pain killers and occasional periods of rest would alleviate the suffering. He also estimated that Ksh.50,000/- would be required to elevate the depressed fracture. The Appellant however said in her evidence that she had **“now fully recovered”** from her injuries and that she had **“not gone back to hospital.”** Her other witness Rose Karambu said that the Appellant was hit by the side-mirror of the motor-vehicle and she noticed thereafter that the Appellant **“was slightly bleeding from the right side of the head.”**
8. The learned trial magistrate with this evidence in mind took issue with the medical report and the evidence of Dr. Barasa which he found to be false and misleading as the learned trial magistrate found that he over-exaggerated the injuries sustained by the Appellant. In the learned magistrate’s view, the Appellant suffered the head injury only and all the after effects of that injury such as recurring headaches and fatigue were a creation of the doctor. He proceeded to award general damages of Ksh.40,000/- in any event.
9. What is in issue is whether the learned trial magistrate in awarding that amount of damages misdirected himself on the principles applicable and the law and thereby awarded a miserably low amount in damages.
10. I have seen that clearly the injuries pleaded in the Pleint were not supported by any evidence before the trial court save the injury to the head. As to the seriousness of that injury, I have seen P.Exh.3 which was a treatment note issued by Kaje Clinic soon after the accident. The injury is stated as being a **“small bruise on the head”**. This evidence is consistent with that of P.W.3 Rose Karambu as well as D.W.1 Lawrence Mbwiria and D.W.2 Pius Murithi who said that the Appellant had a **“slight bruise on the right back of the head”**
11. All evidence also points to the fact that the Appellant after being hit by the side mirror did not fall down and walked to Kaje Clinic. Where then did the doctor, Dr. Barasa get the information that the Appellant was unconscious for 3 hours? If it was the Appellant, she said nothing of the sort to court. As to the complaints of fatigue and recurring headaches, the doctor again states in his report that it was the Appellant who gave him that information. If it was her, why then would she come to court and twice state that she has **“fully recovered”** and has had no reason to go back to hospital? The doctor also states that there would be need for surgical elevation of the temporal bone. The appellant again said nothing of such a necessity and it would seem to me that the doctor’s evidence which was historically based on testimony from the Appellant was not in tandem with the evidence as tendered by the Appellant, the victim of the accident.
12. I am in agreement therefore with the trial magistrate that the expert evidence was not such as to be the sole basis for determining the injuries suffered. I am meant to understand that where expert evidence is not premised on other independent evidence then courts must take that evidence, inconsistent as it is, without questioning it. The evidence of Dr. Barasa, with respect, can be questioned for reasons I have stated above.
13. If the only injury suffered is the head injury, was the amount awarded in damages so low as to call upon this court to interfere with it. I think not. A court sitting an appeal on a matter such as this

one can only interfere with the quantum of damages if the trial court misdirected its mind or applied the wrong legal principles. None have been cited to me in this case and I am wary of interfering merely because the Appellant is not happy with the award of general damages.

14.If this be my finding, I see no other to say more save to state that the Appeal herein does not meet the favour of this court as it has no merit and is hereby promptly dismissed.

15.Costs thereof to the Respondent.

16.Orders accordingly.

Dated, signed and delivered in open court at MERU this 4<sup>th</sup> .Day of July 2006

**ISAAC LENAOLA**

JUDGE

In presence of

Mr. Ringera Advocate for the Appellant

Mr. Kiogora Advocate for the Respondent

**ISAAC LENAOLA**

JUDGE