

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 131 OF 2001

MENENGAI SOAP FACTORY.....APPELLANT
VERSUS
RICHARD KEAGO AREBA.....RESPONDENT

JUDGEMENT

The Appellant has appealed against the judgement of the Senior Resident Magistrate dated the 28th August, 2001 in Nakuru Chief Magistrate Civil Case No. 286 of 1999. During the appeal, the Appellant was represented by Mr. D.P. Mahida while the Respondent was represented by Mr. Motende. According to Mr. Mahida, the appeal is against the quantum of damages payable and that the parties had earlier agreed a liability at 70% - 30%. Besides the above, Mr. Mahida submitted that the judgement should have given the concise statement of the case, the points for determination and reasons. In addition to the above, he also submitted that the Learned Magistrate should have mentioned the injuries as stated in the Plaintiff and whether the same had been proved.

Thirdly, he submitted that the Learned Magistrate should have given her finding on what had been pleaded and what the Doctor had stated. As far as the particulars of the injuries are concerned, Mr. Mahida took issue with the fact that the injured eye had **not** been specified. Apart from the above, he took issue with the finding of the Learned Magistrate since the Doctor had stated that the Plaintiff could have suffered a partial temporary disability for about a week. He concluded by stating that the Plaintiff should **not** have been given more than Kshs.30,000/=.

On the other hand, Mr. Motende submitted that the issue of liability had already been agreed and only the quantum remained. That apart, he referred the Court to Paragraph (3) of the Plaintiff which shows that it was the left eye that had been injured. He concluded by urging the Court to uphold the award granted.

This Court has carefully perused the above submissions together with the entire record of appeal. According to Order XX R. 4 of the Civil Procedure

Rules it states as follows:

“Judgement in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

Though this Court has **no** quarrel with the brevity of the judgement, it is apparent that the same never set out the points for determination and the reasons for the decision. Without going into other grounds of appeal, I hereby allow the same and set aside the judgement of the lower Court and all the subsequent orders.

In the interest of justice, I hereby order for a retrial before any other Magistrate other than the Trial Magistrate.

Those are the orders of the Court.

MUGA APONDI

JUDGE

CH, 2005

Judgement read, signed and delivered in open Court in the presence of Mr. Kagucia for
Mr. Mahida for the appellant.

MUGA APONDI

JUDGE

22ND APRIL, 2005