



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

H.C.C.A. NO. 701 OF 2001

JOSEPH HENRY RUHUIAPPELLANT

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT

This is an appeal from the Judgment of Chief Magistrate's Court at Milimani (Hon. J. Lesiit, as the then was) delivered on May 9, 2001 in RMCC 8355 OF 1998.

The case involves the unlawful arrest and detention of the Plaintiff by the Police, and personal injuries that he sustained in the course of the incident leading to, and subsequent to, his arrest.

The only issue in this appeal is the quantum of damages. The Appellant is aggrieved by the award of shs.200,000/= for general damages which he believes is inadequate, and wants the same enhanced.

The lower Court found as a fact that the Appellant was unlawfully arrested and detained for some 10 hours, was beaten up by Police Officers and suffered multiple bruises on his back and shoulder, low back, hip region and shin; right sided hemiplegia; and exaggerated reflexes in the right limbs due to the violent impact – all of which are described in the Plaintiff.

The lower court also found as a fact that at the time of his assault, the Appellant was in the process of recovering from a stroke, and that the assault drew back on his recovery. Taking all these factors into account the lower court awarded a global sum of shs.200,000/= as general damages.

In submitting that this sum is low, the Appellant's Counsel cited three Authorities; **Anar Kassam v. Bharat Patel** (HCCC 53/86 - Nakuru), **John Kamau Icharia v. Paul Njiru** (HCCC 1774/94 Nairobi) and **Robert Wafula v. Attorney General** (HCCC 2994/95 Nairobi).

I do not find that any of these authorities offer a fair guide to the assessment of damages in the appeal before this Court. The injuries in **Anar's** case were completely different; the period of detention in **Robert Wafula's** case was 49 days as opposed to 10 hours in this case; and in the **Icharia** case, the Plaintiff was confined to detention for two days without any food or water and almost one-half of the award related to exemplary damages which were pleaded.

In the case before me, I agree with Counsel for the Respondent that exemplary damages were not pleaded, and could not be awarded. There is only a prayer for such damages, but no pleading.

The Court of Appeal outlined the principles on which an appellate Court would interfere with the award of damages of the trial Court as follows;

“What then are the principles on which an appellate Court will interfere with a trial Judge’s assessment of damages? These are now well settled in Kenya. Kneller, J.A. (as he then was) put it thus in Robert Mzioki Kilavi v. Coastal Bottlers (1985) IKAR 891 at 895.

“The Court of Appeal in Kenya, then should, as its forerunners did, only disturb an award of damages when the trial judge has taken into account a factor he ought not to have taken into account or failed to take into account something he ought to have taken into account or the award is so high or so low that it amounts to an erroneous estimate”

Hancox, J.A. (as he then was) stated the text thus (at P. 683) in **Idi Ayub Shaban v. City Council of Nairobi** (1985) IKAR 681

“The test as to whether an appellate Court may interfere with an award of damages was stated by Law, J.A. in Butt v. Khan (1977) IKAR as follows:

“An appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

These principles apply to the present case. I do not find any reason to interfere with the Judgment of the lower Court, and accordingly, I dismiss this appeal, with costs to the Respondent.

Dated and Delivered at Nairobi this 26th day of April, 2004.

ALNASHIR VISRAM

JUDGE

26.4.2004