



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL APPEAL NO. 31 OF 2002**

**MARY ADHIAMBO RAMOGI ..... APPELLANT**

**VERSUS**

**JULIUS BIRUNDU MOKAYA ..... RESPONDENT**

**JUDGMENT:**

The appellant had sued the respondent in Kisii Chief Magistrate's court for general damages for pain and suffering from injuries she sustained in a road accident. She told the court that on 16th June 1998 she was a passenger in motor vehicle Reg. No.KAE 465Q a linear bus traveling from Rachuonyo to Nairobi. On the way it collided with m/v Reg. No. KAJ 175T owned by the respondent. It was being driven by his driver who passed away. She sustained several injuries.

Liability was agreed by consent at the ratio of 80% to 20% for the plaintiff. Hearing ended on 29th September 2000. Judgment was delivered on 28th February 2002 almost two years down the lane. The magistrate awarded the appellant shs.80,000/= as general damages.

It was submitted that the award of shs.80,000/= as general damages was so inordinately low as to occasion miscarriage of justice and the court was asked to set it aside and re-assess the damages. It was submitted that the appellant suffered serious injuries, which included a fracture of the 7th vertebra, which involves the spine. The magistrate did not take the fracture into account and said the injuries were classified as soft tissue injuries. Had she considered the fracture the award would have been higher.

Mr. Wesonga for the respondent opposed the appeal and supported the award. He submitted the magistrate was right in awarding the sum of shs.80,000/= general damages. He said the doctor's report did not indicate the treatment given to the appellant. He further said when the doctor examined the appellant she was in fairly good general condition.

The trial magistrate's judgment is at page 44 of record of appeal. It is a two paragraph half a page judgment and clearly falls far short of what would be termed a wellconsidered judgment. I concur with counsel for the appellant that the magistrate in the light of the injuries suffered awarded such low damages that an error of principle can be inferred. The estimate was erroneous. There was a doctor report produced. Also there was a P3 form and treatment notes. They show that appellant suffered a compression fracture of the 7th thoracic vertebra. The magistrate did not at any one-time mention the fracture. She said the injuries were classified as soft tissue injuries. These must have been the other injuries she sustained but even those were not just soft tissue injuries. The doctor classified them as severe soft tissues injuries. After that in the last paragraph of his report he analyzed the fracture which he termed as "severe injury involving the vertebra column ....." As submitted this involves the spine and I believe that is why the doctor concluded that appellant will be unable to carry any heavy objects on the head. Had the magistrate properly analyzed these injuries properly she would have found that they were serious and awarded a higher amount for damages. She erred and I therefore allow the appeal and set aside the judgment and the award of shs.80,000/=.

Having set aside the award the court will proceed to assess the damages. As I have said the injuries suffered were serious especially the fracture. These injuries were similar to those suffered by plaintiff in the case of PETER KIROBI – VS.- AG & ANOTHER HCCC 5602 of 1989 where shs.200,000/= was awarded. Though counsel for appellant urged court to award shs.400,000/= I do note that in his submission in the lower court he had submitted for shs.200,000/=. The injuries haven't gotten worse since. I therefore award a sum of shs.200,000/= as general damages. Appellant will also have the costs in this court and in the lower court.

**Dated 8th October 2004**

**KABURU BAUNI**

**JUDGE**

**8/10/04**

**Mr. Soire H/B for Mr. Ochillo for appellant.**

**Mr. Ogwen: I am for respondent. I pray for stay of execution for 30 days.**

**KABURU BAUNI**

**JUDGE**

**Order: There be 30 days stay of execution.**

**KABURU BAUNI**

**JUDGE**