

IN THE HIGH COURT OF KENYA AT KISII

Civil Appeal 213 of 2003

SHADRACK ARISI MOKUA APPELLANT
VERSUS
BROOKE BOND K LTD RESPONDENT

RULING

The applicant/appellant was summarily dismissed on 9/7/04. He has now applied to the court to review that dismissal order. It was deponed and submitted that the appeal is arguable and that the appellant intended to show during the appeal that the magistrate applied wrong principles in awarding damages. The same magistrate in previous suit had awarded higher damages for less injuries. He annexed two such judgments. This was submitted to be new and important matters which could not have been presented to court when making the order.

The application was opposed. It was submitted that the court was satisfied that there were no sufficient grounds to warrant interference with the award and thus dismissed the appeal. There are now no new grounds.

I have considered the application. Indeed an appellate court can interfere with an award if it finds that wrong principles were used. However I do not find any new ground to warrant the court to review the dismissed order. I have looked at the two judgments by the same trial magistrate annexed. The injuries were almost similar with those in this case. The differences in the amount awarded are not significant. I therefore still hold that there are no sufficient grounds shown in the appeal.

The application is therefore dismissed with costs.

Dated this 6th day of December 2004.

KABURU BAUNI
JUDGE