

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL 8 OF 1997

ZIPPORAH WANJIRU APPELLANT

VERSUS

MUNICIPAL COUNCIL OF NAKURURESPONDENT

JUDGMENT

This is an appeal from the Judgment of the lower court by which the successful Appellant seeks, in the main, further damages by way of loss of business and value of her kiosk which was destroyed by the Respondent. These were not specifically pleaded in her Complaint. Mr. Kahiga for the Appellant argued that these were general damages which the court was obliged to award upon proof thereof. I cannot agree. Looking at the nature of these claims and the process employed to prove them, it is obvious that the same are in the nature of special damages. The Appellant knew what profits she was making from her business and the value of her kiosk at the time she brought her action in the lower court.

Her loss in that respect could be determined with arithmetic accuracy and did not require assessment by the court. It is clear beyond peradventure that special damages need not only be specifically pleaded but also specifically proved. The Appellant chose to prove those damages when she had not pleaded them. In fact, she did not specifically plead any claim for special damages and was not entitled to be awarded any although the lower court did award some. However, since there was no cross appeal to that award, I do not see the reason to disturb the same. I, therefore, dismiss the Appellant's appeal with costs to the Respondent.

Dated and Delivered at Nakuru this 7th day of May, 2003.

ALNASHIR VISRAM

JUDGE