



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 338 OF 2007**

**JN (a minor suing through her father**

**And next friend SNN.....APPELLANT**

**VERSUS**

**PETER MUTUNE.....1<sup>ST</sup> RESPONDENT**

**MICHAEL MWAURA NDUNG’U.....2<sup>ND</sup> RESPONDENT**

**PETER M. MBITHI.....3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment of the SRM Hon.Mrs Muketi delivered on 20<sup>th</sup> March 2007 and 8<sup>th</sup> May 2007 in Milimani CMCC No.5183 of 2002)*

**JUDGMENT**

This appeal is against the 2<sup>nd</sup> respondent after the appeal against the 1<sup>st</sup> respondent was withdrawn following his death. A certificate of death dated 20<sup>th</sup> April, 2015 was presented to the court. It also transpired that the 1<sup>st</sup> respondent is the same person named as the 3<sup>rd</sup> respondent. The appeal against the said party abated following his death. Only the counsel for the appellant filed the submissions and it transpired that it was not necessary for an order for the 2<sup>nd</sup> respondent to reply thereto because there was already interlocutory judgment against he said party as clearly appears at page 65 of the record. The lower court judgment delivered on 20<sup>th</sup> March, 2007 awarded the appellant a sum of Kshs. 150,000/= general damages plus Kshs. 6,200/= special damages. It is that award that prompted the present appeal.

In the Memorandum of Appeal dated 17<sup>th</sup> and filed on 18<sup>th</sup> May, 2007 the trial court was faulted for failing to consider the appellants submissions on quantum and thereby reaching a finding on quantum which was manifestly low and not supported by the injuries or the medical evidence on record. It is also the appellant’s position that the trial magistrate was misguided in reaching the finding on quantum by the appellant’s submissions which contain a type of graphical error on quantum. The court was also faulted for failing to consider and appreciate the authorities relied upon in support of the appellants claim.

At this stage I am required to reconsider and evaluate the lower court record with a view to arriving at an independent decision. An appellate court may not interfere with the award of the trial court unless such an award is inordinately high or low as to give a completely erroneous assessment of damages. Further, a challenge related thereto must show the trial court applied wrong principles or considered irrelevant matters leaving out relevant ones. See - *Mbogo v Shah* [1968] EA 93.

The reason is clear in the exercise of making awards for personal injuries the court exercises a discretion that is guided by medical reports and authorities cited. It is also generally accepted that comparable injuries attract comparable awards. While accepting that no two cases are the same.

In the submissions filed by the appellant, it is correctly observed that the appellant sustained multiple severe soft tissue injuries as pleaded under paragraph 6 of the amended plaint. The medical reports produced in evidence confirmed those injuries. The accident leading to the appellant’s suit took place on 1<sup>st</sup> January, 2002. This is over 17 years ago.

The authorities cited by counsel for the appellant, going by the injuries sustained by the plaintiffs therein, do not compare to the appellant’s injuries. The appellant ought to have demonstrated that the award given by the lower court was so inordinately low to attract the interference of the court. I observe that submissions advanced by parties to a suit are not evidence and are only, as the trial court correctly observed, guiding principles.

I have carefully considered what the lower court said in its judgment, and in particular the injuries sustained, the authorities cited and the inflation factor. I am not persuaded that the award made by the lower court should be disturbed. In effect therefore this appeal is lacking in merit and therefore dismissed. There is no order as to costs.

**Dated, signed and delivered at Nairobi this 21<sup>st</sup> Day of November, 2019.**

**A. MBOGHOLI MSAGHA**

**JUDGE**