



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 29 OF 2017.**

**JYOTI STRUCTURES LIMITED.....1<sup>ST</sup> APPELLANT**

**MICHAEL KIPCHIRCHIR RONO.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**JOASH ABONGO OWUOR.....RESPONDENT**

***(Being an appeal from the judgment and decree of Honourable Obina Senior Principal Magistrate in CMCC NO. 131 of 2016 delivered on 7<sup>th</sup> February, 2017).***

**JUDGMENT**

1. Jyoti structures Limited and Michael Kipchirchir Rono hereinafter referred to as the Appellants are aggrieved by the judgment of the Senior Principal Magistrate in which the magistrate gave judgment in favor of the Respondent Eunice Cherop Kiprotich hereinafter referred to as the Respondent for Kshs.244,800/=.
2. The appellant having being dissatisfied with the said judgment preferred an appeal before this court on the grounds: -
  - i) THAT the Learned trial Magistrate erred and misdirected himself as to the exact and nature of the Respondent's injuries and therefore erred in law in his assessment of damages awardable to the Respondent which was manifestly excessive.
  - ii) THAT the Learned trial Magistrate erred in law and in fact in failing to properly consider and analyze the defendant's submissions and hence arrived at a wrong determination on the aspect of quantum awardable to the plaintiff.
  - iii). THAT the Learned trial Magistrate erred in law and in fact by making excess awards on general damages considering the injuries sustained by the Respondent and the evidence that was adduced by the Respondent.
  - Iv). THAT the Learned trial Magistrate erred in assessing general damages and failed to apply the principles applicable in award of damages and comparable awards made for analogous injuries.
3. The appeal was canvassed by way of written submissions. The appellants averred that the respondent sustained a blunt injury to the head, chest, back, right shoulder and right leg, cut wound on the forehead, cut wound on the right supra-orbital region and bruises to the right shoulder.
4. The Respondent herein suffered only soft tissue injuries as a result of the accident which injuries have since healed. The award in general damages by the trial court was manifestly excessive in the circumstances, and should be substituted for a lower amount of Kshs. 80,000/= bearing in mind that the case laws cited contain analogous injuries to those suffered by the Respondent herein.
5. The Respondent on their part submitted that the sum of Kshs. 244,800/= sufficed as just and adequate compensation to the Respondent. The award was not inordinately high so as to warrant the interference by the appellate court.
6. The injuries were severe soft tissue injuries which were numerous and thus supported the subordinate courts finding on the issue of quantum of damages.
7. The award was reasonable and even on the lower side considering inflation and effluxion of time and the same should be upheld and the appeal dismissed with costs.
8. This being a first appeal, this court is under a duty to re-evaluate, reassess the evidence and make its own conclusions. It must, however,

keep in mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

9. This was aptly stated in the cases of *Selle vs Associated Motor Boat Company Ltd [1968] EA 123* and *Peters vs Sunday Post Limited [1985] EA 424* where in the latter case, the court therein rendered itself as follows:-

10. **“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”**

11. Considering the aforesaid and having weighed the Appellant’s grounds of appeal and the parties respective Written Submissions, it is clear to the court that the only issue for consideration and determination is whether or not the quantum that was awarded by the Learned Trial Magistrate was so manifestly excessive and/ or inordinately high in the circumstances so as to warrant interference by this court.

12. In this appeal, it is clear that the appellant is only challenging the quantum of damages. The general law is that money cannot renew a physical frame that has been battered and shattered.

13. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be endeavor to secure some uniformity in the general method of approach.

14. Awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. The amounts which are awarded should be to a considerable extent, conventional. See *Tayab vs. Kinanu [1983] KLR 114; West (H) & Son Ltd vs. Shephard [1964] AC 326 AT 345.*

15. The Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55* set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

**“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”**

16. The respondent sustained a blunt injury to the head, chest, back, right shoulder and right leg, cut wound on the forehead, cut wound on the right supra-orbital region and bruises to the right shoulder. The injuries were classified as soft tissue injuries.

17. In *Channan Agricultural Contractors Ltd v Fred Barasa Mutayo [2013] eKLR* the High Court reviewed downwards an award of Kshs. 250,000 to Kshs. 150,000 for “moderate soft tissue injuries that were expected to heal in eight months’ time.”

18. In *George Kinyanjui T/A Climax Coaches & Anor. V Hussein Mahad Kuyale [2016] Eklr.* the High Court reviewed downwards an award of Kshs. 650,000/= to Kshs. 109,890/= for soft tissue injuries.

19. In *Dickson Ndungu Kirembe v Theresia Atieno & 4 Others [2014] eKLR* the High Court reviewed downwards an award of Kshs. 255,000/- to Kshs. 127,500/- for soft tissue injuries which produced no complications.

20. In *Purity Wambui Muriithi v Highlands Mineral Water Company Ltd [2015] eKLR* the Court of Appeal revised downwards an award by the High Court of Kshs. 700,000/- to Kshs. 150,000/- for injuries to the left elbow, pelvic region, lower back and left knee.

21. Taking into consideration the foregoing decisions and the actual injuries suffered by the Respondent – to wit soft tissue injuries to the right leg, shoulder, scapula, chest and to the back, it is clear that an award of Kshs. 300,000/= is manifestly excessive. The same is reviewed downward to Kshs.150,000 which is fair and reasonable.

Given that the appeal has partly succeeded each party is to bear own costs of appeal.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 16<sup>th</sup> day of December, 2019**

In the absence of:

Mr. Michela for the appellant

And presence of Miss Keter holding brief for Mr. Mwinamo for the respondent

