



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 42 OF 2017**

**DAVID ABDALLA TIEGO.....1<sup>ST</sup> APPELLANT**

**KISAKA JOHN GEDION t/a**

**PRINCE BUS SERVICES.....2<sup>ND</sup> APPELLANT**

**NATIONAL INDUSTRIAL CREDIT LIMITED....3<sup>RD</sup> APPELLANT**

**VERSUS**

**CLARE SORE JOSEPHINE.....RESPONDENT**

***(An appeal arising from the judgment and decree of the Hon. B. Ochieng, Chief Magistrate***

***in Kakamega CMCCC No. 134 of 2015 of 15<sup>th</sup> March 2017)***

**JUDGMENT**

1. The appellant lodged herein a memorandum of appeal dated 7<sup>th</sup> April 2017, in which it was averred that the trial court had treated the evidence and submissions on quantum superficially and thereby came to the wrong conclusions thereon, had failed to analyse the authorities submitted as against the injuries suffered by the respondent, had not considered the evidence tendered in totality, had proceeded on the wrong principles when assessing the awards of damages to be made and had made an award that was inordinately high in the circumstances. It is sought that the said decision of the lower court be aside and substituted with an award that is appropriate.

2. This is a first appeal and I am conscious of the requirement pronounced in *Selle vs. Associated Motor Boat Company Limited* (1968) EA 123, that in a first appeal the court is obliged to reconsider the evidence, assess it and make appropriate conclusions about it, remembering that it has not seen or heard the witnesses and making due allowance for that.

3. The respondent's injuries, as recorded in her plaint dated 8<sup>th</sup> April 2015, were multiple cut wounds on the thighs and forearms, severe penetrating wound, blunt injury to the right cheek, blunt injury to the chest, blunt injury to the right ear, and blunt injury to the neck. At the hearing on 24<sup>th</sup> August 2016, the respondent did not recite the injuries that she had suffered, instead she referred to her treatment notes and the medico-legal report prepared by her doctor. The medical treatment notes from Provincial General Hospital –Kakamega, dated 2<sup>nd</sup> May 2012, describes her injuries as soft tissue injuries to the left shoulder region. The medico-legal report by Dr. Charles M. Andai of Lubinu Medical Clinic, dated 26<sup>th</sup> April 2013, records that she had the injuries enumerated in the plaint. She was admitted in hospital for three days. The doctor opined that the respondent had suffered moderate soft tissue injuries. His prognosis was that she would recover fully with no resultant incapacity.

4. The trial court made an award of Kshs. 300, 000.00 general damages for pain and loss of amenities. The court did not cite any authorities to justify the award. I note though that the respondent had proposed an award of Kshs. 400, 000.00 but did not cite any authority. The appellants had cited the decision in *Wambaira and 47 others vs. Kiogora and 2 others* (2001) eKLR, where the court had awarded figures ranging from Kshs. 50, 000.00 to Kshs. 100, 000.00, where the case involved eighteen (18) plaintiffs. The said decision of the Court of Appeal had been made on 17<sup>th</sup> December 2004, and *Mokaya Mochama vs. Julius Momanyi Nyokwoyo* (2013) eKLR decided in 2013, where an award of Kshs 70, 000, was made for soft tissue injuries which included loss of consciousness and a cut wound.

5. The parties have urged the appeal by way of written submissions. I have perused through them, together with the attached authorities, and noted the arguments made therein.

6. I have looked at the record before me. I have noted that the injuries sustained by the respondent were strictly to the soft tissues. The prognosis by the doctor is that there would be full recovery with no permanent incapacity. I note though that the injuries were serious enough to necessitate admission in hospital for three days.

7. In view of the foregoing, I find that the appellants have demonstrated that the trial court did fall into error in making the award of damages that it did make in the case before it. I shall accordingly set aside the award of general damages at Kshs. 300, 000.00 and substitute the same with an award of Kshs. 110, 000. I shall allow the appeal to that extent. There shall be no order on the costs of the appeal. The parties have a right of appeal to the Court of Appeal, within the next twenty-eight (28) days of date of delivery of this judgment, should they be aggrieved by the same.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 3<sup>RD</sup> DAY OF DECEMBER, 2018**

**W. MUSYOKA**

**JUDGE**