



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL APPEAL NO. 26 OF 2007**

**PRIME STEEL MILLS LTD .....APPELLANTS**

**VERSUS**

**AMOS KIPKOGEI SIALO.....RESPONDENT**

*(Being an appeal from the judgment of the Chief Magistrate's Court at Machakos delivered by Hon. R. A. Oganyo (Senior Resident Magistrate) on 18<sup>th</sup> January, 2007- at MACHAKOS C.M.C.C. No. 244 of 2005)*

**JUDGEMENT OF THE COURT**

1. The Appeal arises pursuant to the judgment delivered by Hon R. A. Aganyo in **Machakos CMCC No. 244 of 2005** on the 18<sup>th</sup> January, 2007.

2. Brief background of the matter is that the Respondent herein filed a Complaint dated 24<sup>th</sup> August, 2005 in which he sought for both general and special damages for injuries he had sustained due to an industrial accident which occurred on 30/07/2005 at the Appellants premises while he was lawfully performing his assigned duties. Parties through their learned counsels entered into consent on liability at the ratio of 70% to 30% in favour of the Respondent as against the Appellant. The parties further agreed to adopt the medical reports of two doctors who had examined the Respondent as evidence without calling the makers. Finally, the parties filed written submissions on quantum of damages. The Respondent was thereafter awarded general damages of Kshs.180,000/= which was subjected to the 30% contributory negligence giving a net of Kshs.126,000/= and further special damages were awarded in the sum of Kshs.3,000/=. The Respondent was also given costs of the suit and interest.

3. The Appellant being dissatisfied with the said judgement on quantum filed the current appeal which raised two grounds of appeal namely:-

***(a) The learned Resident Magistrate erred in law and fact by making an award on general damages which was manifestly excessive given the injuries sustained by the Plaintiff and the relevant case law produced by the Defendant.***

***(b) The Learned Resident Magistrate applied wrong principles of law in assessing general damages hence arriving at a manifestly excessive damages.***

4. The Appellant prays that this Honourable Court to allow the Appeal and set aside the lower Court's judgement on quantum and substitute it with a fair judgment on quantum that it deems fit with costs of the Appeal to the Appellant.

5. With the leave of the court parties filed written submissions which I have carefully considered.

6. As this is an Appellate Court, it is its duty to re-evaluate and re-analyze the evidence tendered before the trial court. However it is noted that no evidence was tendered before the trial court. The parties recorded a consent on liability in the ratio of 70% to 30% in favour of the Plaintiff against the Defendant. The parties further agreed that medical reports prepared by the parties appointed doctors upon examining the Respondent were adopted as evidence without calling the makers. Both counsels thereafter filed submissions on quantum. Counsel for the Respondent had proposed the sum of Kshs.250,000/= as general damages and relied on the case of **NGALA SHEDI =VS= JACKSON M. NYAMBU MSA HCCC NO.152 OF 1992.** On the other hand counsel for the Appellant had proposed the sum of kshs. 70,000/= as general damages and relied on two cases namely **CYPRIN KINYWA =VS= PHINEAS KIMANTHI MURITHI NBI HCCC NO.888 OF 1989** and **IGAMBI SADRACK =VS= BHAGRA SAWMILLS LITD NBI HCCC. NO. 3178 OF 1988.**

As no evidence was tendered by the Respondent in the Lower Court, regard has to be resorted to the pleadings namely paragraph 5 of the Plaint dated 24/08/2005 in which the injuries suffered while putting a metal rod onto a furnace and which exploded were burns on right leg, right hand and face. Dr. Mwaura and Dr. Wambugu both examined the Respondent and noted the injures on the face, right hand and right foot that had been inflicted by the hot iron pebbles and they formed the opinion that the same were of soft tissue in nature with no permanent disability.

The trial court considered the said authorities and settled on the case of **NGALA SHEDI =VS= JACKSON M. N YAMBU MSA HCCC NO. 152 OF 1992** and awarded the Respondent general damages of Kshs. 180,000/= for pain and suffering.

7. The Appeal herein is solely on quantum of damages awarded by the trial court. The Appellant now wants this court to interfere with the lower court's award and that its learned counsel has submitted that the initial sum proposed at the trial court being Kshs.70,000/= be awarded as general damages since the injuries sustained were soft tissue in nature with no permanent disability. On the other hand counsel for the Respondent suggests that the initial sums proposed by them and awarded by the trial court be adopted. Indeed an Appellate court has to consider that issues of awards of damages by lower courts are usually through exercise of discretion by those courts and that they should not be interfered with as a matter of course. The Court of Appeal in the case of **KEMFRO AFRICA LIMITED t/a MERU EXPRESS SERVICES AND ANOTHER =VS= A. M. LUBIA AND ANOTHER [1982 – 1988] KLR 727** and at page 703 stated:

***“It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellant 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 Appellant court can justifiably interfere with the quantum of damages awarded by the court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some relevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low so as to represent erroneous estimate.”***

I have perused the two authorities cited on behalf of the Appellant in the lower court and note that the injuries sustained by the Plaintiffs in those cases were cut on right hand, cut on right little finger and right thumb as well as right thigh as well as some dislocation of right thumb and that the general damages awarded ranged from Kshs.20,000/= to Kshs.25,000/=. The said cases had been decided in the years 1989 and 1991. However, the case cited on behalf of the Respondent involved a Plaintiff who sustained burns following a burst radiator in which hot water poured onto him which left him with superficial burns on left arm, both legs and back as well as painful right knee. In that case the Plaintiff had been awarded general damages of Kshs.250,000/= and this was in 1993.

The Learned trial magistrate had relied on the above authority and awarded Kshs.180,000/= as general damages. Since the injuries sustained by the Plaintiff in that authority were due to burns, I find the same appear to agree with those of the Respondent herein who also suffered burns. The Plaintiffs in the other authorities cited on behalf of the Appellant in the lower court sustained mainly cuts and not burns. As such I find the trial Magistrate properly exercised her mind and made the award of Kshs.180,000/= as general damages for pain and suffering. The said sum was not inordinately high in the circumstances bearing in mind that the authority relied upon was decided several years ago and with incidence of inflation on the economy being factored. It is the finding of this court that the quantum of damages awarded by the trial court in favour of the Respondent was not excessive in the circumstances.

In the result it is the finding of this court that the appeal herein lacks merit. The same is ordered dismissed with costs to the Respondent.

Dated, signed and delivered at Machakos this 5<sup>th</sup> day of April 2017.

**D. K., KEMEI**

**JUDGE**

In the presence of:

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