



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 136 OF 2005

SOKORO PLYWOOD LIMITED.....APPELLANT

VERSUS

MOSES MBURU MUTUA.....RESPONDENT

***(Being an Appeal from the Judgment/Decree of Hon. A.B.M. Mongare, Resident Magistrate,
Nakuru delivered on 30th June, 2005 in Nakuru CMCC NO.2611of 2000)***

JUDGMENT

1. This appeal is against the trial court's award of general damages to the Respondent of Kshs.70,000/= for what the appellant terms as very minor soft tissue injuries and in turn proposes a reduction of the same to Kshs.40,000/=.

The issue of liability was compromised by a consent judgment recorded by the parties on the 26th May 2005 on a 30:70 basis in favour of the respondent.

The trial court based its findings on general damages on medical reports prepared by Dr. Obed Omuyoma dated 27th March 2000 and Dr. M.S. Malik dated 30th September 2002. Both doctors agreed on the injuries sustained by the Respondent in an industrial accident at the appellants premises. **The injuries were cut wound over the left middle finger, that at date of both examinations and reports had healed leaving a scar on the finger, and complained of numbness on the tip of the finger.**

The trial court relying on authorities with comparable injuries found a sum of Kshs.70,000/= reasonable compensation.

2. The appellant states in its grounds of appeal that the trial court failed to follow laid down principles in the assessment of general damages for personal injuries and thus awarded inordinarily high damages and urged this court to reduce the same to Kshs.40,000/=.

3. The Respondent in opposing the appeal submitted that the said award was reasonable and comparable to decided authorities and the trial court applied principles set out in precedents. Guided by the case **Kemfro Africa Ltd t/a Meru Express Services Ltd -vs- Lubia & Another (1982-88) KAR 727**, it was submitted that the court took into account all relevant factors and that the appellant has not demonstrated in what manner the trial court erred in law and fact in the assessment of the damages.

4. This court being the first appellate court is mandated to re-evaluate the evidence adduced

before the trial Magistrate and come up with its own findings. It is however not bound to follow the trial court's findings. It is to interrogate the damages awarded and find out whether the trial court in assessing the damages took into account irrelevant factors or left out of account relevant ones, or whether the amount was so inordinately low or so high that it must be a wholly erroneous estimate of damages. The above are the principles that an appellate court has to observe, as held in the case **Kemfro Africa Ltd (Supra)** and followed in numerous other decisions.

5. I have considered recent and comparable authorities with similar, or close to those injuries sustained by the respondent.

In **Eldoret Steel Mills Ltd -vs- Charles Owino, C.A No 81 of 2005 (2012) KLR** a sum of Kshs.80,000/= was confirmed on appeal in July 2012 for similar injuries, of soft tissue nature.

In **Kenya Tea Development Co. Ltd -vs- Josephine Kwamboka Omboto (2012) Kisii C.A. No. 307 of 2004**, for comparable injuries, the court confirmed an award of Kshs.100,000/= in November 2012.

In **Butt -vs- Khan, HCA No. 40 of 1997**, the Court of Appeal reiterated the principles that, generally, the trial courts assessment of damages should not be disturbed on appeal unless it is based on some incorrect reasoning, and so should not be disturbed, unless glaringly they are too high or too low.

6. The appellant in this present appeal has not pointed to this court how the trial court misapprehended the evidence in any material respect but only stated that the sum awarded was manifestly too high, and based its submissions on **Sokoro Saw Mills Ltd -vs- Grace Ndua Ndungu HCCA No. 99 of 2003** where for similar injuries the court awarded Kshs.30,000/= in 2006 and **Africa Highlands Produce Co. Ltd -vs- Francis B. Msosi Kericho HCA No. 22 of 2003** where the court awarded Kshs.40,000/=.

With respect to the learned counsel, the above decisions were made well over ten years ago. While assessing damages, the court has to consider the value of money, thus inflation which by all means has more than doubled between the years 2005 and 2016, meaning Kshs.40,000/= in the year 2005 is close to or more than Kshs. 80,000/= today. The trial court no doubt considered the inflation factor and value of money at the date of judgment.

7. In the **Kenya Tea Development** case and **Eldoret Steel Mills Ltd** case, the trial courts judgments were delivered in July 2002 and 2004 respectively as compared to the primary suit in this appeal where judgment was delivered in 2005.

Having considered the authorities cited and the injuries sustained, I find no reason to interfere with the trial courts award on damages. The appellant has failed to justify its submission that the award was inordinately high to warrant interference by this court.

For the above reasons, the appeal is dismissed with costs to the respondent.

Dated, signed and delivered in open this 7th day of April 2016.

JANET MULWA

JUDGE