



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 253 OF 2010**

*(Being an appeal from the judgment/decree of Hon. J. G. Kingori, SPM, Nakuru delivered on 26th August, 2010 in Nakuru CMCC No. 1065 of 2008)*

SILPHANUS KUMBE MURONDO.....APPELLANT

**VERSUS**

LAMEK MBAKA MOTEGI.....1<sup>ST</sup> RESPONDENT

LAWRENCE NYAMUMBO.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

The Appellant/Plaintiff appealed against the judgment of the lower court by a Memorandum of Appeal dated 11<sup>th</sup> September 2010, on a single ground -

***“that the learned trial magistrate erred in law and in fact in considering the appellant's injuries hence awarded the sum of Ksh 60,000/= general damages which was inordinately low as to be adequate compensation to the Appellant.”***

2. In civil claims the principle upon which an appellate court will interfere with the decision of the trial court is that the trial court applied the wrong principles of law or failed to take relevant consideration or took into consideration irrelevant consideration in arriving at its decision.

3. The Appellant's claim arose out of a road traffic accident upon which it was accepted that the Respondent (*Defendant*) was entirely liable for the accident. The only question before the trial court was, and this court, is the quantum of damages. In addition to soft tissue injuries sustained, the Appellant's most serious injury was the fracture of the “5<sup>th</sup> metacarpal bone of the right hand”. The soft tissue injuries were to the chest, right thigh and blunt injury to the right hip-joint.

4. Following the decision of the Court of Appeal in **MOHAMMED FARAH VS. KENYA PORTS AUTHORITY** Civil Appeal No. 138 at Mombasa in which that court upheld the decision of the trial court in which the court awarded shs 30,000/= in general damages – in July 1990, the learned trial magistrate awarded shs 60,000/= for the appellant's injuries.

5. The Appellant's counsel in his written submissions contended that the sum of shs 60,000/= in the year 2010 was too low for the injuries suffered by the Appellant. Counsel for the Respondent/Defendant maintained in his written submissions that the award of shs 60,000/= was in the circumstances adequate.

6. I have considered these submissions. I have also stated the principles upon which an appellate

court will interfere with the exercise of discretion by lower court.

7. It is correct that the Appellant suffered a fracture of the fifth metacarpal bone and other soft tissue injuries. It is also correct that these injuries according to the medical evidence of Dr. Omuyoma had already healed and the Appellant was stated to be in **“a fair state of health and his vital signs are within normal limits.”**

8. Whereas the Appellant's injuries had healed and his vital signs of good health were within normal limits in medical terms, the knowledge of a fracture of a bone will always live with the victim of the injury. Besides, a decision on damages made in 1990, even if the injuries were identical cannot be a fair or proper guide for assessment of damages some twenty (20) years later in August 2010.

9. Apart from the time span, other decisions and higher awards had been made on similar facts and injuries. In **KAZUNGU BIRYA NGOMBO VS. ATTORNEY-GENERAL** (Nairobi HCCC No. 4093 of 1991), the court awarded sh 100,000/=. In **JOSEPH MBURIA VS. JAMLIC FREDERICK KIRIMI** (Nairobi HCCC No. 860 of 2001) the court awarded sh 175,000/= on 8.11.2011. For injuries sustained on 1.09.2008, some seven years after the last mentioned decision, the award of Ksh 60,000/= was in light of those decisions not reasonable. There is always the question of inflation, where, as in this case, the injuries had healed.

10. Counsel for the Appellant suggested a figure of Sh 300,000/= as fair and reasonable in the circumstances. Taking into account the principle that the award of damages is not intended to punish the Defendant (*Respondent in this case*), but rather to compensate the injured party so far as money can be said to compensate for pain and suffering arising out of the Defendant/Respondent's negligence, and also taking into account that the last cited authority was decided in 2008, some two years before the decision in this case, I would award the Appellant a sum of shs 220,000/=.

11. I therefore set aside the sum of Shs 60,000/= awarded by the lower court, and substitute therefor the sum of Ksh 220,000/=.

12. As the appeal succeeds the Appellant will also have the costs in this Court, and the lower court.

13. There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 7<sup>th</sup> day of November, 2013**

**M. J. ANYARA EMUKULE**

**JUDGE**