



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT

Civil Appeal 426 of 2005

ISAAC GITAU NGUGI. APPELLANT

VERSUS

KAKUZI LIMITED. RESPONDENT

(From the judgment and decree of S M Mogoka in Thika CMCC No. 101 of 2003)

J U D G M E N T

This appeal was filed to challenge only the quantum of damages. Judgment on liability had been filed by consent of the parties.

A medical report written by Dr. Timothy Kagoda Byakika in respect to the relevant injuries sustained by the Appellant in this case show the following injuries: -

1. A broad shallow cut wound 5 cm on the dorsal side of left wrist which left an unsightly broad scar. The cut wound did not interfere with tendons and had healed well. It amounted to a partial disability of 2%. The patient was 24 years old.

In the case of **Esther Nyambura Munyiri Vs Christopher M Muteti & 2 others, in Nairobi HCCC No. 1780 of 1990** the Plaintiff had suffered the following injuries: -

1. Bruises to the neck, head, left ear, right shoulder, left hip and laceration on the forehead. He complained of headache, giddiness, forgetfulness, pain in the left hip and difficulty in hearing. The court awarded ksh.50,000/- as general damages for pain and suffering and loss of amenities.

In the case of **Francis Muiruri Kariuki Vs Samuel Njoroge Kimingi & Another, Nairobi HCCC No. 1313 of 1987**, the Plaintiff had suffered the following: -

1. A small cut on the right side of the head, deep cut wound on the right trunk and a cut wound on the lumbar region. He remained with scars on the right side of the head 2 cm long and on the back measuring 10 x 2 cm across. The scar on the back was hypertrophic.

The court awarded Ksh.50,000/- as general damages for pain and suffering and loss of amenities.

Comparing the injury sustained in this case before the court with those in the two cited cases, the court comes to the conclusion that the injuries in the cases are more in number and severity than that the single

injury of the Appellant in this case.

The only difference is in relation to the strength of the Kenya Shilling between 1991 or 1993 and 2005 when the lower court awarded a sum of Ksh.70,000/- which is about 40% more.

I have carefully considered the issue as to whether the sum awarded above is so inordinately low that it must be wholly erroneous. I however, come to the conclusion that the award of Ksh.70,000/- was a correct amount to award in respect to a single totally shallow injury on the dorsal side of the wrist. I find no lawful reason to interfere with the award.

In the circumstances this court finds that this appeal has no merit. It dismisses it with costs to the Respondent. Orders accordingly.

Dated and delivered at Nairobi this 8th day of October, 2012.

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D A ONYANCHA
JUDGE