



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: GICHERU, TUNOI & LAKHA, J.J.A.)
CIVIL APPEAL NO. 187 OF 1998
BETWEEN**

**KEBIRIGO GENERAL STORES LTDAPPELLANT
AND
MARIA WAMBURA MWITARESPONDENT**

**(Appeal from the Judgment of the High Court of Kenya at Kisii
(Hon. Mr. Justice Mbaluto) dated the 8th day of April,
1998
in
H.C.C.C. NO. 206 OF 1995)

JUDGMENT OF THE COURT**

This is an appeal by the unsuccessful defendant from the judgment of the superior court (Mbaluto, J.) given on 8 April, 1998 whereby he awarded the sum of **Shs. 650,000/= as general damages, Shs. 640/= as special damages, Shs. 234,000/= as loss of future earnings and Shs. 90,000/= costs of future earnings making a total sum of Shs. 974,640/=** with costs and interest.

The appeal raises only two points, the first in respect of the refusal by the learned judge to grant an adjournment. This is essentially a matter of discretion with which this Court will not interfere unless it is shown that the learned judge was plainly wrong or that the discretion has been wrongly exercised. We have not been persuaded that the learned judge erred in principle or otherwise. This ground fails.

The other ground urged was in relation to the question of damages. We have heard nothing in support of the appeal on this ground to satisfy us that the award of damages is so inordinately high as to warrant an interference by this Court. No comparable cases were cited on behalf of the appellant and those referred to by the learned judges are not shown to be inapplicable. All in all, we are satisfied that the respondent on balance of probabilities discharged the burden on her and no grounds have been advanced to justify any interference by this Court. The injuries suffered by the plainFtoirf f tahree rseearsioonuss .above stated this appeal has no merit. It is dismissed with costs.

Dated and delivered at Kisumu this 24th day of November, 1999.

J.E. GICHERU

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is
a true copy of the original.

DEPUTY REGISTRAR