



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: SHAH, LAKHA & OWUOR, JJ.A.)

CIVIL APPEAL NO. 74 OF 1998

BETWEEN

MOSES KIPKOLUM KOGO APPELLANT

AND

DAVID MALAKWEN RESPONDENT

(Being an appeal from the Judgment/Decree of the High Court of Kenya at Nairobi (Justice J.V. Juma) dated the 31st of March, 1998

in

H.C.C.C. NO. 4925 OF 1989)

JUDGMENT OF THE COURT

This is an appeal by the plaintiff from a judgment of the superior court (Juma, J.) given on March 31, 1998 whereby he entered judgment for the plaintiff in the sum of *K.Shs.801,753/=*.

The facts giving rise to this appeal may be briefly stated. The plaintiff was travelling as a passenger in the defendant's motor vehicle along Kisumu/Nairobi Road around May 25, 1988 when the defendant's vehicle collided with a parked lorry. As a result, the plaintiff was seriously injured and had a phonological disorder of speech resulting from impaired tongue movements due to a permanent injury in the segment of motor speech area of the brain. His reading was also affected by the injury to his brain.

After a full trial and having considered all that was before him, the learned judge at first instance awarded the plaintiff a total sum of *K.Shs.750,000/=* for pain, suffering and loss of amenities.

Being dissatisfied, the plaintiff has appealed to this Court and two grounds of appeal have been preferred. First, it is contended that the learned judge erred in dismissing the appellant's claim for loss of earnings. But there was no evidence for such a loss and, in our judgment, the learned judge was quite right in disallowing this claim for lack of proof.

The second complaint raised in the memorandum of appeal is that the learned judge's decision is against the weight of the evidence. We hardly deal with such a ground of appeal. **Rule 84** of the Rules of this Court requires that a memorandum of appeal shall set forth concisely the ground of objection to the

decision appealed against, specifying the points which are alleged to have been wrongly decided. This rule has been contravened. The proposal ground is vague and cannot be entertained. As was said in **RIANO VS. R. 1960 E.A. 960** when an appellant is represented by Counsel, he will not be allowed to argue any point under a general ground of appeal.

In any event, in the discharge of our duty as the first appellate court, we have subjected the whole of the evidence to a fresh and exhaustive scrutiny and are satisfied that there was no error in principle or otherwise committed by the learned judge. His decision is plainly right. For this reason, the appeal fails and it is dismissed with costs.

Dated and delivered at Nairobi this 5th day of November, 1998.

A.B. SHAH

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR