



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAIROBI

(CORAM: GICHERU, OMOLO & PALL, J.J.A.)  
CIVIL APPEAL NO. 33 OF 1996

BETWEEN

JOEL KYALO MWEI ..... APPELLANT

AND

PAUL NGEI NZIOKA ..... RESPONDENT

(Appeal from the Judgment of the High Court of Kenya at  
Machakos (Hon. Justice J. L. A. Osiero) dated the  
22nd day of November, 1995

in

H.C.C.C. NO. 21 OF 1994)

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**JUDGMENT OF THE COURT**

On the material which was placed before the learned trial Judge and which is now before us, we are satisfied, on our own independent consideration of that material that the respondent suffered the injuries he alleged in his plaint. The medical report showed the respondent suffered head injuries; through the nature of the head injuries was not specified, the respondent himself said he lost consciousness for three hours. He had persistent headaches. These were facts from which the learned Judge was entitled to infer that the respondent had suffered a concussion. The same must go for the sprained ankle. The medical report which was produced before the Judge, and produced without any context, showed that the respondent had a painful left leg especially after walking for a long distance. We think there is no merit in any of the contentions made by Mr. Itonga for the appellant regarding the nature of the injuries sustained by the respondent.

On damages, we can only interfere with the award of the Judge if it be shown to us that in arriving at the figure he awarded, the learned Judge took into account an irrelevant matter which he ought not to have considered, or that he failed to take into account a relevant matter which he ought to have taken into account or short of these two, that the award is so inordinately high or low that it represents a wholly erroneous estimate of the damages. We are not satisfied that the learned Judge committed any of these sins. We fail to see how a concussion with resultant persistent head-aches can be called "mere soft tissue" injury; nor in our view can a sprained ankle be so described. We see no basis upon which we can interfere with the learned Judge's assessment of damages and that being our view of the matter, this appeal fails, and we order that it be and is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 17th day of March, 1997.

J. E. GICHERU

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

G. S. PALL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR