



REPUBLIC OF KENYA



KENYA LAW

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**Blue Nile Rolling Mills v Mululu (Appeal 13 of 2018)
[2023] KEELRC 195 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 195 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 13 OF 2018
J RIKA, J
JANUARY 31, 2023
FORMERLY NAIROBI HIGH COURT CIVIL APPEAL NUMBER 179 OF 2016**

BETWEEN

BLUE NILE ROLLING MILLS APPELLANT

AND

PHILIP KILONZO MULULU RESPONDENT

*(From the original Judgment of Mr. Onsarigo, Hon.
Chief Magistrate, Thika C.M.C.C No. 668 of 2013)*

JUDGMENT

1. The Respondent was an Employee of the Appellant.
2. He presented a Claim against the Appellant at Thika Chief Magistrate's Court for work injury compensation, on 18th October 2013.
3. He pleaded that he was injured on or about 22nd June 2013, while on duty, sustaining colles fracture to his right wrist and cut wound on the right forearm.
4. Consent Judgment was entered in the Trial Court on liability, in the ratio of 80:20 in favour of the Respondent herein.
5. Parties filed Submissions on the quantum of general damages, and upon considering those Submissions, the Trial Court, in a Judgment dated 15th March 2016, awarded: -
 - a. General Damages at Kshs. 450,000.
 - b. Special damages at Kshs. 3,000.Total...Kshs. 453,000.



Less 20% liability... Kshs. 362,400.

- c. Costs and interest.
6. The Appellant filed this Appeal on 13th April 2016 at the High Court Nairobi, under registration Number 176 of 2016. The Appeal was transferred to the E&LRC by the High Court, on 23rd July 2018. There are 3 Grounds in the Memorandum of Appeal: -
 - a. The sum of Kshs. 450,000 in general damages was excessive and ought to be reduced.
 - b. The sum is not consistent with the level of damages awarded in similar cases.
 - c. The Trial Court did not consider submissions made by the Appellant.
7. Parties agreed to have the Appeal considered on the strength of the Record. They confirmed filing and exchange of their Submissions at the last mention, on 7th October 2022.

The Court Finds:-

8. The Respondent urged the Trial Court to award general damages at Kshs. 700,000, relying on the High Court [Mwera J] decision, *Teresia Wambui Kamau v. Daniel Njoroge Gichumbi*, dated 19th November 1992. Teresia suffered fracture of left arm and deep cut on the right foot, and was awarded general damages for pain, suffering and loss of amenities at Kshs. 180,000.
9. The Appellant proposed to pay the Respondent general damages at Kshs. 150,000, relying on 3 decisions of the High Court: -
 - a. *Nepbat Waitathu Muiruri v. Geoffrey Gaitbura & Another* [Nairobi H.C.C.C No. 1973 of 1992] where the Plaintiff suffered sprains on the right knee, right hip joint and multiple lacerations, and was awarded general damages at Kshs. 100,000. Award was on 20th February 1993.
 - b. *Denys Mabwaka Khabusi v. Mawingo Bus Services Limited & Another* [Nairobi H.C.C.C No. 2707 of 1990] where the Plaintiff suffered cut wounds on the right arm, right leg and face, and was awarded Kshs. 120,000 in general damages. Award was made on 24th September 1991.
 - c. *Zachary Mugambi v. Abdi K. Farah* [Nairobi H.C.C.C No. 1346 of 1984] where the Plaintiff sustained severe contusion of the spine, resulting in muscle spasms and loss of normal curvature, with long-term back pains, and was awarded general damages at Kshs. 150,000, on 8th February 1991.
10. In *Coast Bus Service Limited v. Sisco E. Murunga Ndanyi & 2 Others*, [Court of Appeal No. 192 of 1992], it was held that: -

“ An Appellate Court will not disturb an award of damages, unless it is so inordinately high or low, as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on the wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which is inordinately high or low.”
11. The Trial Court’s award of Kshs. 450,000 was not so inordinately high or low, representing an erroneous estimate.



12. The Court considered decisions of the High Court, where similar injuries were involved. General damages for pain suffering and loss of amenities were quantified at between Kshs. 100,000 to Kshs. 180,000.
13. But all these awards were made over 10 years, before the award made by the Trial Court, in 2013. The value of the Kshs. has not been static in those years, and the purchasing power has dwindled, consumer price indices have shifted, and inflationary rates have not remained in the same place. The Court does not think a sum of Kshs. 450,000 is significantly at odds with a sum of Kshs. 150,000, made 10 or more years back.
14. The Court of Appeal in *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v. Augustine Munyao Kioko* [2006] eKLR, held that awarding of damages is essentially a matter of opinion and experience of the decision-maker. No one can predicate with complete assurance, that the award made by another is wrong.
15. The Appellant has not shown that the Trial Court reached at an award of general damages of Kshs. 450,000 unreasonably. The Trial Court considered decisions of the High Court presented by the Parties, and observed that, “ taking into account the incidence of inflation and the time the above authorities were decided, I believe an award of Kshs. 450,000 as general damages, is sufficient compensation.”
16. The Court has no reason to disturb the Judgment of the Trial Court.
It is ordered:-
 - a. The Appeal is declined.
 - b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA
JUDGE

