



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MURANG'A

CIVIL APPEAL NO. 70 OF 2013

PAUL GATHERU MUREITHI.....APPELLANT

VERSUS

AA GROWERS LIMITED.....RESPONDENT

[Being an appeal from the original judgment of S. Mbungi, Senior Principal Magistrate,

in Kigumo PMCC No. 144 of 2010 delivered on 15th June 2012]

JUDGMENT

1. This appeal is on *quantum of damages* only.
2. None of the disputants challenged the findings on *liability*. The learned trial magistrate found that the respondent contributed 70% to the *road traffic accident*. The appellant on the other hand was liable for 30% in *negligence*.
3. The learned trial magistrate assessed general damages for *pain and suffering* at Kshs 50,000; and, *special damages* at Kshs 700. The net award came to Kshs 35,490. The appellant was also granted interest and costs.
4. The memorandum of appeal raises *four* grounds. They can be compressed into *one*: That the learned trial magistrate employed wrong *principles* in assessing damages.
5. Learned counsel for the appellant relied on the written submissions filed on 12th February 2019. Learned counsel submitted that in view of the injuries suffered by the appellant, the award was *inordinately low* as to disclose an *error of principle*.
6. The appeal is contested by the respondent. The respondent's submissions were filed on 20th August 2018. They are on a two-strand. First, that the appellant suffered *minor soft tissue injuries*. Secondly, that there is no basis for the appellate court to interfere with the *discretion* of the learned trial magistrate.
7. This is a first appeal to the High Court. It is an appeal on both *facts* and the *law*. I have *re-evaluated* the evidence and reached independent conclusions. I am cognizant that I neither saw nor heard the witnesses. ***Peters v Sunday Post Limited*** [1958] E.A 424, ***Selle v Associated Motor Boat Company Ltd*** [1968] E.A 123.
8. As a general rule, an appellate court will *not* interfere with quantum of damages unless the award is *so high* or *inordinately low*; or, founded on *wrong* principles. ***Butt v Khan*** [1982-88] KAR 1, ***Arkay Industries Ltd v Amani*** [1990] KLR 309.
9. At paragraph 5 of the *plaint*, the appellant pleaded *three* injuries: Soft tissue injury to the neck; dislocation of the right thumb; and, soft tissue injury to the chest. When he took to the stand he stated:

"I was injured on the neck, right thumb finger among other injuries. The pain on the neck persisted"

10. The appellant was admitted to Thika Level 5 Hospital and discharged on the same day. Dr. Rose Chakago (PW3) worked there. She said:

"He had left lung contusion with dislocation of the right thumb secondary to a road traffic accident. He was put on antibiotic,

analgesics and [anti] tetanus medication.....it is normal for one to develop pneumonia a day after a road traffic accident.”

11. Clearly, the appellant suffered *minor soft tissue injuries* which had *healed*. There was *no* permanent injury. The alleged injury to the neck was *not* proved. The treatment given comprised of a prescription of antibiotics, anti-tetanus medication and analgesics.

12. I have perused some precedents: In ***Peter Kahugu & another v Ongaro***, High Court, Nairobi, Civil Appeal 676 of 2000 [2004] eKLR, Kshs 80,000 was awarded for multiple soft tissue injuries. In ***Timsales Ltd v Penina Omondi***, High Court, Nakuru, Civil Appeal 192 of 2008 [2011] eKLR, the respondent suffered a deep cut wound on the left index finger and severe soft tissue injuries. The High Court reduced the general damages to Kshs 50,000.

13. I am hard pressed to say that the general damages awarded by the lower court were *inordinately low*; or, that the award was founded on *wrong principles*. I will *not* disturb it.

14. Special damages *must* be *specifically* pleaded; and, *strictly* proved. ***Kampala City Council v Nakaye*** [1972] E.A 446. I concur with the learned trial magistrate that the appellant only *proved* the sum of Kshs 700.

15. The upshot is that the entire appeal is devoid of merit. It is *dismissed*.

16. Costs follow the event and are at the *discretion* of the court. I grant the appellant costs and interest in the *lower court*. In the *interests of justice* I order that each party shall bear its *own* costs in the *appeal*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 5th day of March 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:-

No appearance by counsel for the appellant.

No appearance by counsel for the respondent.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.