



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 66 OF 2013

SAMWEL ANDAYI ANGANYAPLAINTIFF

VERSUS

LUCY WANGESHI1ST DEFENDANT

KIBIRI FERDINAND KINYANJUI2ND DEFENDANT

JUDGMENT

1. This suit is originated by way of an Amended Plaint dated 15/05/2014. It seeks the following prayers:

- a. Special damages Ksh 412,015/=
- b. General Damages
- c. Interest on both special and general damages at court rates
- d. Any other or further relief or remedy deemed appropriate.

2. The Court permitted the Plaintiff to serve through substituted service by advertising in the Daily Nation newspaper when it proved impossible to serve the Defendants personally.

3. The Defendants failed to enter appearance despite the service. Interlocutory judgment was, consequently, entered. Formal proof followed.

4. The Plaintiff testified during the formal proof. He also called Dr. Obed Omuyoma to testify on his behalf.

5. Briefly, the Plaintiff testified that on 30/07/2010, he boarded a matatu registration number KBA 868H heading to Nakuru. The matatu is owned by the two Defendants and was being driven by Amos Maina Wainaina (now deceased). The Plaintiff testified that the matatu was driven dangerously and recklessly – including speeding and undue regard to the conditions of the road and other road users. The result was that the matatu overturned at a place called Nyamathi along the Nairobi-Naivasha Road. As a result, the Plaintiff sustained severe injuries.

6. The Plaintiff testified that he was admitted at Kenyatta National Hospital for more than 3 months. He incurred costs amounting to Kshs. 412,015/-. He produced receipts marked as Exhibits 16(i) to (vi) evidencing these payments.

7. Dr. Omuyoma detailed the injuries suffered by the Plaintiff as a result of the accident. The doctor examined the Plaintiff on 21/11/2011 and that examination formed the basis of his report which he produced in Court. The same was marked as Exhibit 15. Dr. Omuyoma testified that, in addition to examining the Plaintiff, he relied on the following three documents to form his opinion:

- a. Discharge summary from Kenyatta National Hospital;
- b. P3 Form filled at Nairobi Police Area;
- c. X-ray films from Kenyatta National Hospital; and
- d. Emergency treatment records from Kenyatta National Hospital

8. The doctor catalogued the injuries suffered by the Plaintiff as follows:

- a. Head injury with brain concussion;
- b. Fracture of the right tibia and fibula leading to below the knee amputation;
- c. Fracture of the left tibia and fibula leading to below the knee amputation.

9. In short, in addition to the head concussion which led to brief loss of consciousness, the Plaintiff had to have both his legs amputated below the knee as a result of the accident. The doctor concluded that the Plaintiff suffered 50% permanent disability. In addition, he testified that the Plaintiff will require prosthetic legs each of which costs about Kshs. 100,000/-. Finally the doctor testified that the Plaintiff's continued medical problems as a result of the accident include urinary incontinence and frequent headaches as a result of the concussion.

10. Based on these injuries, Counsel for the Plaintiff recommended that general damages for pain, suffering and loss of amenities be assessed at Kshs. 6 million. He relied on ***Peninah Mboje Mwabili v Kenya Power & Company Limited (Voi High Court Civil Case No. 2 of 2015)***. In that case, the Plaintiff lost both her legs to amputation as a result of electrocution blamed on the Defendant. She was admitted in hospital for 3 months. Kamau J. awarded Kshs. 5 million for pain, suffering and loss of amenities. Since this was in 2015, the Plaintiff's counsel argues that, taking into account inflationary rates, an award of Kshs. 6 million is reasonable.

11. In ***Shabani vs City Council of Nairobi (1985) KLR 516*** the Court of Appeal had the following to say regarding the paramount need for Courts to attempt to give comparable awards in like cases:

There is no doubt that, some degree of uniformity must be sought in the award of damages and the best guide in this respect is...to have regard to recent award in comparable cases in the local courts.

12. The case cited by the Plaintiff (***Peninah Mboje Mwabili (supra)***) is almost on all fours with the present case in terms of physical injuries suffered by the Plaintiff. In both cases, the Plaintiff had to have double amputation due to the injuries suffered. It seems prudent to take into account this persuasive authority. I have also considered other cases involving amputations.

13. ***Everlyne Shivachi vs Thara Trading Co Ltd 2013 eKLR*** involved amputation of both legs but was coupled with other severe injuries including a fracture of both arms. The Plaintiff there was hospitalized for five-and-a-half months. She was awarded Kshs. 5,000,000. This was in 2013.

14. ***Macharia Francis Mundui & another v Joel Wanje [2017] eKLR*** involved the amputation of one leg following a road traffic accident. The Plaintiff suffered other injuries as well including a complete fracture of the left femur and Extensive avulsion wound on the right thigh. The Court awarded Kshs. 3,000,000/- in 2017.

15. Finally in ***Cosmas Mutiso Muema vs Kenya Road Transporters Limited & Another 2014] eKLR*** the Court awarded general damages for pain, suffering and loss of amenities in the sum of Kshs. 2,000,000/-. The Plaintiff in that case had suffered a crushed left leading to amputation below the knee, fractures to the cervical spine, fractures to the skull, fractures to the ribs, dislocation to the right knee and vertebrae amongst other injuries. The award was in 2014.

16. Taking all these comparative awards into account and taking into consideration the other injuries suffered by the Plaintiff, it is my opinion that the award of Kshs. 6,000,000/- suggested by the Plaintiff's counsel is, indeed, a reasonable award. I have taken into consideration the long term effects of the double amputation including its effects on mobility and dexterity (even after prosthesis); the limitation on economic activities the Plaintiff can engage in; as well as the traumatic and psychological effects. I hereby award it as general damages for pain, suffering and loss of amenities.

17. The other awards I will grant are Kshs. 200,000/- for the artificial limbs. This was the conservative figure given by the doctor and I accept it. I will also award the special damages which were all proved vide receipts. The total amount of special damages as proved is Kshs. 412,015/-.

18. Consequently, the Court enters judgment for the Plaintiff against the Defendants jointly and severally as follows:

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|-----------------------------|----------------------------------|
| a. General damages - | Kshs. 6,000,000.00 |
| b. Special damages - | Kshs. 412,015.00 |
| c. Cost of artificial limbs | Kshs. 200,000.00 |
| Total | <u>Kshs. 6,612,015.00</u> |

19. The Plaintiff shall also have the costs of this suit.

20. Orders accordingly.

Dated and delivered at Nakuru this 31st day of January, 2019

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JOEL NGUGI

JUDGE