



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 478 OF 2007

LUCY NJERI NGUGI.....1ST PLAINTIFF

EAGLE AFRICA INSURANCE BROKERS LTD

(SUCCESSOR TO ALEXANDER FORBES

INSURANCE BROKERS KENYA LTD).....2ND PLAINTIFF

VERSUS

AVENUE HEALTHCARE LTD.....1ST DEFENDANT

DR RAJIV SHORI.....2ND DEFENDANT

DR ANDREW KEKOVOLE.....3RD DEFENDANT

JUDGEMENT

1. The Plaintiffs instituted this suit by way of a Plaint dated 8th June, 2007. It was averred that the 2nd Plaintiff had entered into a contractual arrangement with the 1st Defendant for provision of health services and therefore owed health care consumers' a duty of care. The 1st Plaintiff averred that she was owed an implied and /or express duty of care by the defendants in the event of consultation and seeking medical attention. The 1st Plaintiff avers that she visited the 1st Defendant on 4th November, 2004 having developed a cold and despite her not feeling/manifesting malaria symptoms, the 2nd Defendant carried out a malaria test which was negative but nonetheless he prescribed *fansidar* tablets and upon completing the said dose, the 1st Plaintiff developed reactions whereof her palms and feet started itching endlessly and continuously.

2. It is further averred that on 14th November, 2004, the 1st Plaintiff returned to the 1st Defendant for further medical consultation when she was attended by the 3rd Defendant who diagnosed her with allergic reaction and prescribed anti-allergy drugs. That after taking the drugs, the 1st Plaintiff suffered a painful throat infection which inhibited swallowing of any solid food and on going back to the 1st Defendant on 17th November, 2004, the 3rd Defendant diagnosed her with a fungal infection. She avers that on 20th November, 2004 after ingesting the full dose of the prescribed drugs, she experienced further reactions and decided to consult an independent medical consultant at Aga Khan Hospital who diagnosed her with Steven Johnson Syndrome whereupon she was admitted for one week and thereafter monitored for one month as an outpatient.

3. The Plaintiffs contend that the defendants were grossly negligent in dispensing and/or administering the treatment. The particulars of negligence of the 1st – 3rd Defendants are set out in the Plaint. These include; misdiagnosis and failure to prescribe the appropriate medicine, prescribing *fansidar* drugs when the 1st Plaintiff did not have malaria symptoms and failure by the Defendants to refer the 1st Plaintiff to a specialist. As a result of the foregoing, the 1st Plaintiff avers that she suffered

- a) lip and oral ulceration,
- b) beefy tongue,
- c) tender erythematous lesions on palms, feet and soles ,and
- d) tender erythematous lesions, limbs and vulva.

4. The 1st Plaintiff avers that after the injuries healed, she was left with ugly permanent black spots all over the body which turned white on healing and left her with a temporary disability in walking for one month due to shedding of skin.

5. The Plaintiffs therefore prayed for judgment against the Defendants as follows;

- a) Special damages
- b) General damages for pain and suffering
- c) Punitive damages
- d) Future medical costs
- e) Costs of the suit
- f) Interest on (a) and (b) above.

6. The Defendants filed a joint Statement of Defence dated 1st August, 2007. They denied the particulars of negligence but admitted having attended to the 1st Plaintiff on the particular dates. It was averred that on 4th November, 2004 the 1st plaintiff did not give history of any known drug allergies and that even though examination revealed no malarial parasite on blood, she was diagnosed with upper respiratory tract infection with clinical malaria following which, prescribed treatment with duracef, nise, fansidar and betamine mouth wash was made. It was averred that on 14th November, 2004, she was diagnosed with allergic dermatitis and was treated with rhizin, celestamine, betavit tabs and merocaine lozenges for pharyngitis. That on 17th November, 2004 investigations revealed that her vital signs were within normal though she had oral thrush and dehydration and was treated with betadine mouth wash, daktarin oral gel and ketaconazole.

7. The Defendants denied that the matters complained of by the Plaintiffs were caused by any negligence or default on their part and stated that they performed their respective duties with the required professional skills. They averred that the curative procedures adopted were explained to, and consented to by the 1st Plaintiff and at no time was she assured that the drugs did not have side effects. They further averred that “*Stephen Johnson Syndrome*” is a rare and slow developing condition and for that reason, there was no negligence on their part in failing to diagnose the same.

8. The defendants denied liability, the particulars of injuries and loss.

9. At the hearing of the suit, the Plaintiff called three witnesses whereas the defendants called two witnesses.

10. **DR. JAPHETH AMUGANDA**, a medical doctor, testified as **PW1**. It was his testimony that he examined the 1st Plaintiff on 24/11/2012 based on the medical history and the treatment she received from the 2nd and 3rd defendants at the first defendant and Aga Khan Hospitals. He described the medical history from both hospitals and testified that the 1st Plaintiff complained of blisters on both feet when she walks for long distances and visible veins on her feet which he says is as a result of peeling of the skin due to the allergic reaction that she suffered. He stated that the 1st plaintiff was also complaining of whitish spots on her chest, abdomen and the legs. When he examined her, she was in good condition and though she had healed, she had scattered spots on the back and legs with healed black spots on both thighs and that the skin on both feet was worn with visible veins. His conclusion was that the reaction had caused the hypo pigmented spots on the chest, abdomen, the back and the legs. The black spots on the thighs and the thinning of the sole of both feet made her vulnerable to blisters on walking for long. It was also his evidence that she suffered from psychological trauma.

11. On cross-examination, PW1 testified that of all the drugs that were prescribed to the 1st plaintiff he would zero in on fansidar as the drug that caused the reaction, and if the 1st plaintiff suffered from chicken pox if any, it was mild and could not have caused peeling of skin and whitish spots. He stated that Aclovir is used for a skin condition called Herpes and that drug reaction is identified through history and it's difficult to identify through tests. He could not remember whether the 1st Plaintiff mentioned to him about the “*Steven Johnson Syndrome*” and that if she was suffering from it, it must have been mild or in the early stages.

12. The 1st Plaintiff **LUCY NJERI NGUGI** testified as **PW2** and stated that she visited the 1st Defendant on 4th November, 2004 with a problem of common cold, headache, sore throat and blocking of the nose. She was attended to by Dr. Rajiv Shori, the 2nd Defendant who advised her to take a malarial test despite her protest that she has never had malaria before. She further stated that though the test turned out to be negative, the 2nd Defendant prescribed malaria drugs which included fansidar and mouth wash. Upon taking the drugs, the cold cleared but she developed a new problem of itchy palms and feet sore as a result of which she went back to the 1st Defendant on 14th November, 2004. when she was attended to by the 3rd Defendant, who diagnosed her with allergic dermatitis and made the necessary prescription. That after a few days, her mouth developed painful sores and she could not eat solid food. She therefore went back to the 1st Defendant on 17th November, 2004 since her condition had deteriorated. She was attended to by the 3rd Defendant who diagnosed her as suffering from fungal infection and prescribed anti-fungal infection drugs and advised her to stop taking the previous drugs.

13. It was her evidence that upon taking the drugs, her condition deteriorated to the extent that she could not walk or hold anything in her hands and on 20th November, 2004 she was taken to Aga Khan Hospital where she was hospitalized for one week. After giving the history of the previous medication, she was diagnosed with cutic drug reaction and varicella infection. Upon discharge, she had black spots on her body and had shed the skin on the palms and feet. She did not work for one month.

14. In cross-examination, she testified that whilst at Agha Khan hospital, she was told that she was suffering from Steven Johnson Syndrome. She also said that the 3rd Defendant was very brief with her when he treated her. It was her evidence that after she was discharged from Agha Khan, she went back to the Defendants to explain to them what had happened to her but no tests were carried out.

15. **JULIUS MURIITHI GAKURE** (PW3) is an accountant working with the 2nd Plaintiff. He produced a computation of the salary that was paid to the 1st Plaintiff for the days she did not work. He also produced the invoice for the medical bill at Agha Khan hospital for shs. 136,328/=. In cross examination, he stated that the invoice was not paid by the 2nd plaintiff and he did not know whether the invoice was paid. He also did not have evidence of how much they were paying the 1st Plaintiff. He also told the court that they did not engage someone else for the period the 1st Plaintiff was ill but rather he made alternative arrangements for her work to go on.

16. **DR. PAUL WANGAI**, the medical quality manager of the 1st Defendant testified as **DW1**. It is his evidence that when the 1st Plaintiff visited their hospital on 4/11/2004, she had symptoms similar to those of malaria even though the microscopic test for malaria was negative. She was put on fansidar, duracif, and betamine mouthwash. She was treated for malaria and upper respiratory infection. On her second visit, on 14/11/2004 she had a generalized rash, inflamed throat but her vital signs were normal. The doctor prescribed rhizin, celestamine, betavit tablet and merocaine lozeng. That the plaintiff went back on 17/11/2004 when the 3rd Defendant noted that the skin rash had improved but she had oral thrush and he prescribed betamine mouth wash, oral gel and ketoconazole. He testified that Steven Johnson Syndrome is a severe form of allergies which can be detected through clinical diagnosis (by seeing the patient) and that when the patient was seen at the 1st Defendant hospital, she did not have Steven Johnson Syndrome, but they treated the prevailing symptoms as at that time.

17. He further testified that upon review of the treatment report from Agha Khan Hospital, he noted that the tests done showed herpes zoster which is a virus that causes chicken pox and the patient was put on Aclovir which is an anti viral used to treat the virus that causes chicken pox. He stated that chicken pox manifests with similar symptoms with those of herpes simplex which are; mucus membrane inflammation with blistering of the skin only that Herpes is usually in the genital area. He also told the court that the records from Agha Khan shows that the patient was not treated for Steven Johnson Syndrome.

18. In cross-examination, he stated that the 1st Plaintiff was not asked whether she had allergies. He denied that the patient could have been in her initial stages of Steven Johnson Syndrome. According to him, they did not investigate the allergies that were noted at their hospital as allergies can only be detected from the symptoms as there are no tests which can be done to pick out a case of allergy. He also told the court that the fact that a microscopic malaria test is negative does not mean that a patient does not have malaria.

19. The 3rd Defendant, **DR. ANDREW KEKOVOLE** testified as **DW2**. His testimony was that on 14/11/2004 the 1st Plaintiff went to the 1st Defendant with a 3 days history of generalised rash and a sore throat. Her vital signs were good on examination but she had a mildly inflamed throat and muscular rash. He formed the impression that she was suffering from allergic dermatitis and prescribed rhizin, celestamine and betavits to boost her immune system. On 17/11/2004, he also examined her, and by then, the rash was going down but she had developed sores in her mouth. He addressed the oral thrush by prescribing ketosonole, gel and a mouth wash. After that he did not see the 1st plaintiff again but he was later informed that she had been admitted at Agha Khan hospital having been diagnosed with Steven Johnson Syndrome.

20. He testified that at the time the 1st plaintiff was being treated at the 1st defendant, she did not show signs of Steven Johnson Syndrome. He further testified that the report from Agha Khan hospital does not support the symptoms of Steven Johnson Syndrome in that if one has Steven Johnson Syndrome the white cells should be high but in her case they were normal. That report from Agha Khan also shows that she had chicken pox, which is more aggressive in adults and Agha Khan hospital was treating her for chicken pox, and drug reaction. He concluded that Agha Khan gave her the same drugs they had given her at the first defendant.

21. He testified that from the medical report from Agha Khan, there is no evidence that they were treating her for Steven Johnson Syndrome but, chicken pox and herpes were confirmed. She was also not diagnosed with malaria. He concluded that at Agha Khan they did not establish any drug that could have caused the drug reaction. He denied that he was negligent in treating a patient based on symptoms. According to him and looking at the documents from Agha Khan they were treating her for herpes which was an unrelated disease from what they were treating her at the first defendant. In cross-examination, he stated that the only common thing between allergic dermatitis and Steven Johnson Syndrome is that they are both allergic but the treatment is different.

22. At the close of the defence case, Counsels filed written submissions which I have duly considered.

23. The Plaintiffs filed joint submissions dated 23rd May, 2017 and singled out four issues for determination which are;

- 1) were the plaintiffs owed a duty of care by the Defendants,
- 2) Did the Defendants breach the duty of care,
- 3) Can the injuries suffered by the Plaintiffs be attributed to the Defendants and are
- 4) The Plaintiffs entitled to the reliefs sought?

24. On the first issue, it has not been denied that the 2nd and 3rd defendants were employees of the first defendant. The first plaintiff was an employee of the 2nd plaintiff, who had taken a medical scheme with the 1st defendant. The 1st plaintiff made three visits to the first defendant and he was attended to, by the 2nd and 3rd defendants. That fact has not been denied by the defendants. In fact the same has been admitted. It therefore follows that a patient – doctor relationship existed between the first plaintiff and the 2nd and 3rd defendants. In the

case of Ricarda Njoki Wahome (suing as administrator of the estate of the late Wahome Mutahi (deceased) Vs Attorney General & 2 Others (2015 eKLR) the court held;

“a duty of care arises once a doctor or other health care professional agrees to diagnose or treat a patient. That professional assumes a duty of care towards that patient.”

25. On whether the Defendants breached the duty of care, it was submitted that the 2nd and 3rd Defendants were incompetent and poorly equipped to treat the 1st Plaintiff. That the Competence and qualification of the Defendants was not proven since during cross – examination, the Defence witnesses admitted that there was nothing placed before court to have their qualifications assessed. The plaintiff therefore concluded that the Defendants were not competent and qualified to treat the 1st plaintiff and relied on the **Evidence Act, section 109** that, *“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”*.

26. It was further submitted that the Defendants failed to diagnose the 1st Plaintiff thoroughly in that after the malaria test turned out to be negative, the Defendants ought to have carried out further tests to establish what the patient was suffering from, which failure the plaintiffs submitted, was out of negligence and incompetence. The Plaintiffs relied on the case of **Grace Wairimu Kuraru & 4 others v Registered Trustees of Sisters of Mercy t/a The Mater Hospital [2015] eKLR** where the court observed that-

“Another issue which arose, is that the medical history of the Deceased was taken by a Casualty Doctor who clearly did little, as the clinical notes show, to establish the patient’s allergies. Even Dr. Ngugi who prescribed the drug “tritace” appears not to have instructed the casualty Doctor to establish the patient’s allergies. Nor did he himself do so, reading either the clinical notes availed in evidence or in his testimony in court. Notwithstanding his good efforts to controvert the effects that the drug caused, it nevertheless remains clear that his failure to fully dig out was a major contribution in the negligence that finally led to the cases of the Deceased’s death.”

27. On their part, the defendants submitted that negative malaria results does not rule out the presence of malaria parasites in the blood which according to them is a scientific fact and the same was not controverted by the plaintiffs. That the treatment was in the interest of the patient as she was from a malaria prone zone and it was meant to prevent complications in case of malaria. It was also submitted that some of the drugs prescribed on the 2nd visit are similar to the ones prescribed at Aga Khan Hospital and if the 1st plaintiff had been suffering from drug reaction the same could have been detected on the 2nd visit. The defendants therefore submitted that by prescribing the malaria drugs, they were not negligent. They relied on the case of **Bolam Vs Friern Hospital Management Committee (1957) 1 WLR 583 thus;**

“A medical professional is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art...putting it the other way round, a man is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view”

28. They also relied on **Herman Nyangala Tsuma V Kenya Hospital Association T/A The Nairobi Hospital & 2 Others[2012]eKLR** where the court quoted **Hunter V Harley (1955) SC 200** in which the House of Lords held that;

“in the realm of diagnosis and treatment there is ample scope for genuine differences of opinion and one man clearly is not negligent merely because his conclusion differs from that of other men..”

29. The defendants therefore submitted that, accordingly, the true test of establishing negligence on the part of a doctor is whether he has been proved to have been guilty of such failure as no doctor ordinarily would be guilty of acting within the ordinary scope.

30. On the standard of proof, it was submitted that it is slightly higher than that of a balance of probability. In support of this contention, the defendants relied on the **case of Pope John Paul’s Hospital & Another vs. Baby Kasozi [1974] EA 221** where the East Africa Court of Appeal held;

“...but the standard of care, which the law requires, is not insurance against accidental slips. It is such a degree of care as normally skillful member of the profession may reasonably be expected to exercise in the actual circumstances of the case, and, in applying the duty of care to the care of a surgeon, it is peculiarly necessary to have regard to the different kinds of circumstances that may present themselves for urgent attention...A charge of professional negligence against a medical man was serious. It stood on a different footing to a charge of negligence against the driver of a motorcar. The consequences were far more serious. It affected his professional status and reputation. The burden of proof was correspondingly greater...The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care...In cases charging medical negligence, a court should be careful not to construe everything that goes wrong in the course of medical treatment as amounting to negligence. The courts would be doing a disservice to the community at large if they were to impose liability on hospitals and doctors for everything that happens to go wrong.”

31. The Defendants submitted that the 1st Plaintiff did not develop Steven Johnson Syndrome and that the allegation is based on presumptive diagnosis. It was their submission that from a review of the record from Agha Khan Hospital, the 1st Plaintiff was only diagnosed with varicella zoster which is also referred to as chicken pox and that the Plaintiffs witness Dr. Amugunda conceded that the symptoms for Steven Johnson Syndrome and chicken pox are similar. That the 1st Plaintiff was initially put on Aclovir which is an antiviral for treating chicken pox and that in cross examination, Dr. Amugunda did not have document to support the theory that it was Fansidar that caused the drug reaction, he used the term the “offending drug”. It was submitted that since no conclusive tests were carried out to establish that the drugs prescribed by the Defendants caused the drug reaction, the Defendants were not negligent.

32. It was further submitted that there was no record that the 1st Plaintiff was treated for Steven Johnson Syndrome and that indeed the 1st Plaintiff was suffering from chicken pox. They cited the case of **Juliet Karisa Vs. Joseph Barawa & Another Civil appeal No. 108 of 1988** where the court acknowledged that medical reports and opinions are like any expert opinion and not binding on the court.

33. When can a doctor be found guilty of medical negligence? A doctor can only be held guilty of medical negligence when he falls short of the standard of reasonable medical care and not because in a matter of opinion he made an error of judgment. For negligence to arise there must have been a breach of duty and the breach of duty must have been the direct or proximate cause of the loss, injury or damage. By proximate, I mean a cause which in a natural and continuous chain, unbroken by any intervening event, produces injury and without which injury would not have occurred. The breach of duty is one equal to the level of a reasonable and competent health worker.

34. In my analysis above, it is evident that the 1st Plaintiff had reservations in taking a malaria test, which test turned out to be negative but none the less, the 2nd Defendant prescribed malaria drugs, I have considered the Defendants' submissions that, the fact that the malaria test turned out to be negative that was not enough to rule out the existence of malaria parasites in the blood. On the other hand, the Plaintiffs submitted that once the malaria test turned out to be negative, the Defendants ought to have carried out more tests to establish any other ailment that the 1st Plaintiff could have been suffering from. The defendants failed to carry out further tests and/or refer the 1st Plaintiff to a specialist.

35. The definition of negligence in the case of **Blythvs. Birmingham Water Works Co. 11 Ex. 784**; is, **"The omission to do something which a reasonable man would do; or doing something which a reasonable man would not do."**

36. Applying this test, the question herein would be, whether a reasonable doctor would have carried out further tests to establish whether the Plaintiff could have been suffering from other infection. After the prescription and taking the drugs, the 1st Plaintiff developed new complications of itchy palms and feet with the peeling of the skin. As a result, she was diagnosed with allergic dermatitis at the 1st Defendant. It was the Plaintiffs' case that the reaction was as a result of taking the fansider drug prescribed on the 1st day at the first defendant. The Plaintiffs submitted that the 1st Defendant did not find out whether the 1st Plaintiff was allergic to the drugs prescribed. In his testimony, the Defendants' witness, DW2 testified that the 1st Plaintiff was not asked whether she had any allergies.

37. At Aga Khan, the treatment record shows that she was treated for drug reaction and chicken pox. The defendants have argued that there is no evidence that she was treated for Steven Johnson Syndrome at Aga Khan. The evidence available to this court is that Steven Johnson Syndrome is an acute case of drug reaction. What comes to my mind is that there could have been a possibility that the drug reaction that Aga Khan was treating had not deteriorated to that level of Steven Johnson Syndrome. The medical records from Aga Khan have not identified the drug that could have caused the reaction but, like I have pointed out earlier on, the 1st plaintiff was given different types of drugs by the 2nd and 3rd defendants. Though it may not be possible to zero in on one drug as the offending drug, I am persuaded by the medical records from Aga Khan and also by the evidence of PW1 that the 1st plaintiff's case was that of drug reaction.

38. In addition, the 1st plaintiff was also diagnosed with chicken pox at Aga Khan. The defendants have not denied that fact. Though no evidence was led to show when she suffered from the said ailment, the evidence on record shows that she was admitted at Aga Khan Hospital on 20/11/2004. This was a period of three days from the time she was last seen at the first defendant, by the 3rd defendant. No such diagnosis was made at the first defendant. If proper diagnosis had been made, she would have been treated early enough.

39. The Defendants testimony that a negative malaria test does not negate the possibility of malaria parasites was not controverted by the Plaintiffs. For one to find a doctor negligent, it has to be established that he acted in a manner so unreasonable such that any reasonable doctor put in his shoes would not have done so. However, on the other hand, I find that the Defendant's negligence arose in not establishing whether the 1st Plaintiff had allergies to the drugs prescribed. A professionally trained doctor will be aware that different people would react differently to drugs and it was incumbent upon the Defendant doctors to interrogate the patient to find out whether she could be allergic to the drugs prescribed.

40. In the instant case, I find that the defendants owed a duty of care to the plaintiff to make proper diagnosis of what she was suffering from and to prescribe proper drugs. A duty to ensure that the 1st Plaintiff's allergies were established. They breached that duty of care which a prudent doctor of experience and special knowledge and skill would have been expected to exercise in keeping in mind the best interest of the patient.

41. On whether the plaintiff's injuries can be attributed to the defendants, the Plaintiff had a duty to establish that the 1st Plaintiffs injuries were as a direct consequence of the Defendants actions. Otherwise put, it had to be established that were it not for the failure to establish the 1st Plaintiffs allergies, the Defendant would not have suffered the subsequent injuries. From my analysis on the issue number two, it is clear that the plaintiff's condition was due to lack of proper diagnosis and also due to drug reaction. Subsequent tests at Agha Khan hospital show that she was diagnosed with drug reaction and chicken pox as evidenced by the medical report as well as the clinical note of Dr. Abdalla on 24/11/2004 which noted; *"plan to talk to lab on diagnosis of chicken pox"*

42. On liability, I find that the Defendants are liable to the plaintiff and the 1st Defendant is vicariously liable for the actions of the 2nd and 3rd Defendants. Under common law one is held vicariously liable if, the person committing the tort is a servant or agent of the defendant and the servant is acting within the scope of his employment at the time of committing the tort. In **M (a Minor) –vs. –Amulega & another [2001] KLR 420** the court held that:

"Authorities who own a hospital are in law under the self-same duty as the humblest doctor. Whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of his ailment. The hospital authorities cannot of course do it by themselves. They must do it by the staff whom they employ and if their staff is negligent in giving the treatment, they are just as liable for that negligence as is anyone else who employs others to do his duties for him..... It is established that those conducting a

hospital are under a direct duty of care to those admitted as patients to the hospital. They are liable for the negligent acts of a member of the hospital staff, which constitutes a breach of that duty of care owed by him to the Plaintiff, thus, there has been acceptance from the courts that hospital authorities are in fact liable for breach of duty by its members of staff.... It is trite law that a medical practitioner owes a duty of care to his patients to take all due care, caution and diligence in the treatment."

43. On whether the Plaintiffs are entitled to the damages sought, on special damages, it is trite law that special damages have to be specifically pleaded and proven. The 2nd Plaintiff's witness produced before this court a computation of the remuneration the 1st Plaintiff would have earned during the 40 days when she was absent due to ill health. PW3 also produced inpatient invoice from Agha Khan.

44. On general damages, the Plaintiff suggested Kshs. 3,000,000 whereas the Defendants have suggested Kshs. 100,000/=. In assessing general damages, a court will normally consider the gravity of the injuries suffered and it would be guided by cases already decided. In the case of **Hilda Atieno Were Vs Board of Trustees Aga Khan Hospital-Kisumu & Another [2011]e KLR** the Court awarded the Plaintiff Kshs. 1,500,000 in general damages for pain and suffering for medical negligence. In **Hellen Kiramana v PCEA Kikuyu Hospital [2016] eKLR**, the Plaintiff was awarded Kshs. 2,000,000 for the injuries she suffered in a medical negligence claim.

45. In the instant case, the Plaintiff was hospitalised for one week and she did not take long to recover. She reported back to work after a period of 40 days. She still feels pain on her feet when she walks for long distance and the healed bruises left ugly marks on her skin. For the pain and suffering she experienced, I will award a sum of Kshs. 600,000. In my view the plaintiffs did not make a case to warrant an award for punitive damages and therefore no award is made under that head.

46. The claim on future medical costs was not pleaded and no evidence was led to support the same.

47. On special damages, the 1st plaintiff has pleaded a sum of Ksh.1,500 for the medical report. No receipt was produced in evidence in support of the same. I therefore make no award under that sub-head.

48. On the part of the 2nd plaintiff a total sum of Ksh.171,135/= is claimed for lost manpower in the form of injury, sick offs due to the wrong and improper medical prescription by the 2nd and 3rd defendants. In support of this the plaintiffs produced exhibit 10 which is a document showing her salary, allowances and her entertainment in a month and her pay per day. As stated elsewhere in this judgment, had the 2nd and 3rd defendants been more careful, the plaintiff would not have been admitted in hospital and thus the 2nd plaintiff would not have incurred this loss. The said sum of Ksh.171,135/= is hereby awarded.

49. A sum of Ksh.147,520 has been claimed as medical costs paid by the 1st plaintiff. In support of this, the plaintiff produced exhibit 11 which is an inpatient invoice from Aga Khan Hospital for Ksh.136,328. Unfortunately no receipt was produced to support the said cost. It is trite law that special damages have to be pleaded and proved. I disallow the same.

50. In the end, judgment is entered for the plaintiffs against the defendants jointly and severally as follows:-

For the first Plaintiff

- a) General damages for pain and suffering - Ksh.600,000/=
- b) Special damages - Nil.
- c) Punitive damages - Nil.
- d) Future medical expenses - Nil.

For 2nd Plaintiff

- a) Special damages - Ksh.171,135/=

51. The general damages will earn interest from the date of this judgment while the special damages will earn interest from the date of filing of the suit.

52. The plaintiffs are also awarded the costs of the suit.

Dated, Signed and Delivered at Nairobi this **19th** Day of **April, 2018**.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... *For the Applicant*

..... *For the Respondent*