



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 75 OF 2012**

**DUNCAN KIMATHI KARAGANIA .....PLAINTIFF**

**VERSUS**

**NGUGI DAVID .....1<sup>ST</sup> DEFENDANT**

**GEORGE NJOROGE WASWA.....2<sup>ND</sup> DEFENDANT**

**NAZISH MOTORS LATD.....3<sup>RD</sup> DEFENDANT**

**SAMUEL NJUNGE NDUNG’U.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff in this case is Duncan Kimathi Karagania. He filed suit herein against the four defendants Ngugi David, George Njoroge Waswa, Nazish Motors Limited and Samuel Njunge Ndung’u vide plaint dated 17<sup>th</sup> February 2012 and filed in court on 29<sup>th</sup> February 2012.
2. The plaintiff’s claim against the defendants jointly and severally is for damages arising from a road traffic accident which was alleged to have occurred on or about the 10<sup>th</sup> day of April 2010 at 8.00pm along Nakuru- Nairobi Highway around Gilgil area involving motor vehicle registration No. KBF 754W wherein the plaintiff was lawfully travelling. The plaintiff avers that the said accident was occasioned by the negligence of the defendant’s by themselves or through their agents, employees, servants/drivers their managing, controlling, steering and or driving the subject motor vehicle which collided with motor vehicle KBA 511 W as a result of which the two motor vehicles rolled thereby injuring the plaintiff seriously.
3. The plaint further alleges that at all material times to this suit the 1<sup>st</sup> defendant Ngugi David was the registered owner of motor vehicle KBF 754W a Toyota matatu which was on the material day lawfully driven by the 2<sup>nd</sup> defendant George Njoroge Waswa as the 1<sup>st</sup> defendant’s employee, servant, agent and or driver in the course of his employment. The 3<sup>rd</sup> defendant Nazish Motors Limited as alleged to have been the registered owner of motor vehicle registration number KBA 511 W a Toyota station wagon which was then being driven by the 4<sup>th</sup> defendant Samuel Njunge Ndungu as its lawful driver, and employee, servant, agent and in the course of his employment with the 3<sup>rd</sup> defendant.
4. The plaintiff blamed the 2<sup>nd</sup> and 4<sup>th</sup> defendants who were in control, management, steering and driving the respective motor vehicles for
  - a. Driving recklessly and or carelessly.

- b. Driving at an excessive speed in the circumstances as it was at night.
  - c. Failing to swerve or take full control of their respective motor vehicles to avoid collision with the oncoming motor vehicle.
  - d. Failing to apply breaks to stop the vehicles from colliding with the vehicles driven by them.
5. The 4<sup>th</sup> defendant is exclusively blamed for trying to overtake the motor vehicle, driven by the 2<sup>nd</sup> defendant when it was clearly dangerous as it was at night and there was an oncoming motor vehicle therefore swerving in the land occupied by the motor vehicle driven by the 2<sup>nd</sup> defendant and consequently colliding with the said motor vehicle and thereby causing the accident.
  6. The plaintiff also sought to rely on the doctrine of Res Ipsa Loquitur. The plaintiff therefore holds the 1<sup>st</sup> and 3<sup>rd</sup> defendants vicariously liable for the accident and the severe personal injuries which he sustained as a result of the collision between the two motor vehicles driven by the 2<sup>nd</sup> and 4<sup>th</sup> defendants respectively.
  7. The plaintiff claimed that he sustained injuries as a result of the material accident involving
    - a. Blunt head injury with the loss of consciousness for over two hours;
    - b. Lacerations over the face on both sides.
    - c. Comminuted fracture of the maxilla bilaterally at the Le /fort 11 level.
    - d. Compound fracture of the mandible.
    - e. Comminuted fracture of the right humerus, articular region of the elbow surface of radio car pal.
    - f. Multiple lacerations of the hands and forearms.
  8. He claimed for damages for the pain and suffering, and loss of amenities future medical expenses and special damages of Kshs 1,097,428. The plaintiff also claimed for costs of the suit, interest and any other relief or further relief as thus Honourable court deems fit.
  9. The plaintiff's advocate Wasonga Kimakia & Associates Advocates took out summons to enter appearance on 24<sup>th</sup> February 2012 and effected service upon the defendants who neither entered an appearance nor filed defence. The 3<sup>rd</sup> defendant was served on 10<sup>th</sup> July 2012. The 1<sup>st</sup> defendant was served on 23<sup>rd</sup> August 2012. The 4<sup>th</sup> defendant was served on 30<sup>th</sup> October 2013 whereas the 2<sup>nd</sup> defendant was served on 30<sup>th</sup> October 2013. All the defendants were served in person as per the filed sworn affidavit by Milton Okello.
  10. On 29<sup>th</sup> November 2012 interlocutory judgment in default was entered against the 1<sup>st</sup> and 3<sup>rd</sup> defendants whereas interlocutory judgment in default was entered against the 2<sup>nd</sup> and 4<sup>th</sup> defendants on 20<sup>th</sup> November 2013.
  11. This suit was therefore set down for formal proof hearing which took place on 21<sup>st</sup> July 2015 *ex parte*.
  12. The plaintiff testified on oath as PW1 relying on his witness statement signed on 17<sup>th</sup> February 2012 which was filed and adopted as his evidence in chief. The plaintiff testified that he resides in Nairobi and works with Davis and Shirliff as a technician. That on 10<sup>th</sup> April 2010 he was travelling to Nakuru from Nairobi together with other relatives and friends to pay dowry to his in laws. On their way to back, he was a passenger in motor vehicle registration No. KBF 754W. At around 8.00pm at around Gilgil area, a station wagon motor vehicle registration number KBA 511W tried to overtake the matatu in which the plaintiff was a passenger but because there was an oncoming lorry which hooted, the station wagon veered to the side into the matatu registration No. KBF 754W and the two vehicles collided and rolled. The plaintiff had on him a safety belt. He lost consciousness and only regained it at Kijabe Hospital the next day 11<sup>th</sup> April 2010. He was transferred to Aga Khan Hospital, Nairobi the same day/night and admitted until 25<sup>th</sup> April 2010 when he was discharged. He suffered extensive injuries to his face, nose, head, mouth, jaws, hands and legs. He had scratches on his face, his right lower jaw was fractured, his head was aching seriously, his both hands had fractured and his left knee had scratches. He was operated on and implants inserted in his nose, upper and lower jaws and both hands. On 11<sup>th</sup> October 2010 he was readmitted at Kenyatta National Hospital private wing for wires to be

removed from the right elbow and he was discharged on 13<sup>th</sup> October 2010. He continued with checkup treatment at Kenyatta National Hospital and at the time of hearing he still visited the said Kenyatta National Hospital for regular checkup because of the implants which are still insitu his right forearm and left elbow and in the jaws which cracked. He reported to the police at Gilgil Traffic Base and was issued with a police abstract and P3 form which was filled by a doctor which he produced as contained in the bundle of documents filed on 20<sup>th</sup> February 2012. The plaintiff's instructed an advocate who did a search on the ownership of the accident motor vehicles. He produced the two searches confirming that the motor vehicles were owned by the 2<sup>nd</sup> and 2<sup>rd</sup> defendants respectively as pleaded in the plaint and which he produced as contained in his bundle of documents filed on 20<sup>th</sup> February 2012. The plaintiff was later examined by doctors G. Gikenye and Professor M.L. Chindia. He prayed for general damages and special damages as per the receipts contained in his bundle of documents filed on 20<sup>th</sup> February 2012. He also prayed for costs and interest. The plaintiff produced his entire bundle of documents filed on 20<sup>th</sup> February 2012 as his exhibit No. 1.

13. The plaintiff also called PW2 Jacob Mwendia Nabea who testified on oath and his written witness statements signed on 17<sup>th</sup> February 2012 adopted as his evidence in chief. That he is a driver of by profession. PW2 reiterated the testimony of the plaintiff adding that he was indeed travelling with the plaintiff when the accident occurred. That their motor vehicle was being driven at a moderate speed towards Nairobi. He confirmed that it is motor vehicle KBA 511 W which tried to overtake them but met an oncoming lorry and as the lorry hooted, the driver of the offending motor vehicle swerved into the matatu lane thereby colliding with the matatu KBF 754W from the right front side by the left rear of the station wagon and he two vehicles rolled severally. He clung to the seat in front of him while belted. The windows broke into pieces. The matatu suddenly stopped but it was accelerating hitting on the station wagon continuously. He jumped through the rear left window while other passengers dashed to switch off the matatu engine because the driver was unconscious. PW2 was not injured at all. He therefore helped putting the injured passengers into a rescue pickup. Among the injured was Duncan Kimathi Karagania his friend. They were taken to Gilgil dispensary and taken to Nakuru Mission Hospital in an ambulance. The following day they were taken to Kijabe hospital. Kimathi (the plaintiff) was referred to Aga Khan Hospital since his injuries were severe.

14. The plaintiff also called PW3 Doctor Gichambria Gikenye who testified on oath on 28<sup>th</sup> October 2015. He stated that he was a private medical practitioner. He was also a lecturer at the University of Nairobi, Human Anatomy Department. He further testified that he examined the plaintiff on 17<sup>th</sup> November 2010 as per the medical report dated 17<sup>th</sup> November 2010. He confirmed that the plaintiff sustained injuries as pleaded and that on examination he complained of difficulties in chewing because of discomfort in the right jaw; restrictions of movements at the right elbow, left elbow and left wrist. He also had-

1. A minor asymmetry of the lower jaw and scar on the upper lip.
2. Limitation of movement maximum extension at 110<sup>o</sup> and flexion 90<sup>o</sup> of the right elbow.
3. Limited movements of the left wrist both in dorsal and palmar flexion, ulna and radial deviations.
4. The plaintiff had scars in the injured areas. The doctor concluded that the plaintiff sustained severe injuries. He relied on the history given by the plaintiff, case summaries and Xray forms. He identified and produced the plaintiff's medical report as contained in the plaintiff's bundle of documents. He stated that he was paid kshs 10,000/- for court attendance.

15. The plaintiff closed his case and his advocates filed written submissions on 3<sup>rd</sup> November 2015. In the said submissions, the plaintiff's counsel urged the court to find that the plaintiff had proved his case against the defendants and that the court should find them 100% to blame and award him damages. Decided cases were annexed to the submissions on quantum. The plaintiff prayed for kshs 9 million general damages for pain, suffering and loss of amenities relying on the case of **Rukia Mungayia V Johnson Juma Ogotu & Another CA 135/2006, Nairobi, BKM (minor) V Christopher Komen HCC 139/2012 (Nakuru); and Ngure Edward Karega V**

**Yusuf Doran Nassir HCC 157 of 2012 ( Nakuru).** He also prayed for special damages of kshs 1,107,421. The plaintiff also prayed for future medical expenses for removal of implants and plastic surgery and superficial radiotherapy each at shs 350,000/- totaling shs 700,000. He also prayed for costs and interest at court rates from date of filing suit. He annexed copies of the authorities relied on.

16. I have carefully considered the plaintiff's pleadings, evidence as adduced by the plaintiff and his two witnesses including Doctor Gikenye. I have also considered the documentary evidence and submissions as filed by the plaintiff's counsel both on liability and quantum of damages.

17. The court notes that the defendants despite being served with the plaint, documents, witness statement, all accompanying summons to enter appearance, none of them entered appearance nor filed defence. Accordingly, the plaintiff applied and obtained interlocutory judgment and therefore the suit herein proceeded by way of formal proof hearing.

18. In my view, therefore, considering the record as a whole, the following are the issues for determination

1. Whether the defendants are liable for the material accident/who was to blame for the accident.
2. Whether the plaintiff sustained injuries and or suffered loss and damage as a result of the accident.
3. What is the quantum of damages that the court should assess?
4. Who should bear the costs of this suit.

19. On who was to blame for the material accident, the plaintiff clearly testified and his evidence as corroborated by PW2 Jacob Mwenda Nabea is that the two were both travelling in the same motor vehicle after attending a bride price payment ceremony together and on their way back to Nairobi the 4<sup>th</sup> defendant driver, was driving the 3<sup>rd</sup> defendant's motor vehicle registration No. KBF 754 W matatu when the 1<sup>st</sup> defendant driving motor vehicle KBA 511 W station wagon tried to overtake them and he met an oncoming lorry which hooted. The 1<sup>st</sup> defendant swerved to the left lane of the 4<sup>th</sup> defendant and collided with the matatu. The two vehicles rolled severally. The plaintiff was seriously injured so he lost consciousness and found himself in hospital. He later reported to Gilgil Traffic Base and was issued with a police abstract and a P3 form which he produced as exhibits.

20. The police abstract No. 0214416 document 3 in the plaintiff's bundle of documents show that the motor vehicle KBF 754W Toyota matatu was driven by George Njoroge Waswa the 4<sup>th</sup> defendant whereas motor vehicle KBA 511W Toyota station wagon was driven by Samuel Njunge Ndungu. The plaintiff is named as one of the injured persons. PW2 testified that he escaped the accident without any injuries or at all. The plaintiff sustained severe injuries as pleaded and confirmed by Doctor Gikenye PW3 who examined the plaintiff and produced the medial report as an exhibit. The plaintiff also produced certificates of searches from Kenya Revenue Authority confirming that the matatu minibus KBF 754W was owned by David Ngugi the 1<sup>st</sup> defendant whereas the Toyota station wagon KBA 511W was owned by Nazish Motors Limited, the 3<sup>rd</sup> defendant. There was no evidence that any of the drivers of the accident motor vehicles was charged with any traffic offence.

21. From the evidence as adduced by the plaintiff and his witness PW2 who was an eye witness and who was lucky to escape without any scratch, I am satisfied that the plaintiff has proved on a balance of probabilities that following the material accident which was not denied, the 4<sup>th</sup> defendant who was driving motor vehicle registration No. KBA 511 W Toyota station wagon was entirely to blame for the accident.

22. I have reached that finding and conclusion for it is clear from the testimony of the plaintiff and PW2 that the matatu driver was lawfully driving on his side of the road when the 4<sup>th</sup> defendant started overtaking the matatu and in the process he was alerted by an oncoming lorry which hooted in order to avoid a head on collision with the lorry. As a result, the 4<sup>th</sup> defendant swerved to the left side of the road into the 1<sup>st</sup> defendant's matatu being driven by the 2<sup>nd</sup> defendant and collided with it sideways and as a consequence, both vehicles rolled severally.

23. This court, from the above evidence does not perceive how the 2<sup>nd</sup> defendant could have

- contributed to the occurrence of the accident even if he has not defended this suit.
24. It is my humble view that from the available evidence, the 4<sup>th</sup> defendant drove recklessly and without due care. He was overtaking the matatu without ensuring that the road ahead was clear or that he would have sufficient opportunity to complete the act of overtaking the matatu and get onto the left lane ahead without encountering the motor vehicles from the opposite direction.
25. The 4<sup>th</sup> defendant endangered his life and the life of others like the plaintiff and PW2 by taking the risk of overtaking without ensuring that it was safe to do so thereby swerving onto the 2<sup>nd</sup> defendant's lane and colliding with the 1<sup>st</sup> defendant's motor vehicle. It was at night. He did not drive carefully. If he had been a careful driver, he should have seen the oncoming lorry and waited until the road was clear before overtaking. He was negligent and it is his negligent and rash or reckless driving by overtaking dangerously that caused the accident wherein the plaintiff was severely injured. I hold him solely responsible for the accident. As there is evidence that the motor vehicle was owned by the 3<sup>rd</sup> defendant, I find that the 3<sup>rd</sup> defendant is vicariously liable for the negligent acts of the 4<sup>th</sup> defendant who was in the absence of any evidence to the contrary, its driver, agent/servant and in control of the accident motor vehicle KBA 511W Toyota Station Wagon.
26. Accordingly I find the 3<sup>rd</sup> and 4<sup>th</sup> defendants wholly, jointly and severally to blame for the accident and for the injuries suffered by the plaintiff at 100%. As against the 1<sup>st</sup> and 2<sup>nd</sup> defendants, I find no evidence to apportion liability on them. The mere fact that the matatu driver was on the road and driving a motor vehicle which was hit by the 3<sup>rd</sup> defendant's motor vehicle, by itself does not make the driver of the matatu contributory negligent or negligent at all for the occurrence of the accident and therefore responsible for the resultant injuries that the plaintiff sustained.
27. Accordingly, I find that there is no evidence that the 1<sup>st</sup> and second defendants in any way were responsible for the accident since it is the reckless overtaking and swerving by the 4<sup>th</sup> defendant that caused the collision between the two motor vehicles.
28. I therefore dismiss the plaintiff's suit against the 1<sup>st</sup> and 2<sup>nd</sup> defendants for want of proof of negligence since the plaintiff and his witness did not even tell the court how the 2<sup>nd</sup> defendant could have avoided being hit by the 4<sup>th</sup> defendant who swerved to avoid colliding head on with the oncoming lorry.
29. On quantum, the plaintiff pleaded and produced a medical report by Doctor Gikenye who filled the P3 form on 17<sup>th</sup> November 2010 using the treatment notes which confirmed that he sustained severe injuries classified as grievous harm. The said injuries involved:
1. Blunt head injury with loss of consciousness for over two hours.
  2. Lacerations over the face on both sides.
  3. Comminuted fractures of the maxilla bilaterally at the Le Fort 11 level.
  4. Compound fracture of the mandible.
  5. Comminuted fracture of the right humerus.
  6. Articular region of the elbow surface of radio carpal.
  7. Multiple laceration of the hands and forearms.
30. The plaintiff was admitted in Kijabe hospital, transferred to Aga Khan Hospital and Kenyatta National Hospital's. He was in hospitals for a total of 18 days. He sustained fractures which necessitated surgery and implants inserted in the fractured sites. He still has implants and continues to go for medical checkup. According to Doctor Gikenye's medical report the fractured jaws compromise the plaintiff's chewing ability. His elbows movements are restricted. He was left with multiple scars in the injured areas measuring between 0.5 cm to 19 centimeters some of which like the one on the forearm was hypertrophic and had developed keloids. The court had an opportunity to see the plaintiff as he testified. The accident disfigured him. He could hardly speak, stand or even hold an item due to the fractures and restricted movements in the jaws and elbows and left wrist.
31. According to doctor Gikenye, the scars noted are permanent. The implants in the right elbow

- and left forearm were still insitu. The plaintiff's permanent incapacity was assessed at 30% and he needs further surgery to remove the metal implants at a cost of shs 200,000 and due to the keloids, he will need shs 200,000 for plastic surgery and superficial radiotherapy.
32. For the above injuries the plaintiff's counsel submitted that an award of shs 9 million would suffice for pain and suffering and loss of amenities. Counsel cited the cases of **Rukia Mugoya V Johnson Juma Ogutu & Another** (supra) where the plaintiff was awarded kshs 12,462,000 for wedge compression, fracture dislocation at C4,C5; facial paralysis both upper and lower limbs, loss of stool control and loss of sensation from naval region downwards. He also relied on **BKM (minor) V Christopher Komen** (supra) where the plaintiff minor suffered unconsciousness with Glasgow coma scale; paralysis of the left upper limb and bilateral lower limbs, swollen face on the left side with tongue profusion; swollen (soft tissue injuries) left periorbital area with occlusion of the eye; cut wounds, 4cm left super orbital region and 1cm at the scalp with multiple bruises in all limbs shoulder and legs; fractures of the left maxillary antrum and subsequent raised intracranial pressure; major bruises on the right shoulder, right knee, dorsal aspects of hands and foot( bilaterally) fracture (depress of the left parietal region with foreign bodies, injury at brocas area, pain and blood loss on the affected areas. He was awarded kshs 6,000,000 in 2012.
33. The third authority on quantum is of **Ngure Edward Karega Vs Yusuf Doran Nassir** (supra) where the plaintiff was awarded kshs 5,000/- for injuries involving fracture of the 6<sup>th</sup> cervical, fracture of the right leg; bruises on the head and pals and spinal injury.
34. It is not disputed that the plaintiff herein sustained severe injuries which have greatly affected his quality of life. The principles governing assessment of damages are as espoused in the often quoted case of **West (H) and Sons Ltd V Shepherd [1964] AC 326** as cited with approval in **Cecilia Mwangi & Another V Ruth Mwangi CA 251/1996** where Lord Morris stated that :

*“ But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation:*

*In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.”*

35. Further guidance is found in the decision by Lord Denning in **Kim Pho Choo V Camden & Islington Area Health Authority [1979] 1 ALL ER 332** cited with approval by Wendoh J in **Nancy Oseko V BOG Maasai Girls High School [2011] e KLR** that:

*“ In assessing damages the injured person is only entitled d to what is in the circumstances, a fair compensation for both the plaintiff and the defendant.....the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should punish the defendant.”*

36. Applying the above principles to this case and considering the injuries suffered by the plaintiff and their resultant effects as stated by doctor Gikenye and taking into account the submissions and authorities supplied by the plaintiff's advocate, I note that the injuries sustained in the authorities cited by the plaintiff's advocates were more serious than the ones sustained by the plaintiff herein. Nonetheless I am cognizant of the fact that no two cases are similar. Taking into account those comparable injuries and inflationary trends and the principles as espoused above in awarding general damages I would in the circumstances of this case award the plaintiff a sum of kshs 4,000,000 general damages for pain, suffering and loss of amenities.
37. The plaintiff also pleaded for damages and costs of future medical expenses. Doctor Gikenye testified and stated that the plaintiff will require surgery to remove the insitu implants at a cost of shs 200,000/-and due to keloid scars, the plaintiff will require a further kshs 200,000/- for plastic surgery and superficial radiotherapy.

38. This court is satisfied that the claim for future medical expenses is not farfetched. Although his advocate submitted a proposal for an award of shs 350,000 each on each item, the Doctor Gikenye proposed shs 200,000/- on each. The plaintiff did not seek to produce any further evidence that would enable this court to consider enhancing the figures proposed by the doctor in 2010. The plaintiff's counsel also submitted on an injury that was suffered by the plaintiff thus ***"She is not able to hold urine for long as a result of fracture of the bladder and has difficulty walking long distances because of the leg shortening."***
39. That injury is not relevant to the plaintiff's case. Accordingly, I award the plaintiff shs 400,000/- for future medical expenses as proposed by doctor Gikenye.

The plaintiff also prayed for special damages in the sum of kshs 1,107,421/- made up for

Police abstract	200
Medical report	3000
Attendance of doctor	10,000
Medical expenses	1,073,221
Transport and related expenses	20,000
Motor vehicle search fees	1,000
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Total	1,107,421

40. In the plaint, the plaintiff pleaded for shs 1,097,428 covering all the above listed expenses except attendance of the doctor shs 10,000. It is trite law that special damages must not only be specifically be pleaded but they must be strictly proved. Starting with attendance by the doctor shs 10,000/-. This sum was not pleaded. The doctor nonetheless testified and produced a receipt confirming that he was paid shs 10,000/- being court attendance fees. That may be so. However, as the claim was not pleaded, this court declines to grant it. One can only prove what is contained in the pleadings. Furthermore, the doctor is a witness. Any sums of money paid to him to facilitate his court attendance to testify on behalf of the plaintiff is a witness expense therefore a cost of the suit incurred. It can only be claimed as a cost of the suit by way of witness expenses. It is not a special damage. The plaintiff produced police abstract but there is no receipt for shs 200/- as pleaded. The claim is rejected as it is not proved. He produced two motor vehicle searches from Kenya Revenue Authority. He paid kshs 500/- each through National Bank of Kenya on 29<sup>th</sup> June 2011. I grant him shs 1,000/- as pleaded and proved. He also pleaded and proved shs 3000/- being doctor Gikenye's fees for medical report examination fee vide receipt dated 11<sup>th</sup> January 2011. On the medical expenses pleaded kshs 1,073,228, the receipt issued by Aga Khan Hospital all total a sum of kshs 1,091,225. I hereby award the plaintiff the sum of Kshs 1,073,228 medical expenses pleaded and proved.
41. The plaintiff also pleaded for shs 20,000 transport and related expenses. He did not produce any receipt to prove that item. In addition, the claim for 'related' expenses is too vague. Accordingly I decline to award him anything under this head.
42. In the end, I award the plaintiff the following special damages as specifically pleaded and strictly proved:

1. Medical expenses	1,073,228
2. Motor vehicle searches	1,000
3. Medical report	<u>3,000</u>
<b>Total special damages</b>	<b><u>1,077,228</u></b>

43. Consequently, I enter judgment for the plaintiff against the 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally on liability in negligence at 100%. I award the plaintiff a sum of kshs four million (Kshs 4,000,000) general damages for pain, suffering and loss of amenities. I award him special damages of kshs **1,077,228**. Total damages kshs **5,077,228**.
44. I also award the plaintiff costs of the suit and interest at court rates on general damages from the date of judgment until payment in full. I further award him interest on special damages from the date of filing suit until payment in full. The case against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is hereby dismissed with no orders as to costs since the two defendants did not participate in the proceedings herein.

Dated, signed and delivered in open court at Nairobi this 22<sup>nd</sup> day of March 2016.

**R.E. ABURILI**

**JUDGE**

In the presence of Mr Kimakia for the plaintiff

N/A for defendants

Gitonga: Court Assistant