REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO.4 OF 2006

D O M (Minor suing thro' his and next friend J K...APPELLANT

VERSUS

RONGAI WORKSHOP LTD…………………….................................………1ST RESPONDENT

FREDRICK WANYONYI MUSUYA...2ND RESPONDENT

(Being an appeal from the judgment and decree from the Principal Magistrate's Court at Kericho in Kericho Principal Magistrate's Court Civil Case No.801 of 2004 (Hon. J. K. Ng'eno) delivered on 19th January 2006)

JUDGMENT

1. The appellant, then a minor, was the plaintiff in Kericho Principal Magistrate's Court Civil Case No. 801 of 2004 while the 1st and 2nd respondents were the 1st and 2nd defendants respectively. The appellant had sued the respondents for damages in a claim arising out of a road traffic accident that occurred on 22nd March 2004 along the Kericho-Nakuru road near Brooke Trading Centre. The accident involved the minor, who was riding a bicycle along the said road, and motor vehicle registration number KRY 496 Leyland Lorry which he alleges was owned by the 1st respondent and driven by the 2nd respondent. As a result of the said accident, the minor sustained injuries for which he holds the 1st respondent vicariously liable.

2. In his plaint dated 14th September 2004, the appellant alleged to have suffered a fracture of the right shaft of the femur, a compound fracture of the left tibia, head injury with loss of consciousness for two hours, and a deep cut on the left leg. He was admitted at the Kericho District Hospital for treatment.

3. In their defence, the 1st and 2nd respondent denied being the registered owner of the motor vehicle and its driver respectively and put the plaintiff to strict proof thereof. They also denied that on the alleged date, the appellant was riding his bicycle along the verge of the Kericho-Nakuru road near Brooke Trading Centre, or that the 2nd defendant negligently drove or controlled motor vehicle registration number KRY 496 or that the motor vehicle knocked the appellant. They also denied that the 1st respondent was vicariously liable for the negligence of the 2nd respondent.

4. While denying the occurrence of the accident, they averred that if it occurred, it was solely caused or substantially contributed to by the negligence of the appellant.

5. In a reply to defence dated 12th October 2004, the appellant joined issue with the defendants/respondents and denied the allegations of negligence, sole or contributory, made against him.

6. The case was heard before Hon. Ng’eno, Principal Magistrate.The appellant/plaintiff called five witnesses, while the respondents relied on two witnesses.

7. In his decision, the Learned Magistrate, in dismissing the appellant’s case, found that the appellant had not established the ownership of the motor vehicle concerned as he did not produce records from the Commissioner of Motor Vehicle Registration. He also found that the appellant and his 5th witness were not credible witnesses, and he found the version of events proffered by the defence more credible. He did not make an assessment of the damages he would have awarded the appellant had he found in his favour.

8. Aggrieved by this decision, the appellant filed the present appeal in which he sets out 11 grounds of appeal as follows:

> ***1. That the learned Principal Magistrate erred both in fact and in law in failing to appreciate the issues before him in his judgment.***
>
> ***2. That the Honourable Magistrate misdirected himself on the evidence on record arrived at wrong findings in his judgment.***
>
> ***3. That the trial Principal Magistrate erred in ignoring and/or disregarding the evidence of PW2, the minor.***
>
> ***4. That the learned trial Principal Magistrate misdirected himself and therefore arrived at a wrong finding that the plaintiff had failed to establish ownership of the motor vehicle.***
>
> ***5. That the learned trial Principal Magistrate erred in finding PW2, the minor and PW5 as people unworthy of credit yet there was no justifiable reason for him to do so.***
>
> ***6. That the learned trial Principal Magistrate misdirected himself in holding that it is illogical for the accident lorry to stop and reverse knocking the minor as is the case in this suit.***
>
> ***7. That the learned trial Principal Magistrate erred in holding, while there was no evidence before him to enable him do so, that:-***
>
> > ***a. The plaintiff minor's experience of 3 weeks in riding the bicycle is short time and not enough to equip him with enough experience.***
> >
> > ***b. The plaintiff rammed into a stationer lorry while riding his bicycle at high speed.***
>
> ***8. That the learned trial Principal Magistrate erred in admitting hearsay evidence and proceedings to rely on the same in arriving at his judgment.***
>
> ***9. That the learned trial magistrate failed to consider evidence of PW3, Isaac Simentro, an eye witness in arriving at his judgment.***
>
> ***10. That the learned trial Principal Magistrate failed to write judgment according to the provisions of law.***
>
> ***11. That the learned Principal Magistrate erred in allowing the defence to adduce evidence in support of a defence that they had not pleaded.***

9. The appeal was opposed, and both parties filed submissions in support of their respective cases. Counsel for the appellant highlighted his submissions on 21st June 2016, while the respondents asked the Court to rely on their submissions dated 24th October, 2013.

The Appellant’s Submissions

10. In his submissions, the appellant stated that he would submit on grounds 1, 4 and grounds 2, 3, 5 and 6 of the Memorandum of Appeal together. With respect to the first ground, that the trial magistrate erred in both fact and law in failing to appreciate the issues before him for determination, it was the appellant's case that the trial magistrate was duty bound, under Order 21 rules 4 and 5 of the Civil Procedure Rules, to frame the issues for determination flowing from the pleadings and render a finding on each issue and reasons for the finding. The appellant's submission is that the court failed to do this.

11. The appellant's fourth ground of appeal is that the trial magistrate misdirected himself and therefore arrived at a wrong finding that the plaintiff had failed to establish ownership of the motor vehicle. The appellant argues that the trial magistrate was duty bound to consider whether any one or both defendants were the owner and driver of motor vehicle registration number KRY 496 either by way of registration or proprietorship. According to the appellant, the court only considered one aspect of ownership, namely registration. While conceding that the appellant never produced a certificate of registration in proof of ownership, the appellant submitted that he tendered enough evidence to discharge proof of ownership by proprietorship.

12. Counsel for the appellant cites such evidence as being that of the minor's mother who was given a police abstract that shows the vehicle belonged to the 1st respondent and PW4, the police officer, who produced the police abstract and investigations file and stated that the motor vehicle belonged to the 1st respondent. The appellant also relies on the evidence of defence witnesses, DW1 and DW2, whom he submits were employees of the 1st defendant and who admitted that the motor vehicle belonged to the 1st defendant.

13. According to the appellant, section 8 of the Traffic Act takes cognizance of other forms of ownership. He relied for this submission on the decisions in **Nancy Ayiemba Ngaira vs Abdi Ali, Mombasa High Court Civil Appeal No.10 of 2008** and **Samuel Mukunya Kamunge vs John Mwango Kamuru [2005] eKLR** and urged the court to find that the issue of ownership had been proved at the trial and that the court erred in finding otherwise.

14. On the issue of liability, the appellant relied on the evidence on record to submit that there had been an accident in which the minor had sustained injuries. He relied in particular on the treatment documents, P3 form and medical report by Dr. Ajuoga, as well as the police abstract. He cited the decision in **Anne Wambui Nderitu (suing as administrator of the estate of George Nderitu Kariamburi (deceased) vs Joseph Kiprono Ropkoi & Another [2009] eKLR** to submit that the court chose to rule in favour of the defendant due to a petty mistake of a minor and overlooked the evidence of the minor's mother as well as other witnesses.

15. It was also the appellant's argument that the trial court had an obligation to assess the damages payable even if he did not find the respondents liable for the accident. He urged this Court to find that the trial court erred in dismissing the suit and make an award of Ksh.750,000/- for pain and suffering, special damages, costs and interest.

The Respondents' Submissions:

16. In their submissions dated 24th October 2013, the respondents oppose the appeal. They counter the appellant's contention that the trial court failed to apply the evidence on record by relying on section 109 of the Evidence Act. They submit with regard thereto that the onus was on the appellant to prove her case.

17. With respect to the ownership of the motor vehicle, their submission was that it is a settled position that proof of motor vehicle ownership should be through an official search certificate from the motor vehicle registrar. They submitted that a police abstract in itself is not conclusive proof of ownership and placed reliance on the decision in **Thuranira Karuri vs Agnes Ncheche Civil Appeal No.192 of 1996** as cited in **Nancy Ayiemba Ngaira vs Abdi Ali (supra).**

18. To the argument that the trial court failed to consider the evidence of PW2 credible, their argument is that this claim is unfounded as the evidence of PW2, a minor, was uncorroborated. It is also their

submission, in reliance on the decision in **Lucy Muthoni Munene vs Kenneth Muchange & Kenya Bus Services Ltd, Nairobi HCCC NO.858 of 1988** as cited in **Jane Waweru vs Peter Githinji [2006] eKLR** that in the absence of concrete evidence on how the accident occurred and how the minor sustained injuries, there is no basis for apportioning liability to the respondent.

19. With respect to the quantum of damages, the respondents' position was that should the appellant have proved his claim, then an award of Ksh.100,000/- would have been sufficient. They rely on the decision in **Elizabeth Mulwa vs Tawfiq Bus Services, Mombasa HCCC No. 81 of 2000** in which an award of ksh.250,000/- was made to an adult who had been injured in a road traffic accident.

Analysis and Determination:

20. I have read carefully and considered the record of appeal in this matter and the respective submissions of the parties. This being a first appeal, I am not bound by the findings of fact by the trial court, and I am under a duty to consider the evidence, reassess it, and arrive at a finding in respect thereof-see **Selle vs Associated Motor Boat Company Ltd., [1968] EA 123**.

21. Having considered the record of appeal and the submissions and authorities of the parties, it is my view that the appeal before me raises three main issues for determination. The first relates to the finding of the trial court that the appellant had not established the ownership of the motor vehicle involved in the accident. The appellant argues that he had established ownership other than by registration, namely, ownership by proprietorship or possession.

22. The second issue relates to the alleged failure by the trial court to set out the issues before it and the reasons why it had accepted the defence version of events as opposed to that of the plaintiff. Should I find in favour of the appellant, then I would need to consider, as the final issue, the quantum of damages to award the appellant, the trial court having failed, as argued by the appellant, to assess the amount of damages it would have awarded the appellant had it found in his favour. In determining these issues, I will consider first the facts that the parties placed before the court in evidence.

The Facts

23. While the respondents had in their defence denied the occurrence of the accident, what emerges from the evidence on record is that there is no dispute that an accident did occur as a result of which the minor sustained serious injuries.

24. The facts of the case as they appear from the plaint are that the minor, D O M, was on 22nd March 2004 riding his bicycle on the verge of Kericho Nakuru road near Brooke Trading Centre when the 2nd respondent negligently drove motor vehicle registration number KRY 496 and knocked the appellant as he was riding his bicycle as a result of which he suffered pain, loss and damage.

25. In her evidence, PW1, J K, the appellant's mother, told the court that she had not been present at the time of the accident. She produced a police abstract dated 18th August 2004 which she stated showed the lorry involved in the accident belonged to the 1st respondent.

26. In his evidence, the appellant told the court that he was riding a bicycle, which he had borrowed from another boy, and which he had been teaching himself to ride, his words being a 'self-learning exercise', for three weeks. He stated that he saw a lorry pass him and then stopped ahead of him. It started to reverse and he tried to move and get away from it but it hit him.

27. The evidence of **PW3**, **Isaac Simethro Juma**, was that on the material day, he saw a lorry emerge from Brooke area (passed over) bumps then reversed and hit a cyclist. He stated that the lorry was being driven by a conductor who got out of the lorry, then got back in and drove the lorry away. He also stated that the lorry driver came back to take the lorry away but taxi drivers blocked the road.

28. **PW4, PC Omachore**, produced the investigation file and the police abstract on the accident. He stated that the records showed that the motor vehicle belonged to the 1st respondent. In cross-examination, he stated that sketch plans showed that the point of impact was at the parking bay, and that the lorry was hit from the rear.

29. **PW5**, **Thomas Maange**, stated that he saw the lorry emerge from Ketepa stores and move into a parking bay. He then saw a young man on a bicycle, the lorry reversed and hit the young man. On cross-examination, he stated that he knew that the bicycle had been bought by the boy's father He maintained that the boy had been hit by the reversing lorry, and that the lorry stopped some fifty metres away after hitting the boy.

30. **DW1**, **Solomon Anuna Ogae**, who testified that he was at the time of the accident working as a turn boy at the 1st respondent, Rongai Workshop, told the court that motor vehicle KRY 496 turned into a layby at Brooke and stopped, and the driver went to collect a loading order for a consignment while he remained in the vehicle, in the driver's cabin. He stated that he felt the lorry shaking and alighted to check, and that he found an injured boy at the back of the lorry. He and a woman who alleged that the lorry had hit the boy took him to a clinic at Brooke. His evidence was that there was no bicycle at the scene, and he denied being to blame for the accident and blamed the boy for hitting their lorry from the back.

31. In cross-examination, **DW1** stated that the vehicle was owned by the 1st respondent. The lorry was about 50 feet in length and had a single 40 feet container. He felt the lorry shake a little and got out to find a young boy lying at the left side of the lorry. He was seriously injured. On re-examination, he stated that the boy had a big bicycle, and that the boy was down and the bicycle was atop him.

32. **DW2**, **Frederick Wanyonyi Musuya,** the 2nd respondent, told the trial court that he was the driver of the lorry. His evidence was that he parked at the layby and moved with documents to the Brooke Bond office. He was away for about a half hour. When he returned he found the turn boy away. He started the lorry and the turn boy moved after him and informed him that the lorry had been involved in an accident. He did not find a bicycle at the scene, and he blamed the appellant for the accident. On cross-examination, he stated that he was not at the scene when the accident happened, and so does not know how it happened.

33. In his judgment, the trial magistrate analysed briefly the evidence of **PW3** and **PW5**. He noted that the evidence of **PW5** was that he had taken the minor to hospital with unknown people, and that he knew the boy's father had bought the bicycle involved even though the minor had indicated that he had borrowed the bicycle. The trial magistrate concluded that the plaintiff had not proved his case on a balance of probability as he had not established the ownership of the motor vehicle involved. This was because he had not produced records from the Commissioner of motor vehicles to establish ownership. He also stated that the minor and **PW5** had struck the court as unworthy of credit, the basis of this conclusion being that **PW5** had told the court that the minor's father had bought the bicycle while the minor had stated that he had borrowed it from another boy. The trial court also accepted the defence version of events, the trial magistrate stating in his judgment that:

> ***"It does not stand to logic that a lorry would run a head, suddenly stop and reverse hitting someone behind like the present case. The probable scenario would be, from the evidence on record, that the minor who had 3 weeks experience in ridding (sic) the bicycle failed to control the bicycle and rammed at a high speed into a stationery (sic) lorry injuring himself. The defence case is the probable version of events. For those reasons I dismiss the Plaintiff's case with costs to the defence."***

34. It appears to me that the appellant is correct that the trial magistrate failed to adequately address himself to the issues falling for determination and the reasons for his decision on each issue as required under Order 21 Rules 4 and 5 of the Civil Procedure Code. Rule 4 requires as follows with respect to the contents of judgments:

4. ***Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.***

35. Rule 5 imposes on the court a duty to state its decision on each issue:

> ***In suits in which issues have been framed, the court shall state its finding or decision, with the reasons therefor, upon each separate issue.***

36. In his 3 page judgment in this matter, the trial magistrate made a somewhat cursory assessment of two of the plaintiff/appellant's witnesses, and did not consider or analyse at all the defence evidence. That notwithstanding, it is apparent from the decision that he addressed himself to two issues, the question of ownership of the motor vehicle involved in the accident, and liability for the accident, both of which he determined in favour of the respondent. These are the two issues that I will now turn to consider.

Ownership of the Motor Vehicle

37. The appellant argues that he established that the 1st respondent was the owner of the motor vehicle involved in the accident, albeit by means other than production of the certificate of search from the Registrar of Motor Vehicles. He had produced a police abstract which indicated that the motor vehicle belonged to the 1st respondent, and the respondents two witnesses had confirmed that the motor vehicle belonged to the 1st respondent.

38. I have considered several decisions on this point. In the case of **Nancy Ayiemba Ngaira vs Abdi Ali** which both parties cite in their submissions before me, Ojwang J (as he then was) stated:

> ***"There is no doubt that the registration certificate obtained from the Registrar of Motor Vehicles will show the name of the registered owner of a motor vehicle. But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the Traffic Act is fully cognizant of the fact that a different person, or different other persons, may be the de facto owner(s) of the motor vehicle – and so the Act has an opening for any evidence in proof of such differing ownership to be given. And in judicial practice, concepts have arisen to describe such alternative forms of ownership –*** <u>***actual ownership,***</u> <u>***beneficial ownership, possessory ownership.***</u> ***A person who enjoys any of the other categories of ownership, may for practical purposes, be much more relevant than the person whose name appears in the Certificate of Registration;…"***

39. In his decision in **Charles Nyambuto Mageto & Another vs Peter Njuguna Njathi Nakuru High Court Civil Appeal No. 4 of 2008,** Anyara Emukule J, after citing the words of Ojwang J in the **Nancy Ayiemba Ngaira** case cited above, observed as follows:

> ***"From the interpretation of Section 8 of the Traffic Act as elucidated above, a person claiming or asserting ownership need not necessarily produce a log book or a certificate of registration. The courts recognize that there are forms of ownership, that is to say, actual, possessory and beneficial, all of which may be proved in other ways, including by oral or documentary evidence such as the Police Abstract Report even, as held in the Thuranira and Mageto cases (supra) that the Police Abstract Report is not, on its own, proof ownership of a motor vehicle. If, however there is other evidence to corroborate the contents of the Police Abstract as to the ownership, then, the evidence in totality may lead the court to conclude on the balance of probability that ownership."***

40. In the case of **Samuel Mukunya Kamunge vs John Mwango Kamuru (supra), Okwengu J** (as she then was) held as follows:

> ***"It is true that a certificate of search from the Registrar of motor-vehicle would have shown who was the registered owner of the motor-vehicle according to the records held by the Registrar of Motor vehicle. That however is not conclusive proof of actual ownership of the***

motor vehicle as section 8 of the Traffic Act provides that the contrary can be proved. This is in recognition of the fact that often times vehicles change hands but the records are not amended." See also **Dorcas Wangithi Nderi vs Samuel Kiburu Mwaura & Another Embu High Court Civil Appeal Case No. 58 of 2013.**

41. Finally, in the case of **Joel Muga Opija vs East African Sea Food Limited Kisumu Civil Appeal No. 309 of 2010,** the Court of Appeal, in considering a situation such as is presently before me where production of a police abstract had been held by the first appellate court as not enough proof, on its own, of ownership of the motor vehicle involved in an accident, observed as follows:

> ***"We agree that the best way to prove ownership would be to produce to the court a document from the Registrar of Motor vehicles showing who the registered owner is, but when the abstract is not challenged and is produced in court without any objection, its contents cannot be later denied.***

42. In the case before me, the appellant produced the police abstract as evidence of the ownership of the motor vehicle involved in the accident. Production of the abstract was not challenged. Indeed, though the respondents had denied ownership of the motor vehicle, it was expressly admitted in evidence by its two witnesses that the motor vehicle belonged to the 1st respondent. The first defence witness, the conductor of the lorry, testified that he was a conductor in the lorry which belonged to Rongai Workshop Ltd, while the second witness, the 2nd respondent and the driver of the lorry, also testified that the lorry belonged to the 1st respondent. There was therefore before the trial court evidence with regard to the ownership of the lorry, both from the plaintiff, now appellant, and confirmed by the defence witnesses. The evidence before the court was that the lorry involved in the accident belonged to the 1st respondent, Rongai Workshops Ltd. In my view, therefore, and I so hold, the trial magistrate was in error when he found that the appellant had not established the ownership of the motor vehicle involved in the accident.

Liability

43. The appellant's evidence before the trial court was that the minor was riding a bicycle along the verge of the road along the Kericho-Nakuru road when the 1st respondent's lorry passed him and stopped. It then started reversing and hit the appellant. This was the evidence of the minor, PW2, and two witnesses, PW3 and PW5. The driver of the lorry was not present when the accident occurred, though he blames it on the minor. The evidence of DW1 is that he and the 2nd respondent parked at a layby at Brooke. The driver left the lorry to collect a consignment while he remained in the driver's cabin.

44. He further states that he felt the lorry shaking and alighted to check and found an injured boy at the back of the lorry and a woman who alleged that the lorry had hit the (boy). He also testified that there was no bicycle at the scene. On cross-examination, DW1 stated that he felt the lorry shaking and alighted to find out what was happening. He found a young boy lying down with a bicycle and a woman standing there. He stated that he suspected that the boy had hit the bumper of the trailer as he did not see the act take place.

45. Confronted with this evidence, the trial magistrate stated that he did not find the evidence of the appellant and PW5 credible. He found that PW5 had, in his zeal, stated that the bicycle that the appellant had been riding had been purchased by the minor's father, while the minor had stated that he had borrowed it. On this basis, he concluded that the appellant and his 5th witness were not worthy of credit.

46. I must observe that the trial court focused on a statement by PW5 that was, if not totally irrelevant, peripheral to the issue before him. Where the appellant had obtained the bicycle that he was riding on the material day could not go into the issue of liability. In any event, his evidence that the lorry had reversed and hit him was corroborated by the testimony of PW3, which the trial magistrate did not take into account in determining that the appellant and PW5 were unworthy of credit.

47. Two versions of events with respect to the accident were before the court: either that the lorry

stopped, then reversed and hit the appellant, or the appellant rammed into the lorry. The appellant's evidence, supported by that of PW3 and 5, is that the lorry reversed into him. Without evidence, other than the statement from DW1 that the appellant rammed into the lorry, the trial magistrate concluded that ***"It does not stand to logic that a lorry would run a head, suddenly stop and reverse hitting someone behind like the present case. The probable scenario would be, from the evidence on record, that the minor who had 3 weeks experience in ridding (sic) the bicycle failed to control the bicycle and rammed at a high speed into a stationery (sic) lorry injuring himself."***

48. No evidence was called by the defence to support the contention that the appellant *"rammed at a high speed"* into the lorry. While the trial court found that *"it does not stand to logic*" that the lorry could reverse and hit the appellant, a less logical scenario is one in which an 11 year old boy on a bicycle (the evidence indicates that he was thirteen at the time of the trial in 2006, which would make him 11 at the time of the accident) could ram into and shake a Leyland lorry with a 40 feet container as alleged by DW1, the conductor of the lorry who testified that he was in the driver's cabin when he felt the lorry shake. It was more probable, as testified by PW3, **Isaac Simethro Juma**, that the conductor reversed the lorry in the absence of the driver and hit the appellant. In my view, therefore, the appellant had presented sufficient evidence before the court to establish negligence on the part of the servants or agents of the 1st respondent, and it is my finding therefore that the trial court erred in failing to find the respondents liable fully for the accident.

Quantum of Damages

49. The appellant submits that the trial court erred in failing to assess the amount of damages that it would have granted the appellant had it ruled in his favour. He relied on the decision in **Samuel Mukunya Kamunge vs John Mwango Kamuru (supra**) in which Okwengu J observed that ***"With regard to the issue of quantum, the trial magistrate had the obligation to assess the damages payable notwithstanding the fact that he did not find the Respondent liable."***

50. As the trial court failed to assess the damages that the appellant was entitled to, it falls on this court to make such assessment. The evidence before the court is that the appellant suffered a fracture of the right shaft of the femur, a compound fracture of the left tibia, head injury with loss of consciousness for two hours, and a deep cut on the left leg. The appellant prays for an award in general damages of Kshs.750,000. He relies on the decision in **Ahmed Mohamed vs Abdulhafidh Mohamed Banragah Mombasa HCCC No. 319 of 2001**. On their part, the respondents propose an award of Kshs.100,000 on the authority of **Elizabeth Mulwa vs Tawfiq Bus Services Mombasa HCCC No. 81 of 2000.**

51. I have considered the authorities relied on by the appellant and the respondents. I note that the injuries sustained by the plaintiff in **Ahmed Mohamed vs Abdulhafidh Mohamed Banragah** were extremely severe. The plaintiff was operated on 3 times and admitted in hospital for 9 months. He had suffered, among other injuries, a crushed tibia. The injuries are therefore not comparable to the injuries suffered by the appellant in this case, and the damages awarded therefore are not a good guide in this matter.

52. Conversely the award in damages proposed by the respondents is in my view too low. I am persuaded by the decision of the Court in the case of **Beatrice Wairimu Wandurua vs C. Dorman Limited Nyeri Civil Appeal No. 35 (2009) eKLR** contained in the appellant's bundle of authorities. In this case, the Court of Appeal sitting at Nyeri made an award of Kshs.350,000 in general damages for pain and suffering and Kshs.213,000 for future medical expenses to the appellant. The appellant in that case sustained compound fractures of the left tibia and dislocation of the left ankle joint, injuries similar to those sustained by the appellant in this case. The medical evidence in respect of the appellant in the above case was that she suffered serious and incapacitating leg injuries which would require a long period of expensive surgical treatment in the future.

53. This is unlike the appellant in the case before me. From the medical report of Dr. Ajuoga, there is no indication that future treatment was required, the medical opinion being that the appellant was highly likely to be left with a certain degree of deformity or disability.

54. Taking into account the injuries sustained by the appellant in this matter and the authorities relied on by the parties with regard to quantum which I have summarized above, I am satisfied that an award of Kshs.300,000 is sufficient. The appellant shall also have the special damages of Kshs.100 in respect of the police abstract and Kshs.5,500 in respect of the medical report.

55. The upshot of my findings above is that the appellant's appeal succeeds. I therefore allow the appeal, set aside the decision of the trial court dated 19th January 2006 dismissing the appellant's case, and substitute therefor an order of judgment in favour of the appellant as against the respondents in the sum of Kshs.300,000 by way of general damages together with special damages of Kshs.100 and Kshs.5,500.

56. The appellant shall also have the costs of the suit and interest thereon from 19th January 2006, as well as the costs of this appeal.

Dated, Signed and Delivered at Kericho this 22nd day of September 2016

MUMBI NGUGI

JUDGE