



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 888 OF 2006

MICHAEL MURIGI KARANJAPLAINTIFF

VERSUS

MOHAMMED SALIM KASSAMDEFENDANT

JUDGMENT

1. The plaintiff claims against the defendant for special and general damages for injuries he sustained whilst in the course of employment owing to the negligent/ breach of contract of the defendant a stair to the ladder mounted on the well of the building under construction broke and a stair system collapsed as a result of which the plaintiff fell down. Thereafter other construction materials including a wheelbarrow, piece of timber, construction blocks and concrete fell on the back of the plaintiff and the plaintiff sustained serious bodily injuries. The plaintiff avers that the collapse of the stairs was a result of the negligence of the defendant, his agent, servants and/or employees and or as a result of a breach of an implied condition and/or warranty in the employment contract to take steps to ensure the safety of the plaintiff during the cause of his employment.

2. He particularized the defendant's negligence as follows;

- i. Failing to take steps to ensure the safety of the plaintiff during the cause of employment;
- ii. Failing to provide the plaintiff with protection gear
- iii. Failing to service the ladder regularly
- iv. Failing to provide adequate materials to ensure the safety of the plaintiff
- v. Failing to provide a safe system of work
- vi. Failing to provide adequate supervision
- vii. Acting reckless, negligently and/or without proper regard for safety of the plaintiff
- viii. Exposing the plaintiff to danger
- ix. Failing to adhere to safety standards of construction
- x. Causing accident

3. He particularized his injuries as follows;

- a. Blunt lower back injury leading to numbness of the lower back and legs
- b. Blunt injuries to the left leg leading to numbness of the left leg
- c. Blunt injuries to the left arm leading to the numbness of the right leg
- d. Bruises of the right hand
- e. Partial paralysis of the body from the lower back downwards

4. The plaintiff 56 years old, claims that he was leading a normal life before the accident and that he was working as a qualified Manson earning Kshs. 9,600/- per month and that due to the accident he has lost

his future earning capacity and loss of future earnings.

5. The plaintiff prays for loss of future earnings and will require a wheel chair estimated at Kshs. 80,000/- , a service attendant at Kshs. 5,000/- per month, Physiotherapy, medication and treatment at Kshs. 10,000/- per month for the rest of his life.

6. The defendant denied the plaintiff's claims as alleged in the plaint stating that if at all the plaintiff was injured as alleged then he was the sole author of his misfortune and particularized his negligence as follows;

- i. Using a ladder improperly
- ii. Failing to wear protective gear provided to him
- iii. Using a ladder which he knew or had reason to know could not take his weight having regards to all circumstances
- iv. Carrying out his duties in a careless and reckless manner without any due regard to his own safety
- v. Knowingly exposing himself to danger of being injured
- vi. Failing to heed advice from his supervisor

EVIDENCE

7. The plaintiff, Michael Murigi Karanja testified that he was employed by the defendant as a mason for 6 months. He was given instructions by the defendant who also paid his salary but he was not given the implements for working. He testified that he was not given a helmet to protect his head or a rope to tie to prevent him from falling. That on 3/11/2005 while on a ladder with a wheelbarrow with plaster material about 20 feet above the ground he fell to the ground unconscious and was taken to Guru Nanak Hospital where he discovered that he was injured on his back and legs. That the defendant paid his hospital expenses and took him home. He stated that he sustained injuries on his lower body and that his sex organs were paralyzed, at the time of the accident he was 58 years and has 1 wife and 8 children. That while working he was paid Kshs. 400 per day and used to be paid after 1 week and had not worked since the accident. He testified that he was used to using a metal ladder and blamed the defendant for not training him to use a wooden ladder. He denied being given any protective gear and denied that he was working carelessly and that there was no contract but used to sign for the money. He testified that he had trained himself and had worked for 17 years.

8. On cross examination he testified that he was doing plastering for 6 months and was dividing the rooms and plastering and that he was the only mason. He denied knowing any man called Julius Nethia Thuku adding that at the time the accident occurred the defendant was on site. He testified that he did not know who made the ladder and that the same was made a week earlier and that he had used it for 3 weeks before it collapsed. That since he fell he is unable to control urine. That he saw a doctor in 2007 and he wrote him a medical report.

9. Esther Gathoni testified that Michael Murugi is her husband of 30 years and that she met Mr. Mohammed Salim Kassam when he accompanied her husband to the house in Karura Kitangare. She testified that she was a laborer and used to dig for people. She admitted to having sat in court when her husband testified. She testified that she met the defendant at Guru Nanak Hospital where he had been taken after he was injured at work. The defendant came at around 8.30 a.m. and went and spoke to the doctor and then told her that the doctor had said that her husband would go home and get better. He carried her and her husband in his car and took them home. He told her that he would give him the hospital card once he was done with it and that it was the defendant who paid the hospital bill adding that he would be giving them money for medication and urged her to collect her husband's salary. Every time the husband went to work he fell and she urged the husband to leave the job and at one time he was brought home by the defendant with blood dripping in the lower part.

10. On cross examination by Mr. Mwangi, she testified that the husband got injured in 2005 and was taken to hospital at around 12.00 p.m. by his colleagues that were working with him. That when she got to the hospital she did not find the defendant but saw him the next morning when she had taken tea for the

husband. That she found the husband lying down and he did not get up and that he was not sent to KNH from Guru Nanak. She stated that she could not remember the registration number of the vehicle that transported them adding that they were in company of the defendant, the foreman and their daughter. She testified that she was to collect the salary every week. After collecting salary for two weeks the defendant told the plaintiff to be going to work to supervise people he said he couldn't go but went in the company of his son and was given Kshs.2,400/- per week and he was going to hospital after some time he went to another hospital and saw other doctors at KNH in the company of their son but could not recall the doctor's name, or age and added that he only wanted his husband to be paid so that he can be treated.

11. On re-examination she testified that the doctor advised that they take the husband to KNH and that the defendant took all the documents. That they had no means to take the plaintiff to hospital. That the husband was building for people while she was digging for people. He went with his son and the Asian had claimed he would pay him as he usually did. But he was not given any papers and that the foreman supervised their work.

12. Doctor Washington Wakobi testified that he prepared the report dated 28/8/12 on examining Mr. Murigi Karanja and based on the history given by the plaintiff and his observation of the patient at the time. A request from Niri's Investigators indicated that he fell from a platform where he was building and hit the ground. He was taken to Guru Nanak and after he stabilized he was told to go to another hospital of his choice. He was not taken to another hospital but remained bed ridden at home. He mobilized himself from home and walked with support and could not go back to gainful employment. When he examined him he had many complains e.g. he couldn't move his head from side to side with ease. His left side of the body was weak and he could not grip with his left hand he also complained that he could not walk or stand for long, loss of libido and disability to sustain an act, inability to hold urine or stool. He observed that the plaintiff had hemi paralysis on both sides of his body but more prominently on his left side. That he couldn't grip or grasp and that all the joints were stiff and the left leg was also weak with smaller muscle and the calf were wasted the same was observed of the right side but to a lesser extent. He observed that the plaintiff was left paralyzed and didn't receive thorough investigations recommended and it contributed to his condition. That though he is able to walk but with a lot of difficulties and has sexual dysfunction, inability to hold stool and urine are attributed to partial paralysis and this will distress him. He wets himself and cannot reach the toilet. He assessed his degree of disability at 75%. He stated that he charged Kshs.2,000/- and Kshs.5,000/- for court attendance he adduced receipts of Kshs. 15,000/- for court attendances. He stated that the fall caused a spinal and nerve injury.

13. On cross examination by Mr. Mwangi he stated that his report was based on the notes and clinical examination. He stated that he observed his gait and did a physical on him that his hips are weak and he has deformities the same were conclusive and he did not carry out examination. That he did not send him for x-rays as they wouldn't have helped him further and there was no clinical need to do so. That he saw the referral notes from Guru Nanak adding that the plaintiff did not disclose that he had seen other doctors. He stated that he examined the plaintiff 7 years after the accident. That one can't find the reason for libido and he doesn't carry out tests to rule out cause. That the plaintiff was not on a wheel chair when he saw him but was while supporting himself with a walking stick. He testified that he knows the Dr. Charles Nzioka and Dr. Cyprian given the two reports adding that the report is different Okere talks of different blunt injuries and the other states of blunt injuries the other states that he is not able to talk. That on face value there is a copy and paste he added that he had attended court thrice and had been paid though at one occasion he did not testify. Paralysis is not total paralysis. That it was a clear case of cause and effect.

Defendant's case

14. Mohammed Salim testified that he works in spare part shop in Kirinyaga road and denied being a building contractor. Though he admitted to having a construction site on Limuru road in 2002 he denied hiring the plaintiff at the said site where a permanent building was been put up. He testified that he had given a contractor by the name Julius M. Mbika to work in 3 stages. That it was a labour contract and he got the materials for him. The contractor came with his own employees. He denied employing the plaintiff or paying him any wages. That he was supplying cement when the

- accident happened but he did not go where he fell but took him to Guru Nanak Hospital. The contractor said one of his people was hurt and he only took him to hospital as a good Samaritan. He denies paying the hospital bills, taking the hospital bills or taking him to his house. He testified that there was no painting work going on as the house was not complete. That the plaintiff did not demand payment for 3 days. He denied asking the plaintiff's wife to collect his wages from him. That he saw Dr. Nzioka's report dated 27th/11/09 and he was re-examined on 28/8/12 which was after the plaintiff testified while Dr. Cyprians report is dated 27/8/2006. He testified that the reference and the phone numbers in the two reports are word for word the same. He testified that the plaintiff wasn't telling the truth when he said that he didn't see any doctor.
15. On cross examination by Mr. Kivuva he stated that the labour contract was signed though not dated. The contract stated that there was no reason for Mbika not to employ other people and that there was a place it stated that he was to supply the materials. That he had just gotten to the site when the accident occurred and the plaintiff got injured and he took him to hospital. He denied seeing the plaintiff's wife in hospital and added that he had not joined Julius Mbika as a party. He denied that they are paid per day. He admitted to paying him Kshs. 70,000/-. He testified that he did not see the need to call Mbika as his witness as he is the one who drew the agreement. He denied referring the plaintiff for a 2nd medical report and added that he doubted the plaintiff's injuries and denied any attempts to get in touch with the two doctors. He added that protective gear was on site adding that the supervisor was a kamba guy. He stated that they did not have a civil engineer as the same was a small construction and Suleiman was his contract with whom he had a contract. That he completed the construction and had been told that the plaintiff was alright and denied paying him. He denied writing the document which he referred to as a contract.
16. On re-examination he stated that Julius Mbika prepared the document and the same provided how the phases were to be implemented. The same stated to prevent wastage of time materials should be on site adding that if he had hired one person Kshs. 70,000/- would have been a reasonable sum. He denied knowing the whereabouts of Mbika as he did not require him and hadn't seen him again.
17. The plaintiff in his written submissions pointed out that the following issues are in dispute;
- i. Was the plaintiff employed by the defendant at the time of the accident?
 - ii. If the plaintiff was engaged by the defendant, was the defendant liable for the accident?
 - iii. Is the plaintiff entitled to general damages?

a. **Was the plaintiff employed by the defendant at the time of the accident?**

It is the plaintiff's submission that he was engaged and paid by the defendant who took him to hospital and drove him home after he was discharged. That this evidence was corroborated by his wife and was paid Kshs.2,400/- . The defendant denied the allegations and claims that he engaged a subcontractor one Julius M. Mbika and produced a hand written note allegedly written by the sub-contractor at the site. That the defendant in his defence did not claim that he had engaged a sub-contractor and the agreement adduced in support had many issues. It was not signed by the defendant, was not witnessed by any independent witnesses contrary to section 3(3) of the Contract's Act and the contract does not state the site under construction. That the said contract mentions two houses. Julius Mbaika the alleged author does not indicate he was to hire extra labor. That the first sentence is written in 1st person singular "***I can stop working if I don't want to continue***" while the plaintiff and the defendant both testified that the construction was pertaining to one house while the alleged agreement refer to two houses big and small. No documents were adduced to prove that Julius M. Mbika is a registered contractor, having license to carry out construction works, the agreement is not dated and the maker was not called as a witness, the same was introduced into pleadings after the close of pleadings.

18. That section 2 of the employment Act defines a person employed for wages or salary and includes an apprentice and indentured learner. An employer is defined to include the agent, foreman, manager or factor of such a person. That section 1(b) and (c) of the Employment Act Cap 226 of a contract of service for performance of specified work reasonably expected to be completed within a period which could not be reasonably expected to be completed within a period or number of working days amounting to an aggregate of 3 months shall be in writing by the employer further

section 10 provides particulars of such a contract of service to include, names of employer & employee, address of both, job description, date of commencement, form and duration of contract, remuneration. Further that section 37 provides that where a casual employee works for a period of not less than 1 month shall be deemed to be a permanent employee after an extra 2 months of service. That the document marked DEexh1 has no evidentially value and is not admissible in evidence as the defendant testified that he was not the maker of the document on this he relied on section 35(2) of the Evidence Act that provides that, the admission of such a document is only admissible where the maker of the document cannot be traced and the court has ordered such. That section 107 of the evidence Act (cap 80) lays the burden of proof on the defendant to show that the plaintiff was employed and failure to call the maker of the document is to the detriment of the defendant. Failure to disclose the contractor in the defence meant that the plaintiff could not enjoin the contractor as a party to the proceedings. And that in any event the contractor was an agent of the defendant. This issue was confirmed in the case of **Wilson –vs- Cylda Coal Co. –vs- English (1938) A.C. 57** where it was held, “ *the employer personal duty whether he performs or can perform it himself, or whether he does not perform it or it save by servants or agents.*” That the employer’s duty is not discharged by appointment of a competent person to carry out the tasks, this was confirmed in **Mc Dermind –vs- Nash Dredging and reclamation Co. Ltd. (1987) A.C. 906** where defendant was held liable for injuries sustained by an employee engaged by an independent company engaged by an independent company because they had delegated the performance of their duty to take care for the claimant’s safety to the contractors and its employees and that all these factors combined make it evident that the plaintiff was employed by the defendant and is liable when that duty is not fulfilled.

Was the defendant negligent?

19.It was submitted that the nature of employers liability is threefold as per Lord Wright in **Wilson – vs Cyde coal Co –vs- English (1938) AC 57 at 58**. “*the provisions of a competent staff of men, adequate material and proper system of work and effective supervision.*” That the plaintiff was not provided with proper equipment and his ladder collapsed during construction of the site and the plaintiff fell from 2nd floor of the building. He submitted that the system of work was not safe and that the plaintiff did not have protective gear and was exposed to grave danger by the defendant. That the defendant had not provided evidence that he had engaged qualified men to supervise the construction. That under the Factories Act, the responsibility of employees is three fold provision of protective gear, a good system of work and adequate supervision duties the defendant did not comply with and is therefore 100% liable.

Quantum

20.That according to Dr. Wakobi’s medical report he explained that the plaintiff suffered serious blunt injuries to the back, left leg, right hand, zygomatic region and multiple soft tissue injuries and assessed his permanent disability at 75%. That considering the severe nature of injuries sustained by the plaintiff, lapse of time and inflation trends in Kenya and proposed an award of Kshs.5,000,000/- he relied on the following cases; **Rosemary Wanjiru Kungu –vs- Elijah Macharia Githinji & Another[2014] eKLR** where a plaintiff who suffered fracture of thoracic spine vertebrae T12, complete paraplegia, large wound on right shoulder, urine retention, dislocation of knee, severe spine injury (fracture) and partial paralytic ileus was awarded Kshs. 3,000,000/-. **In Joseph Maganga Kasha –vs- Kenya power and Lighting Company Ltd. Plaintiff sustained serious injuries and became paralysed from his waist down. The medical report revealed that he had sustained very severe and debilitating spinal injuries with burst displaced fracture of thoracic spine and also on the left transverse process, spinal cord and exit nerve compression leading to total paralysis below L1. Bone fragments within spinal canal and urine and stool inconsistencies, erectile dysfunction. He was awarded Kshs. 3,000,000/-.** **William Wagura Maigua –vs- Elbur Flora Limited [2012] eKLR**, plaintiff a carpenter, lost consciousness after the accident. According to the doctor who examined him, the plaintiff was suffering from paralysis of the limbs as a result of spinal injuries and was unable to use his limbs and had to depend on other people for mobility. He was awarded Kshs. 3,000,000/-.

On loss of future *earnings and future earning capacity*. It was submitted that the plaintiff at the time of the accident was 56 years old and had a normal life. At the time he was working as amazon earning Kshs. 400/- per day making Kshs. 9,600/- per month but after the accident he could not engage in gainful employment and the Doctor assessed his disability at 75% and as such the plaintiff will not be able to work and earn a living. That the plaintiff being a casual worker he may be required to work over and above the retirement age. Considering the retirement age of 60 the plaintiff would have worked for another 24 years. Currently the plaintiff is 64 years of age. He proposed a multiplier of 14 years is both reasonable and considerate. $Kshs.9600 \times 12 \times 14 = Kshs. 1,612,800/-$.

A wheel chair every year for 14 years $Kshs. 80,000/- \times 14 = Kshs. 1,120,000/-$

Kshs. 5000/- per month for a helper

$Kshs.5,000 \times 14 \times 15 = Kshs. 840,000$.

Kshs. 10,000/- per month for physiotherapy $10,000 \times 14 \times 12 = Kshs. 1,680,000/-$

Special damages

Medical report Kshs. 2,000/-

Court attendance by Dr. Wakobi Kshs. 30,000/-

He claims for;

General damages for pain and suffering Kshs. 5,000,000/-

Loss of future earnings and earning capacity Kshs. 1,612,800/-

Cost of wheelchair- Kshs. 1,120,000/-

Cost of helper Kshs. 840,000/-

Cost of physiotherapy Kshs. 840,000/-

Medical report Kshs. 2,000/-

Doctor's court attendance Kshs. 30,000/-

Total award Kshs. 10,284,800.00

Defendant's submissions

21. It was submitted that the plaintiff produced no evidence to prove that he was employed by the defendant though he claims to have worked at the site for over 6 months he only got to see the plaintiff in 2006, he did not know who made the ladder he was using which was made a week before the accident hence his claim that the he had used the ladder 3 weeks earlier contradicted his evidence. Further that he did not understand how a mason with over 17 years' experience could stand on a wooden ladder on which he had placed a wheelbarrow loaded with plastering material and this only showed that the plaintiff was negligent in how he carried out his assignment. The plaintiff's claims that the defendant took him to Guru Nanak Hospital and paid all his hospital bills and other documents and went away with them this he claims was not pleaded in the plaint. That the plaintiff had pleaded a medical report by Dr. Cyprian Okoth Okere dated 27/4/2006. That though the same was not pleaded if forms part of pleadings and should not be ignored by the court and pointed out that the said report was made barely a year after the plaintiff had the said accident. Efforts by the defendant to produce the said medical report and the one by Dr. Nzioka was

objected to by the plaintiff. He pointed out that Dr. Wakobi's report was done on 28/8/2012 two months after the plaintiff testified and 7 years after the accident and the plaintiff did not refer to the said medical report. That Dr. Wakobi admitted that he only relied on a physical examination and the history as given by the plaintiff adding that this could be the reason of no incapacities in the plaint. That the plaintiff has not proved the particulars of negligent and breach of contract as pleaded. On the issue of the plaintiff being provided with boots and a helmet the plaintiff did not show how the said items would have prevented him from suffering the alleged injuries. Further that a claim of negligence must establish a duty of care, a breach of that duty and the resultant loss or damages. That the plaintiff has failed to prove he was employed by the defendant and that he owed him a duty of care. That no evidence was adduced that he needed a wheel chair or a nurse or attended any physiotherapy clinic as he testified that he never attended any other hospital after Guru Nanak. That the plaintiff has not proved his case on a balance of probability and urge the court to dismiss his claim with costs. On quantum he submitted that the injuries sustained by the plaintiff were soft tissues injuries in nature and considering there was no proof of alleged salary he proposed an award of Kshs. 200,000/- for pain and suffering. At the time of filing the suit the plaintiff was 56 years and is currently past retirement age.

Determination

Having considered the evidence and submission by the parties I find that the issues for determination are as follow;

- a. Was the plaintiff an employee of the defendant?
- b. If yes did the defendant owe him a duty of care?
- c. Has the plaintiff proved breach of that duty?
- d. Who bears liability for the injuries suffered by the plaintiff?
- e. Is the plaintiff entitles to special and general damages sought?

Was the plaintiff an employee of the defendant?

22.It was the plaintiff evidence that he was employed by the defendant to carry out some plastering work and it was in the course of carrying out those duties that he fell from a ladder and sustained several injuries. The plaintiff has not adduced any evidence to prove that he was employed by the defendant. In his testimony he only used to sign for money he was paid. However the defendant in his own testimony stated that the plaintiff sustained the said injuries while working at his site and he even took him to Guru Nanak Hospital for medical attention. The defendant denies that he had employed the plaintiff and claims that he had hired a contractor to carry out the building works on the said site. I note that this had not been mentioned at all in his filed defence. In support of this he has adduced a hand written document allegedly drawn by the said contractor one Julius M. Mbika. The said agreement is not dated, is does not have description of the parties to the agreement, and is only signed by only one party Julius M. Mbika. The maker of the said agreement was not called to verify its validity. I therefore find that the same cannot stand. From the evidence I find that the plaintiff was a casual worker at the defendant's site and in most cases casual workers are not usually given written contracts, parties tend to agree orally and therefore it is excusable that he did not have a document to prove he was an employee. In the case of ***Jacob Ayiga Maruja & another v Simeon Obayo, Civil Appeal No. 167 OF 2002*** Justices Omolo, Tunoi & Githinji, JJ.A held that; *"we do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way to prove earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things."*

I find that the circumstances surrounding the plaintiff's presence at the site to a great extent is proof that he was working for the defendant.

23. As an employee employed by the defendant the defendant was required to provide him with the necessary equipment to carry out the tasks allocated to him. I find it was not enough that the defendant claims that the plaintiff did not show how the gumboots or helmet would have protected him from sustaining the injuries he alleges he sustained. The defendant owed the plaintiff a duty of care to provide him with protective clothing and other safety amenities to enable him carry out his work. Failure to provide the safety clothing and safe system of work in the construction industry shows that the defendant was in breach of duty of care he owed the plaintiff. The plaintiff has testified that he has been a mason for over 17 years I think he has been in various similar constructions before and he is well aware of the risks involved. I find that he also should have exercised some caution and paid some personal safety in carrying out the tasks this in my view would have prevented the accident. In that regard I find that it is only fair to apportion liability at 30: 70, plaintiff bears 30 % and defendant 70%.
24. On the injuries sustained by the plaintiff the medical reports of Dr. Nzioki Charles and Dr. Cyprian Okoth Okere were not admitted and I will therefore only refer to Dr. Wakobi's medical report dated 2nd August 2012. Doctor Wokabi in his examination of the plaintiff he noted that the plaintiff left upper limb was wasting all groups of muscles. His left hand fingers are stiff and spastic and have claw hand deformity. The wrist and elbow joints and spastic he cannot grip or grasp all which he attributes to nerve hemi-paralysis. The left leg is weak and the thigh muscles are wasted, the calf and knee are spastic. In his medical opinion he observed that the plaintiff sustained severe spinal injury as the neck and lumbar region level that left him hemi paralysis on both upper and lower limbs and due to lack of treatment. That though he is able to walk he does so with difficulties and he cannot work or engage in gainful employment. That he has a sexual dysfunction which will persist permanently and will be distressful as it will deny him consortium with his wife. That his inability to hold stool and urine are because of the hemi paralysis and sometimes he will be soiling and wetting himself. He assessed the plaintiff's disability at 75%. From Dr. Wakobi's medical report it is evident that the plaintiff indeed suffered very serious injuries and has as a result been incapacitated and cannot be in gainful employment. Going by the authorities cited by the plaintiff I find that the Sum of Kshs. 3,500,000/- is adequate for loss of amenities.
25. The plaintiff at the time of the accident was 56 years old. Factoring in that he was in informal sector he could have worked past the set retirement age of 65 years. Considering the vicissitudes of life I will take a multiplier of 9 years. The plaintiff claims that he was earning Kshs.400 per day, Kshs. 2,400 per week =Kshs. 9,600/- per month, 9,600 x 108= 1,036,800/-, under this head I award him Kshs. 1,036,800/-, General damages Kshs. 3,500,000/-. The plaintiff in his written statement filed in court on 3rd February 2012 he stated that he needed a wheelchair however, the cost of the wheel chair was not provided to enable this court determine what to award. Doctor Wakabi in his report assessed the plaintiff's disability at 75% but did not indicate that the plaintiff required physiotherapy, medication and treatment to the tune of Kshs. 10,000/- per month for the rest of his life. The plaintiff did not plead any special damages in his plaint. A party is bound by their pleadings. His claim for special damages therefore fails. I therefore award the plaintiff the following;

- i. General damages Kshs 3,500,000/-
- ii. Loss of future earnings Kshs. 1,036,800/-

Total Kshs. 4,536,800/-

The plaintiff bears 30% liability I therefore enter judgment for the plaintiff in the sum of Kshs. 3,175,760/- plus cost with interest from the date entry of this judgment until payment in full. The plaintiff shall also have cost of the suit.

Orders accordingly

Dated, signed and delivered this 24th day of **April** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Plaintiff**

.....**For the Defendant**

.....**Court Clerk**