



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

Civil Case 312 of 2009

ISAAC WAWERU MUNDIA.....PLAINTIFF

VERSUS

KIILU KAKIE NDETI T/A WIKWATYO SERVCIES DEFENDANT

JUDGMENT

1. On **31/03/2008**, the Plaintiff, **Isaac Waweru Mundia** (“Plaintiff”) was travelling as a fare-paying passenger in motor vehicle registration number **KAM 958V** owned by the Defendant along Mombasa Road at Kapiti Plains area when the vehicle rammed into another vehicle parked off the road. The Plaintiff suffered serious injuries. He was first taken to Machakos Provincial Hospital where he was admitted in a comatose state. He remained there until **02/04/2008** when he was transferred to Kenyatta National Hospital. He did not regain consciousness until four days after the accident. He remained hospitalized until **13/04/2008** and had at least two major surgeries.

2. The Plaintiff, through his advocates, **Khayega & Co. Advocates**, started this suit by filing Plaintiff on **12/10/2009** seeking general damages for pain, suffering, and loss of amenities; special damages and costs of the suit. Although the Defendant, the owner of the motor vehicle he was traveling in was served and an affidavit of service duly filed, the Defendant did not enter appearance. Consequently, the Plaintiff requested for, and obtained interlocutory judgment pending formal proof.

3. Formal proof was scheduled before Justice Kihara Kariuki who heard two witnesses on **04/05/2011** and **12/07/2011**. The Plaintiff was ordered to file written submissions within sixty days of **12/07/2011** and the matter scheduled for mention for **23/11/2011**. By that time, Justice Kihara Kariuki had transferred out of Machakos Station and the matter was placed before me to consider the evidence and deliver judgment.

4. The Court heard from two witnesses – the Plaintiff and Dr. Theophilus Wangata, a medical practitioner who examined the Plaintiff. Their testimonies were largely corroborative. Dr. Wangata categorized the injuries suffered by the Plaintiff as “grievous harm” which he described in summary form thus: “head injury with fracture[d] base of the skull, fracture[d] mandible, loss of tooth and facial disfigurement. This caused a lot of physical and psychological pain, blood loss and suffering.” According to Dr. Wangata, the specific injuries suffered by the Plaintiff were as follows:

a. Fracture of the base of the skull;

b. Comminuted complex mandibular fracture (right condylar neck fracture) with malocclusion and loss of left lower incisor tooth;

- c. Right eye vertical dystopia and diplopia on left gaze with marked ptosis of the upper eyelids;
- d. Resultant facial asymmetry caused by the above injuries;
- e. Wounds and abrasions on the lip, chin, and both lower limbs;
- f. Loss of blood, physical and psychological pain.

5. Dr. Wangata testified (and recorded in his medical report) that the Plaintiff displays symptoms of post-traumatic stress disorder and will likely require future treatment for that. He will also need further maxillofacial/dental follow-up and replacement of the missing tooth. He approximates the extent of the permanent and functional incapacity as a result of the injuries at twenty percent. The P3 form and the discharge summary from Kenyatta National Hospital corroborate the findings of Dr. Wangata. Since the Plaintiff's case is uncontroverted, I will treat these injuries as proved.

6. The Plaintiff produced the following receipts in proof of special damages:

- a. Kenyatta National Hospital receipt dated 13/04/2008 for Kshs. 143,009 (although, due to the NHIF rebate the actual amount paid by the Plaintiff is Kshs. 123,009)
- b. Plaza Imaging Solutions receipt dated 02/04/2008 – Kshs. 6,800
- c. Receipt from Diagnostic Center dated 08/05/2008 –Kshs. 7,000/=
- d. Receipt from Dr. Gichuru Mwangi dated 17/04/2008 – Kshs. 5,000/=
- e. Receipt from Dr. Gichuru Mwangi dated 02/05/2008– Kshs. 3,000/=
- f. Receipt from Diagnostic Center dated 05/04/2008 –
Kshs. 1,200/=
- g. Receipt from Dr. Edwin Rono dated 02/05/2008–
Kshs. 3,000/=
- h. Receipt from DAN Pharmacie 17/04/2008–Kshs. 470/=
- i. Receipt from Lyntons Pharmacy dated 02/05/2008 –Kshs. 2145/=
- j. Receipt from Dr. Edwin Rono dated 23/09/2009 –Kshs. 187,000/=
- k. Receipt from Machakos District Hospital dated 03/04/2008–Kshs. 1100/=
- l. Receipt from Dr. Edwin Rono dated 21/08/2009 – Kshs. 4,500/=
- m. Receipt from KRA Search dated 24/09/2009–
Kshs. 500/=

n. Receipt from Dr. Theophilus Wangata dated 12/07/2011 – Kshs. 20,000/=

7. In his Plaintiff, the Plaintiff had particularized special damages as follows:

- a. Police abstract – Kshs. 200/=

