



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL CASE 368 OF 2010

CAROLINE WANJIKU KARIMI.....APPLICANT

VERSUS

1. SIMON K. TUM.....1ST RESPONDENT

2. SHAMI TRADING CO LTD.2ND RESPONDENT

JUDGMENT

1. Caroline Wanjiku Karimi was 18 years old when, on 18th May, 2010, she was crossing Likoni-Ukunda Road – Mombasa. It was about 7.00p.m and she just left her mother’s shop. Suddenly, she was knocked down and ran over by a Nissan Matatu Registration Number KBD 685F, registered in the name of the 2nd Defendant, but beneficially owned by the 1st Defendant. Fortunately, the accident occurred just adjacent to Likoni Police Station so quick action was taken. Karimi was rushed to Pandya Hospital where first aid was administered before being taken to Coast General Hospital. There she was admitted for six weeks from 18th May to 30th June, 2010.

2. On 22nd October, 2010, Karimi filed this suit against both Defendants. She alleged negligence and carelessness on the part of the owners and driver of the Nissan Matatu, and highlighted particulars of negligence, injuries and special damages. She seeks general damages, special damages of Kshs. 101,700/= costs of the suit and interest at court rates on the damages and on costs of the suit. The Plaint and summons to enter appearance were served on the defendants as attested to the Affidavit of Service deponed by Michael Otieno on 22nd December, 2010. The 1st Defendant is a Police Officer at Diani Police Station, Mombasa, whilst the 2nd Defendant has offices at Moi Avenue, Mombasa.

3. None of the Defendants entered appearance or filed defences. Accordingly, after a request on 25th January, 2011, interlocutory judgment, was entered on 4th February, 2011. A hearing was held on 16th February, 2011 for assessment of damages. Two witnesses were heard: PW1–Dr. Stephen Kanegeni Ndegwa, and PW2–the Plaintiff herself.

4. PW1, Dr. Ndegwa took the court through a detailed medical report produced as PExhibit 1, outlining the injuries suffered by Karimi. He examined her on 18th September, 2010, and his report incorporates a review of the treatment notes from the Coast General Hospital. He also produced as PExb 3 a Radiologist’s report from Dr. A.M. Salyani, to whom he referred Karimi. The X-rays taken were of the forearm, hand, pelvis and femur, all of which were confirmed as injured in the medical report. In Dr. Ndegwa’s opinion, the level of disability was about 30%.

5. The injuries detailed in the medical report are reproduced hereunder:

- a) **Displaced and angulated fractures of the right distal radius.**
- b) **Avulsion fracture of the right ulna styloid process.**
- c) **Displaced comminuted fracture of the upper mid shaft right femur**
- d) **Displaced fracture of the right pubic ramii.**
- e) **Displaced fracture of the right ischial ramii.**
- f) **Fracture of the left ischial ramus and arcuate eminence.**
- g) **Crush fracture of the distal phalanx of the right index finger.**
- h) **Fracture of the distal phalanx of the middle finger.**
- i) **Fracture of the distal phalanx of the right ring finger.**
- j) **Fracture of the middle phalanx of the right little finger.**
- k) **Dislocation of the right ulnar end.**
- l) **Sub-luxation of the proximal and distal inter-phalangeal joint of the right index finger.**
- m) **Sub-luxation of the distal inter-phalangeal joint of the right middle finger.**
- n) **Sub-luxation of the distal inter-phalangeal joint of the right ring finger.**
- o) **Friction burns on the entire right wrist.**
- p) **Severe lacerations on all the right fingers with loss of nails on the 1st – 4th fingers. The loss of nail on the 2nd – 4th is permanent and the pulps have been sheared off.**
- q) **A huge friction burn covering the right forearm upper arm and shoulder and measuring 30×4 cm.**
- r) **7cm deep cut wound on the left upper arm surrounded by several smaller ones.**
- s) **Several large lacerations on both legs.**
- t) **Lacerations on the dorsum of both hands.**
- u) **10×8 cm friction burn on the right buttock.**
- v) **7×4 cm friction burn on the right back.**
- w) **7×4 cm friction burns on the right temporal scalp.**
- x) **10×3 cm friction burns over the left iliac crest.**

6. Dr. Ndegwa's summary of his examination is as follows:

- She has suffered extensive disfiguring scars. Several large surgical scars are on her right thigh, hip and right wrist.

- There is severe stiffness involving all the right hand fingers whose nails are missing on 2nd – 4th deformed fingers.
- General tenderness of pelvis on palpation.
- The right knee and right hip movements are tender.

Dr. Ndegwa concluded that the injuries are:

“extremely severe multiple bone, joint and extensive serious soft tissue injuries.”

In his opinion treatment would be ongoing, and aggressive physiotherapy was recommended.

7. Dr. Ndegwa stated that, in the long term, because of the gross deformities in Karimi’s right hand, the twisted wrist, stiffness in all her right fingers, inability to grip with right hand and the ugly shoulder and back scars, Karimi would be discriminated in such jobs as in the military where they look out for scars and in the beauty world. Being right handed, she will have to relearn to write with her left hand due to her twisted wrist and inability to grip.

8. Karimi also gave evidence in her own behalf. She said she was 20 years old and studying for a Bachelors degree in Education at Kenyatta University in Nairobi at the time of the accident. She indicated and exhibited her injuries. The court saw the deformities on her hand and some of the scars which she was not too embarrassed to show. She produced photographs taken by her friend two months prior to the hearing, showing the large and ugly burn scars on her buttocks and back, surgical scars on her shoulder and thigh. Her right wrist is twisted to the right and her fingers are stiff so that she cannot grip things with that hand. She is right handed and has difficulties in writing and eating.

9. Karimi said her self-esteem was affected and she found it almost impossible to wear attire that revealed her arms because of the ugly sight of the large scars, which were embarrassing and caused her to be invariably questioned, and intermittently and reminded of their ugliness. She attends physiotherapy twice a week at Kenyatta University clinic when she is in college, and at Coast General Hospital when on holiday. Because she was fitted with plates in her right leg, she cannot run or take part in sports, and finds it difficult to walk.

10. Although Karimi appeared to me a bright and feisty young lady, she also evoked trauma given that she was in what may be described as a nubile age carrying the burden of those ugly scars which she was embarrassed to disclose or discuss.

11. Besides the photographs Karimi produced several exhibits such as Exhibit 6 being a P3 Form in which the clinical results of her injury were assessed as “grievous harm”; Exhibit 7, the Police Abstract of the accident; Exhibit 8 being the Hospital Discharge Abstract; Exhibit 9 being 4 receipts for treatment costs, taxi charges to and from physiotherapy etc., all for Kshs. 38,150/=, and Exhibit 10 being her lawyer’s demand letter.

12. Having carefully assessed all the documentary evidence adduced, and listened to the witnesses and submissions of counsel, I now make my findings on liability and assessment of damages as follows:

Liability

As earlier pointed out the suit is undefended as no defence was filed. The particulars of the Defendants’ negligence are therefore, pursuant to Order II, deemed to be admitted.

Special Damages

The Plaintiff has claimed Kshs. 107,000/= in Special Damages. The receipts provided in proof were, however, as follows:

	<u>Amount in Kshs.00</u>
Exhb 9 Bundle	- 38,150
Dr. S.K. Ndegwa Exh 4	- 3,500
Dr. S.K. Ndegwa Exh 2	- <u>1,500</u>
Total	43,150 =====

Future Medical Expenses

These were estimated by Dr. Ndegwa at Kshs. 100,000/=.

13. In his submissions, Mr. Mutubia for Karimi argued that the Defendants were fully liable and sought Ksh.4,500,000 as general damages. He relies on the case of Embu HCCC Number 118 of 2006 **Jackquline Syombua vs. BOG Ekalakala Secondary School** where W. Karanja J (as she then was) awarded Ksh. 6,500,000/- in her judgment dated 4th March, 2010 for what he called similar injuries. I have studied that case carefully. There, Jacqueline suffered 100% disability, consigned to life on a wheelchair as a quadraplegic. The case of Karimi is far less severe. And, going by percentage of disability alone, at 30%, the amount awardable would be Kshs. 2,165.000.00.

14. In Nakuru HCC 109 of 2002 **Stephen Kihara Gikonyo vs Peter Kirimi Kingori and Patrick Githinji**, where the Plaintiff was hospitalized for six weeks, as in the present case, with dislocation of right hip, head injury and cerebral concussion, osteoarthritis of right hip and shortened leg, with permanent disability at 35% and injuries classified as “grievous harm” Justice Koome awarded Kshs. 800,000/- for general damages. That was in 2007.

In Kisii HCCC 223 of 2002 **Simion Oyaro Ogachi vs Faiz Mohamed Hassan**, the Plaintiff suffered bruises in the left wrist, crushed left leg which was amputated and hospitalized for 18 days. He was awarded Kshs. 800,000 on 5th March, 2005.

15. The object of damages in personal injuries cases is not to attempt to compensate or to bring the person back to the level they would have been. Nor is it to pay for the injuries for, as stated by Lord Morris in **H West and Sons Ltd vs Shephard** (1964) AC 326:

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

16. In this case, Karimi will be saddled for life, unless she undergoes plastic surgery, with numerous large and ugly scars. Her self esteem has suffered and she will suffer further in future as she seeks employment. The beauty industry will be a no-go zone for her, so too the military. She is studying for a bachelor’s degree in education, which frequently leads to a life of teaching, personal coaching and mentorship, and, increasingly into psychology and counseling. Her deformed hand and twisted wrist will be a lifelong limitation. Consistent physiotherapy, we were told, will have to be undergone by her.

What Karimi suffered was described in the medical report from the Coast General Hospital, as earlier noted, as “grievous bodily harm.” Which means, and I quote from the definition in the report:

“any harm which amounts to maim, or endangers life, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to my external or internal organ.”

Even within this category of grievous harm, there are many levels of injury. The onerous task of the judge is to make an award that reasonably compensates the victim, taking into consideration cases of a similar nature, and compensatory trends within the environment and country where they have been suffered.

17. Given the foregoing, and guided by the comparative injuries in the cases analysed above, I am satisfied that an award of general damages at Kshs. 1,800,000/= is appropriate.

The import of the awards given in this case is, therefore, as follows:

General Damages	Kshs. 1,800,000.00
Special Damages (proved)	Kshs. 43,150.00
Future Medical Expenses	Kshs. 100,000.00

I also award interest on special damages at court rates from the date of filing these proceedings. On general damages and future medical expenses I award interest at court rates from the date of judgment to the date of full settlement. The Plaintiff shall also be entitled to costs.

Orders accordingly.

SIGNED BY:

.....
R.M. MWONGO
JUDGE

Read in open court on this.....30thday of April...2012

(BY HON. JUSTICE JOHN MWERA)

Coram:

1.Judge: Hon. John Mwera

2. Court clerk: T. Furaha

In Presence of Parties/Representative as follows:

- a)
- b)
- c)
- d)