



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 1231 OF 2005**

**A.G.M** (Suing through

his next friend **J.M**) ..... **PLAINTIFF**

**VERSUS**

**DR. KENNETH MUNENE** ..... **1<sup>ST</sup> DEFENDANT**

**REGISTERED TRUSTEE ARCHDIOCESS OF NAIROBI**

**T/A MARY HELP OF THE SICK HOSPITAL** ..... **2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**THE PLEADINGS**

1. This suit was commenced by way of a plaint dated 14<sup>th</sup> October 2005 and filed in court on 17<sup>th</sup> October 2005. The plaintiff alleged that the defendants jointly and severally breached their duty of care to the plaintiff in relation to his treatment including all matters arising out of or incidental thereto by failing to take reasonable care of the plaintiff in relation to the medical, nursing and other care with which the plaintiff was provided and further that the defendants jointly and severally failed to take reasonable care to ensure that there was a safe system of health care provided by the 2<sup>nd</sup> defendant. As a result of the said breach, the plaintiff suffered loss and traumatic amputation of his left hand above the wrist. Reasons wherefore, the plaintiff prayed for judgment against the defendants jointly and severally for:-
  - a. **General damages for pain suffering and loss of amenities;**
  - b. **Future medical expenses;**
  - c. **Loss of future earnings due to handicap;**
  - d. **Interest on (a) (b) and (c) above at court rates until payment in full;**
  - e. **Aggravated damages;**
  - f. **Any other relief that the honourable court may deem fit and just to grant.**
2. The 1<sup>st</sup> defendant filed his defence through the firm of J.K. Ngaruiya & Co. Advocates on the 2<sup>nd</sup> February 2006. He denied that he was negligent in any manner and stated that all proper care was taken in the treatment of the plaintiff. Further, he stated that the plaintiff's mother, J.M demanded

for the release of the plaintiff from the hospital against the advice of the doctor who was treating the plaintiff. He further denied that any cause of action had arisen in favour of the plaintiff and urged the court to dismiss the suit with costs.

3. There was also a joint defence dated 13<sup>th</sup> January 2006 and filed in court on 17<sup>th</sup> January 2006. The
3. defendants averred that save that the plaintiff was born through caesarian section on 11<sup>th</sup> September 2003, they denied that they failed, neglected and or refused to diagnose in good time the development of gangrene and its management thereof. The defendants denied all the particulars of negligence made against them and stated that the risk in the treatment of the plaintiff's general condition since birth was an inherent risk arising despite the exercise of reasonable care and skill; and that all the treatment accorded the plaintiff was given in keeping with the practice of the Medical Practitioners and Dentists Board.
4. The plaintiff filed a reply to the 1<sup>st</sup> Defendants defence and averred that the defendants were indeed negligent in their treatment of the plaintiff. The plaintiff urged the court to dismiss the said defence and to enter judgment for the plaintiff as prayed in the plaint.

#### THE PLAINTIFF'S CASE AND EVIDENCE

5. The plaintiff's case against the defendants is that on or above 11<sup>th</sup> September 2003, the plaintiff, a minor suing through his next friend, was born at the 2<sup>nd</sup> defendant's hospital. The plaintiff alleged that he was negligently managed by administration of a drip on the left hand without due care and attention thus causing gangrene on the minor's left hand which eventually necessitated amputation of the hand at Gertrude's Garden Childrens' Hospital on the 27<sup>th</sup> September 2003.
6. It is the plaintiff's case that the events which culminated in the plaintiff's amputation of the left hand were solely caused by the negligence of the defendants, their servants and/or agents, particulars of which are:-
  - i. *Failing to put the plaintiff on aggressive antibiotics to prevent the process of ischaemia and the sepsis.*
  - ii. *Administering the drip negligently and carelessly.*
  - iii. *Failing to maintain close observation on the plaintiff's left hand.*
  - iv. *Failing to observe in sufficient time that the plaintiff's hand had become gangrenous and therefore put the right management.*
  - v. *Leaving the canula in situ for a very long time thus affecting the plaintiff's delicate hand and aggravating the fast spreading ischaemia.*
  - vi. *Over tightening and over covering the plaintiff's delicate hand thus cutting out blood supply to the plaintiff's lower limb.*
  - vii. *Failing to observe that the plaintiff's left hand needed urgent attention to stop gangrene from spreading.*
  - viii. *Failing to refer the plaintiff to specialists in sufficient time to avoid the gangrenous effect of the left hand.*
  - ix. *Prescribing the wrong medication, applying the wrong management and discharging the plaintiff while he was still in danger.*
  - x. *Causing the plaintiff's left hand to be amputated.*

7. The plaintiff called 4 witnesses in support of his case. PW1 was J.M (M), the plaintiff's mother. She narrated that the plaintiff was born to her through caesarian section on 11<sup>th</sup> September 2003 carried out by the 1<sup>st</sup> defendant herein and after she left the theatre, the plaintiff, who looked alright was brought to her. On the 12<sup>th</sup> September 2003, the 1<sup>st</sup> defendant informed her that the plaintiff had had a weak cry at birth, and that as a result thereof, he had had to be put in the nursery for observation. That on 13<sup>th</sup> September 2009, when she went to the nursery to breastfeed the plaintiff, she found he was in good health but at about 5.00 p.m. on the same day, she was informed that the plaintiff had developed jaundice and a breathing disorder. The plaintiff was put on oxygen.
8. On the 14<sup>th</sup> September 2003, the plaintiff passed the first stool which was dark in colour. The 1<sup>st</sup> defendant informed M that the dark stool was due to a bleeding disorder which the plaintiff had. She was also informed that the plaintiff's stool would be taken to the laboratory for test. However, on the 15<sup>th</sup> September 2003, the 1<sup>st</sup> defendant told her that the plaintiff did not have a bleeding disorder after all. She was then advised to stop breastfeeding the plaintiff as arrangements were made to administer medicine to him through a drip. The plaintiff was to be isolated from other patients and fed through a pipe.
9. On 16<sup>th</sup> September 2003, M noticed that the contents of the drip were not moving as expected. She informed the nurses who in turn called the 1<sup>st</sup> defendant. When the 1<sup>st</sup> defendant came over, he quickly ordered the nurses to remove the tightly tied bandage on the plaintiff's little left hand as he also asked, "**who did this?**" She stated that she noticed that the plaintiff's left hand had turned red up to the wrist. At that point, she was informed that the reddening of the plaintiff's hand was as a result of a reaction to the medicines which had been administered to him. Later on, the plaintiff's left hand developed blisters, whereupon the 1<sup>st</sup> defendant instructed a nurse to puncture them. The open wounds were cleaned with a saline solution.
10. When PW2, J.M (M), came to the hospital to see the plaintiff, she was denied access. The 1<sup>st</sup> defendant also refused to see her when she sought audience with him. By the 17<sup>th</sup> September 2003, the open wounds on the plaintiff's left hand had dried up but the fingers remained folded. The plaintiff appeared to be in pain, refused to breastfeed and cried all the time. On the 18<sup>th</sup> September 2003, the plaintiff's wounds started to give off a foul smell. The pain experienced by the plaintiff persisted and between 19<sup>th</sup> and 25<sup>th</sup> September 2003 the plaintiff cried a lot. The plaintiff's weight dropped drastically from 2.6 Kilograms to 1.9 Kilograms. On the 26<sup>th</sup> September 2003, M asked to be discharged from the 2<sup>nd</sup> defendant so that she could seek a second opinion on the plaintiff's condition. On that night, the plaintiff did not sleep and cried throughout.
11. On the 27<sup>th</sup> September 2003, the plaintiff was admitted into Gertrude's Garden Children's Hospital. The plaintiff was found to be weak and had to be put on additional nutrients. On further examination by Dr. Mutiso of Gertrude's Garden Children Hospital, (not called as a witness), it was found that the plaintiff needed urgent amputation of the left hand. The amputation was carried out on 2<sup>nd</sup> October 2003. On 5<sup>th</sup> October 2003, a secondary operation was done. The plaintiff was subsequently discharged from Gertrude's Garden Children's Hospital on 7<sup>th</sup> October 2003. The discharge summary from Gertrude was produced as **P. Exhibit 2**.
12. M contended that if the 2<sup>nd</sup> defendant had made an appropriate referral in time, the plaintiff would not have lost his hand. She also stated that had the defendants cared enough for the plaintiff, the plaintiff would not have developed the gangrene, and further that the 1<sup>st</sup> defendant failed to advise her that the only way to deal with the plaintiff's condition was through surgical intervention.
13. Dr. Kiama Wangai, PW3, (Dr. Wangai) stated that in his opinion, there was negligence on the part of the defendants in that they allowed a branulae to be introduced into the lumen of an artery instead of the vein. That it was this wrong insertion of the branulae which caused the artery to go into a spasm as a result of occluding the blood supply to the plaintiff's left hand. Dr. Wangai

testified further that the result of occluding blood supply was ischemia to the tissues, hypoxic tissue injury, histotoxic tissue injury necrosis, all of which resulted in gangrene. He explained that gangrene manifests itself through blistering, change of colour of the affected tissue, drop in temperature and eventual blackening of the tissue.

14. According to Dr. Wangai, there was negligence on the part of the defendants when they inserted the branulae in the wrong place and by generally keeping both M and M in the dark as to the actual condition the plaintiff was suffering from. Dr. Wangai also said that the defendants were negligent in exposing the plaintiff to infection and failing to make a proper referral in total disregard of the plaintiff's health. Dr. Wangai produced his expert opinion report as **P. Exhibit 3**.

#### THE 1<sup>ST</sup> DEFENDANT'S CASE AND EVIDENCE

15. The 1<sup>st</sup> defendant's case is that the plaintiff was born premature, was weak and of poor feeding at birth. That the plaintiff subsequently developed sepsis and was treated but later developed apneic attacks but was resuscitated successfully by the 1<sup>st</sup> Defendant and that in any event, the plaintiff's mother demanded the plaintiff's discharge from the hospital against the advice of the doctor treating the plaintiff.
16. The 1<sup>st</sup> defendant gave evidence and told the court as much. He stated that after carrying out the caesarian section, he found the amniotic fluid to be smelly and that the unborn plaintiff had passed stool while still in the womb. He also stated that because of the condition in which the plaintiff was, he was put into the nursery while the mother was taken to the ward. According to the 1<sup>st</sup> defendant, the plaintiff was put on treatment after he developed sepsis due to his weak APAGS score. The 1<sup>st</sup> defendant stated that the plaintiff's treatment was by way of administering antibiotics and I.V fluids, but he denied that it was him who inserted the branulae. The 1<sup>st</sup> defendant also stated that he only saw the plaintiff during the rounds and not as a private patient.
17. It was the 1<sup>st</sup> defendant's further testimony that on the third day after birth and while he was still in the nursery, the plaintiff developed a bleeding disorder. As a result of this development and the earlier apneic attacks which the plaintiff had developed, the 1<sup>st</sup> defendant ordered for the insertion of a nasogastric tube in the minor to help remove waste. Later, the 1<sup>st</sup> defendant was informed that the I.V fluids were not moving. The branula that had been inserted was removed and another one inserted in the right hand. Thereafter, the plaintiff's left hand started turning black due to gangrene. It was the 1<sup>st</sup> defendant's position that he informed M that the only mode of treatment for the plaintiff's condition was surgical, but that the surgical procedure could not be done until the plaintiff, who was by then weak, became stable. He also stated that, M demanded the plaintiff's discharge in the absence of the 1<sup>st</sup> defendant and without any consultation. The plaintiff was discharged by Dr. Kimani. The 1<sup>st</sup> defendant stated that after the plaintiff's discharge, he was served with a letter from the Medical Practitioners and Dentists Board, requiring him to explain a complaint filed against him by plaintiff's father. The 1<sup>st</sup> defendant was absolved from any blame as per **D. Exhibit 1**.

#### PLAINTIFF'S SUBMISSIONS

18. Counsel for the plaintiff submitted that the plaintiff has proved that the defendants were negligent in the way they handled the plaintiff's condition. Counsel relied on CLERK AND LINDSELL ON TORTS at P. 438 paragraph 8-50 where the learned authors state that a patient alleging negligence against a Medical practitioner must prove:-

1. *That his mishap results from an error*
2. *That an error is the one a reasonably skilled and careful practitioner would not have made.*

19. The learned authors above quoted set the parameters for establishing how a mishap occurs when they said:-

**“In establishing how a mishap occurred, the plaintiff may in certain circumstances be aided by the maxim res ipsa loquitur an inference of negligence will arise against the medical practitioner when an accident occurs which in the ordinary course of things does not happen if the practitioner has exercised reasonable care and skill ----.”**

**“To establish that the occurrence itself is evidence of negligence, it must be demonstrated that it is an occurrence which, generally, should not happen.”**

20. It was submitted that the 1<sup>st</sup> defendant’s evidence as to what actually happened is very evasive although he admits that gangrene did occur during the period of treatment of the plaintiff by the defendants. Counsel submitted that the 1<sup>st</sup> defendant has failed to demonstrate what caused tissue and sepsis; that he has also failed to explain what remedial action he had taken despite the fact that he had seen the gangrene from the tips of the plaintiff’s fingers. It was also contended that the 1<sup>st</sup> defendant failed to make a proper referral for proper management of the plaintiff’s condition.
21. For the reasons advanced in support of the plaintiff’s case, counsel urged the court to hold the defendants severally and jointly 100% liable in negligence.
22. On quantum, counsel asked for Kshs.1,000,000/= for pain and suffering. Reliance was placed on **HCCC No. 238 of 2004 – Joseph Maraka Ondoro –vs- Paul Njogo Kihara** where the court awarded Kshs.500,000/= for similar injuries.
23. Counsel also asked for future medical expenses to cover the cost of a prosthesis first at age 15 at a cost of Kshs.100,000/= and another one 10 years later. It was stated by Dr. Omondi Afulo, PW4, that the plaintiff’s bone will require refashioning every two (2) years to avoid the same perforating the skin and causing a wound. According to Dr. Afulo, every such refashioning would require Kshs.200,000/=, and that the refashioning would be done every 2 years until the plaintiff attains age 30 when the bone stops growing. The plaintiff was aged about 7 years at the time of hearing of this case. In this regard, counsel asked for future medical expenses as follows:-

**i. Cost of refashioning the stump every year:-**

$$30 \text{ Years} / 2 \text{ years} \times 200,000.00 = \text{Kshs.3,000,000.00}$$

**ii. Cost of prosthesis**

$$2 \text{ times @ Kshs.100,000.00} = \text{Kshs.200,000.00}$$

24. Counsel also asked for loss of future earnings due to the amputation which has resulted in a handicap. Counsel urged this honourable court to find that the plaintiff will work for at least 25 years at an average salary of Kshs.6,000/= a month which would translate to:-

$$\text{Kshs.6000} \times 25 \times 12 = \text{Kshs.1,800,000.00}$$

25. The plaintiff also asked this honourable court to award aggravated damages for the negligent manner in which the defendants inserted the branula into the plaintiff’s left hand resulting into development of gangrene. A sum of Kshs.1,000,000.00 was proposed under this head. In total, the plaintiff prays for a total of Kshs.6,000,000/= in damages.

**THE 1<sup>ST</sup> DEFENDANT’S SUBMISSIONS**

26. On liability, counsel for the Defendant submitted that M deliberately misled the court when she stated that the premature neonate was left with her at the ward after leaving the theatre. It was submitted that the plaintiff was placed in the nursery and a branula inserted immediately after the caesarian in keeping with the 2<sup>nd</sup> defendant’s standard procedure of placing premature babies in

the nursery. Counsel also submitted that until the 16<sup>th</sup> September 2003, the branula that had been inserted in the plaintiff's left hand had been working. It was also submitted that the plaintiff had suckling difficulties at birth thus making breastfeeding difficult. Counsel also submitted that the 1<sup>st</sup> defendant was not the discharging doctor and that it was a Dr. Kimani who discharged the plaintiff and gave instructions that the plaintiff's hand be treated with sprays. The 1<sup>st</sup> defendant wonders why Dr. Kimani was not sued. It was also contended on behalf of the 1<sup>st</sup> defendant that M demanded to be discharged against the advice of the doctors attending to the plaintiff and therefore that the doctors should not be held accountable for what transpired thereafter.

27. It was further submitted that the treatment given to the plaintiff at Gertrude Garden Childrens Hospital confirmed that the plaintiff had an infection and that in fact the gangrenous hand was already dead even before admission to Gertrude. The question that counsel for the defendants has left unanswered is: who is responsible for the condition in which the plaintiff found himself?
28. Regarding the expert opinion of Dr. Wangai, counsel for the Defendant submitted that his report was based only on the detailed account of the case as given by M, scanty discharge summaries from Mary Help of the Sick and from Gertrude Hospital and the brief report by the preliminary enquiry committee. Counsel faulted Dr. Wangai for not considering the explanation given by the 1<sup>st</sup> Defendant to the Medical Practitioners' and Dentists' Board, and that he did not even consider an interview with the 1<sup>st</sup> Defendant or even seek the medical treatment notes from the hospital. Dr. Wangai was also accused of making wild allegations about the insertion of the branula into the plaintiff's left hand and that as a result of those wild allegations, his expert opinion was flawed, and more so because the discharge summary from Gertrude Hospital did not contain such evidence.
29. It was contended that if the drip had been moving through the artery as alleged by the plaintiff, then blood would have flowed out instead of upwards.
30. Further, Dr. Wangai was castigated for allegedly reaching conclusions on the 1<sup>st</sup> defendant's negligence without obtaining conclusive evidence based on the following:-
  - Patient's file from the hospital;
  - A report on the 1<sup>st</sup> Defendant from the Medical Board;
  - A letter from the Medical Board and forwarding statement by the Hospital Administrator;
  - Minutes of the Board and names of persons who heard 1<sup>st</sup> defendant's case;
  - A copy of PW3's report to the Board;
  - Individual write-ups of the members of the Inquiry Committee.
31. Counsel submitted that Dr. Wangai's failure to gather detailed information for his report showed lack of diligence on his part. It was also submitted that his report as produced in evidence was only a draft until he was provided with all the other necessary evidence to make his report final. This court was urged to find that Dr. Wangai's report was based on the evidence of M and M, which evidence was said to be peppered with wild unsubstantiated allegations not worth believing. Counsel submitted that it was incumbent upon the plaintiff to call proper expert evidence to support his case that the mishap that befell him resulted from an error and that the error was made in a negligent manner. According to counsel, Dr. Wangai's expert evidence did not pass the test of being expert evidence as it was mere opinion based on uninformed views by M and M. It was contended that whatever error occurred in this case occurred despite the exercise of due care by the defendants, so that the doctrine of *res ipsa loquitor* does not apply.
32. It was further submitted that mitigation against loss in this case was prevented by the plaintiff's weak condition which meant numerous resuscitations which compromised the plaintiff's chances of being able to withstand surgery. Counsel for the 1<sup>st</sup> defendant did not provide any authority for the assistance of the court, only saying that the case of **Joseph Maraka Ondiro** (supra) was not applicable to this case.
33. The 2<sup>nd</sup> defendant neither gave evidence nor filed submissions.

34. I have now carefully considered the pleadings in this case, the submissions made and the relevant law. It is not disputed that the plaintiff was born through caesarian section carried out by the 1<sup>st</sup> defendant at the 2<sup>nd</sup> defendant's hospital premises. It is also not in dispute that the plaintiff developed certain complications which led to his being kept in the nursery from birth on 11<sup>th</sup> September 2003 until he was discharged on 25<sup>th</sup> September 2003 at the behest of his mother, M. It is also not in dispute that during the course of his stay at the 2<sup>nd</sup> defendant and in fact right from the first day, a drip was set up on his left hand. While the plaintiff contends that the branula for the drip was fixed badly and negligently, and into the tissue and not the vein of the plaintiff's little left hand, it is not in dispute that the plaintiff developed gangrene. While the plaintiff contends that the gangrene was caused by the negligence of the defendants which resulted in loss of blood supply to the plaintiff's left hand, the defendants alleged that the plaintiff was weak at birth from prolonged labour and distress and had infection of the blood so that after birth, he had to be resuscitated three (3) times in 48 hours. That in the course of the stay at the hospital the plaintiff developed a blood disorder.
35. The defendants also disputed the fact that the apparent delay in giving the plaintiff appropriate treatment for gangrene was negligent. They said that the plaintiff was too weak to withstand surgery, a fact that was confirmed by Gertrude's Garden Children Hospital where the plaintiff was admitted on 27<sup>th</sup> September 2003.
36. After considering the above, the only question that arises for determination of this court is who was responsible for the eventuality suffered by the plaintiff in this case. In other words, has the plaintiff demonstrated through his evidence that his mishap resulted from an error and if so, was the error one that a reasonably skilled and careful practitioner would not have made?
37. In my considered view, the mishap in this case resulted from an error which a reasonably skilled and careful medical practitioner would not have made. M gave a detailed day to day account of what happened between 11<sup>th</sup> and 25<sup>th</sup> September 2003. She explained how the 1<sup>st</sup> defendant kept on shifting ground each day as to what was ailing the plaintiff. I am persuaded by the evidence on record that the branula was inserted into the tissue instead of the vein. In my view, this was a simple procedure that is usually done by nurses and a careful and skilful doctor would notice at once if the branula was not properly inserted. The 1<sup>st</sup> defendant admitted that he saw the plaintiff daily during the rounds, but it is clear from what happened to the plaintiff that it did not occur to the 1<sup>st</sup> defendant that things were not going right until the drip stopped moving some five days after insertion. Even thereafter the 1<sup>st</sup> defendant took an unreasonably long time to diagnose that the plaintiff had developed gangrene. It took the plaintiff's mother's own initiative to take the plaintiff out of danger by asking to be discharged. The 1<sup>st</sup> defendant blamed M for asking to be discharged against doctor's orders. He also said that the plaintiff was too weak to withstand surgery.
38. What is clear to me however is that if the 1<sup>st</sup> defendant had decided by the 16<sup>th</sup> September that the plaintiff's condition could only have been treated through amputation, that should have been done because there is no evidence showing that the plaintiff was too weak to undergo the surgery then. It is my considered view that by the time the plaintiff was discharged from hospital the situation had gone beyond repair. It is obvious that what gave rise to the development of gangrene was the wrong insertion of the branula into the plaintiff's hand and its continued remainder into the hand for longer than was absolutely necessary. Removing the branula before the 16<sup>th</sup> September 2003 would have saved the situation, but that did not happen so that by the time the plaintiff was discharged, he had grown weak from neglect by the defendants and his gangrenous hand was already dead by that time of discharge. In fact as of 25<sup>th</sup> September 2003, no regime had been put into place to assist the plaintiff to sufficiently recover for the surgery to be done. I have therefore reached the conclusion that the defendants were either unable or unwilling to deal with the plaintiff's condition. They were therefore negligent.
39. I have considered the evidence by Dr. Wangai with much care. The defendants have rubbished that evidence together with the report that Dr. Wangai submitted before this court. I have

considered that report against the report given by the Medical Practitioners and Dentists Board dated 9<sup>th</sup> February 2005. The report while noting that it was sad that **“A.G [minor] ended up losing his left hand, however, it should be noted that the baby was very sick from the beginning. The ischaemia of the hand occurred because the doctors were resuscitating the baby. The resuscitation was successful as the baby lived.”**

40. Considering the totality of the evidence that was placed before me, I am still satisfied that the plaintiff lost his hand because of a branula introduced into the lumen of an artery instead of a vein and being allowed to remain there for a dangerously long time. I also find that the contention by the 1<sup>st</sup> defendant that the plaintiff had to be resuscitated many times is not borne out by the notes on the Discharge Summary by the 2<sup>nd</sup> defendant. There is nothing about the plaintiff having been resuscitated. It only talks about the baby having later developed a bleeding disorder through stomach haematocheria. Even if it were to be accepted that the plaintiff was resuscitated many times, the defendants should have been in a position to deal with that situation. In short, I am satisfied that the defendants were negligent in the manner they inserted and handled the branula which gave rise to the gangrene.

### QUANTUM

41. The plaintiff has asked for and tried to justify a total of Kshs.6,000,000/= made up as follows:-

- a. **General damages for pain and suffering ..... Kshs.1,000,000.00**
- b. **Future medical expenses**
  - i. **Cost of refashioning stump every two (2) years ..... Kshs.3,000,000.00**
  - ii. **Cost of prosthesis ..... Kshs.200,000.00**
- c. **Loss of future earning due to handicap ..... Kshs.1,800,000.00**
- d. **Aggravated damages ..... Kshs.1,000,000.00**

42. I note that the defendants made no counter offers in their submissions. I have carefully considered the evidence offered by the plaintiff. It is not disputed that the plaintiff will require refashioning of his stump every 2 years until he attains age 30. This was the testimony given by Dr. Omondi Afulo, PW4, otherwise the bone would protrude and pierce the skin. It is also not disputed by the defendants that the plaintiff would require prosthesis 2 times at a cost of Kshs.1,000,000/= each.

43. I also find that because of the handicap, the plaintiff may not be able to use his full potential as an adult. He will have to confine his skills only to what a one-handed person can do. I find that applying 20 years at a minimum salary of Kshs.4000 would be reasonable in the circumstances so that an assessment under this head would be:-

$$\text{Kshs.4000} \times 20 \times 12 = \text{Kshs.960,000.00}$$

44. I have considered the prayer for general damages for pain, suffering and loss of amenities. In the circumstances of this case, I think that a sum of Kshs.600,000/= would be adequate. I am also satisfied that the defendants exposed the plaintiff so much undue suffering as to attract, aggravated damages in the sum of Kshs.500,000/=.

45. In making the above awards, I am alive to the fact that any assessment of damages by courts ought to be reasonable so as not to hurt the body politic.

46. Accordingly, I enter judgment for the plaintiff as against the defendants jointly and severally as follows:-

- 1. **Liability ..... 100%**
- 2. **Quantum:-**

- a. General damages for pain and suffering ..... Kshs.600,000/=
- b. Future medical expenses:-
- i. Cost of refashioning stump every two (2) years ..... Kshs.3,000,000/=
- ii. Cost of prosthesis two (2) times @ Kshs.100,000/= ..... Kshs.200,000/=
- c) Loss of future earnings due to handicap ..... Kshs.960,000/=
- d) Aggravated damages ..... Kshs.500,000/=

Total      Kshs.4,760,000/=

47.The plaintiff shall also have costs of the suit and interest at court rates.

48.It is so ordered.

**RUTH NEKOYE SITATI**

**JUDGE.**

Read and delivered at Nairobi this 4<sup>th</sup> day of May, 2012

**RUTH NEKOYE SITATI**

**JUDGE**

**In the presence of:**

**Mr. Muturi for Plaintiff**

**Nilucirwelubkure for Defendants**

**Nikebir - Court Clerk**

**ROSE E.A. OUGO**

**JUDGE.**