



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 2182 OF 2001

GODFREY NYANDERA ABWAWO.....1ST PLAINTIFF

MARTHA ADHIAMBO NYANDERA.....2ND PLAINTIFF

LABAN OKOTH OMINDE.....3RD PLAINTIFF

VERSUS

MOTHERS FAVOURITE BAKERIES CO. LTD

(IN RECEIVERSHIP).....1ST DEFENDANT

NDIASON KAMAU.....2ND DEFENDANT

JUDGEMENT

The plaintiffs in this suit have instituted this suit against the defendants claiming damages both special and general. According to the plaint the 1st defendant was at all material times the registered owner of motor vehicle Registration No. KAE 988 Mitsubishi pick-up while the 2nd defendant was the lawful driver of the said vehicle. On 3rd January 1999, it is pleaded the plaintiffs were lawfully travelling in their motor vehicle registration no. KXQ 344 Toyota when due to the negligence of the 2nd defendant the two vehicles collided as a consequence of which the plaintiffs sustained injuries. The particulars of the 2nd defendant's negligence according to the plaintiffs are as follows:

- a) He drove at a speed which was not only excessive but was equally dangerous and reckless in the circumstances of this case.**
- b) He failed to keep any or any proper look out or to have any or sufficient regard for other road users such the plaintiffs.**
- c) He failed to stop, slow down, serve or in any other way to halt the 1st defendant's motor vehicle, so as to manage or control the said motor vehicle and to avoid the said collision.**
- d) He failed to see the plaintiffs in sufficient time or at all to avoid the said collision.**
- e) He failed to heed the presence of other road users on the road and to have regard to their safety as is the law required of drivers.**
- f) He failed to observe and/to have regard to safety Rules and regulations as embodied in the**

Highway Code.

g) In the alternative the 2nd defendant was guilty of breach of Statutory duties under the Traffic Act (Cap 403) Laws of Kenya.

On 15th January 2004, interlocutory judgement was entered by the Deputy Registrar of this Court on default of appearance and defence. It follows that this judgement is only in respect to assessment of damages.

PW-1, **Martha Adhiambo Nyandera** gave evidence that after the accident she was taken to Aga Khan Hospital where she stayed for 2 months. She was unconscious when admitted therein till the following day when she realised that she was in hospital. According to her the hospital bills she incurred amounted to a sum of Kshs.220,695.00 which she raised partly through fundraising. She however did not recover fully and was later treated at Coptic Hospital. She relied on her statement filed on 31st July 2012 as part of her examination in chief. According to her said statement she sustained serious injuries on her head and feet and eventually had her left leg was amputated. After her discharge from hospital she continued attending outpatient clinic for 6 months for dressing for which she was spending Kshs. 350.00 per day Kshs. 1,000.00 per day for doctor's fees and Kshs. 1,000.00 per day on taxi expenses for one year. At Coptic Hospital she underwent a minor operation which cost her Kshs. 25,000.00. She however continued with dressing visits at Metropolitan Hospital for one year which cost her Kshs. 350.00 per day for dressing and Kshs 500.00 on taxi. She was also admitted at Kenyatta National Hospital for two weeks in July 2002 and was further operated at the cost of Kshs. 150,000.00 and acquired an artificial leg in the sum of Kshs. 45,000.00. In 2004, she went to the United States of America where she received specialised treatment where she incurred huge expenses and was there for one year. According to her the air ticket cost her Kshs. 125,000.00. Although she has now healed she has lost the use of her left leg and had to leave her employment at Beutika where she was earning Kshs. 5,000.00 per month. She therefore prays for general damages, special damages in the sum of Kshs. 1,393,625.05 as well as interests and costs.

Godfrey Nyandera Abwawo, gave evidence as PW-2. He had already recorded his statement which he relied on as part of his evidence in chief. According to him, after the accident, his wife was thrown out of the windscreen and landed on the ground where the vehicle ran over her left foot. After the accident the vehicle was towed to Muthaiga Police Station and later to a garage at the cost of Kshs. 3,000.00. It was later towed from the said garage to his workshop in Industrial Area at the cost of Kshs. 7,000.00. On his part he sustained slight injuries and was treated at Aga Khan Hospital where he was charged Kshs. 2,000.00. He also accompanied his wife to the United States for further specialised treatment and spent Kshs. 125,000.00 on air ticket. As a result of the said accident, a disagreement arose between him and his partner at work as a result of which he lost business. Accordingly, he seeks compensation in form of general damages, special damages in the sum of Kshs. 137,000.00 as well as interests and costs.

PW-3 was **Laban Okoth Ominde**. He also relied on his statement filed herein as part of his evidence and produced the plaintiffs' bundle of documents filed herein as plaintiff's exhibit 1. According to his statement, after the accident he lost consciousness momentarily and was taken to Aga Khan where he regained his consciousness. He was admitted for one day and discharged after payment of Kshs. 86,303.70. He suffered cut wounds, blood loss and was later taken to a theatre. However, on discharge, he continued attending outpatient clinics at Aga Khan Hospital for physiotherapy 3 months a week for 3 weeks for which he was charged Kshs. 1,000.00 per visit. He additionally went for follow up clinics twice a week for 6 weeks at the same Hospital for which he paid Kshs. 500.00 per visit. He also incurred Kshs. 100.00 for transport to Aga Khan Hospital for 6 months for visits. He therefore claims general damages, special damages in the sum of Kshs. 131,303.70 as well as interests and costs.

At the close of the plaintiffs' case the plaintiff's counsel was directed to file written submissions and the matter was fixed for mention on 10th August 2012. On the said date no submissions had been filed and no appearance was made on behalf of the plaintiff.

I have considered the foregoing. The plaintiffs also relied on the documents contained in their bundle of

documents which was produced as exhibit. According to the medical report prepared by **Dr. Kiama Wangai** dated 12th October 2005, the 1st plaintiff, **Godfrey Nyandera Abwao** sustained bruised left shoulder, bruised face for which he was treated by **Dr. Okonji** and discharged after which he was managed as an outpatient. He still complains of occasional pains. On general damages, it is clear that the injuries sustained by the 1st plaintiff were minor soft tissue injuries. In High Court at Nyeri Civil Appeal 162 of 2002 **Teresia Njoki Mwangi vs. Elizabeth Wanjiru Kimani, Makhandia, J** stated that **general damages for award of damages for soft tissue injuries range between Kshs. 20,000.00 and Kshs. 120,000.00 depending on the seriousness of the injuries.** As is clear, the 1st plaintiff's injuries were not very serious. Accordingly I award him Kshs. 60,000.00 in general damages for pain and suffering. With respect to special damages, there are two invoices in respect of towing charges appearing at page 14 of the bundle amounting to a total of Kshs. 7,000.00. There is also a receipt at page 16 in the sum of Kshs. 800.00. The total special damages amounts to Kshs. 7,800.00. Special damages must not only be specifically pleaded but must be strictly proved as well. The 1st plaintiff pleaded Kshs. 6,900.00. Accordingly I am unable to award the amount claimed in respect of air tickets for the reasons that the same was not pleaded and secondly, that it was not damage directly incurred by the 1st plaintiff as a result of the said accident since it was not meant for his treatment but for the treatment of the 2nd plaintiff.

With respect to the 2nd plaintiff there is no doubt that she suffered very serious injuries. According to the medical report prepared by **Dr. Kiama Wangai** dated 12th October 2005, the 2nd plaintiff sustained blunt injury of the head with loss of consciousness, loss of one tooth, crush injury to the left leg with eventual amputation and extensive laceration injuries of the right knee. In **Jackson Mutuku Ndeti vs. A O Bayusuff & Sons Ltd Civil Appeal No. 6 of 2003**, the plaintiff sustained massive trauma to the left lower limb which trauma necessitated amputation early in his treatment. He was left with an above knee amputation and used a wheel chair for mobility. He also suffered massive soft tissue injury of the right leg and posterior to the right knee for which he required multiple skin grafting. This led to contracture of the right knee, loss of sensation over the skin grafted areas of the leg and recurrent oedema of the right foot because of compromised circulation in the leg. The compromised circulation was a permanent feature. He ran a small but definite risk of developing malignant change in the hypopigmented skin in the right leg. The Court of Appeal on 25th May 2007 awarded Kshs. 2,000,000.00 for pain and suffering. Although the injuries in that case were slightly more serious than the injuries sustained in the present case, taking into account the fact that the said decision was made 5 years ago I believe a sum of Kshs. 2,000,000.00 for the injuries sustained by the 2nd plaintiff herein is adequate. The special damages pleaded, to which no defence was filed is Kshs. 360,278.10 which is similarly awarded.

On the part of the 3rd plaintiff, according to the medical report prepared by **Dr. Kiama Wangai** dated 12th October 2005, he sustained cut wound on the left fronto temporal region and soft tissue injuries on the left forearm. He was admitted at Aga Khan Hospital from 3rd January 1999 to 11th January 1999. Based on the decision cited above in respect of the 1st plaintiff's case and injuries an award of Kshs. 80,000.00 for general damages for pain and suffering is in my view adequate. He is also entitled to Kshs. 96,080.70 pleaded as special damages.

In the result judgement is entered against the defendants jointly and severally in favour of the plaintiffs as follows:

- 1. 1st Plaintiff Kshs. 60,000.00 general damages, Kshs. 6,900.00 special damages, interests at court rates and costs.**
- 2. 2nd plaintiff Kshs. 2,000,000.00 general damages, Kshs. 360,278.10 special damages, interests and costs.**
- 3. 3rd plaintiff Kshs. 80,000.00 general damages, Kshs. 96,080.70 special damages, interests and costs.**

Dated at Nairobi this 16th day of October 2012

G V ODUNGA

JUDGE

In the presence of Mr Odhiambo for Mr Juma for the Plaintiffs