



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 221 OF 2007

M.M.W.N (Minor suing through Next Friend M.W.N)PLAINTIFF

VERSUS

HILL TOP PRIMARY & HIGH SCHOOL.....DEFENDANT

R U L I N G

On 4th September 2009 judgment was entered for the Plaintiff against the Defendant on account of injuries received in a road traffic accident. She was awarded special damages of KShs 35,906/00, general damages in the sum of KShs 1,600,000/00 and a further sum of KShs 600,000/00 for future medical treatment. The Plaintiff was also awarded costs and interest.

Execution of decree was difficult on account of the Defendant going out of business. So, the decree was negotiated and discounted. A consent order to that effect dated 25th October 2011 duly signed by both parties was filed on 26th October 2011. Under that consent, the decretal sum was discounted to KShs 1,500,000/00. The Defendant was also to pay to the Plaintiff certified costs of KShs 139,639/00. It was also agreed that the decretal sums be paid within 30 days from the date of execution of the consent order, and in default of payment the Plaintiff to be at liberty to execute for the entire outstanding sum.

As the Plaintiff is a minor who sued and obtained judgment through a next friend, approval by the court of the discounted decretal sum was required. The court would also make appropriate orders for apportionment and investment for the benefit of the minor Plaintiff. Hence, the application by **notice of motion dated 7th November 2011** which is the subject of this ruling. The application seeks two specific orders: -

1. That the courts do approve the compromised or discounted decretal sum.
2. That the court do approve for apportionment of the total compromised or discounted decretal sum of KShs 1,639,639/00 as follows:
 - (i) KShs 500,000/00 to be invested in an interest-earning fixed deposit account with **Chase Bank Ltd** in the name of the minor Plaintiff, and the same to be released to her upon attaining the age of majority.
 - (ii) The balance of KShs 1,139,639/00 to be released to the next friend,

M.W.N, for payment of legal fees, and also the minor Plaintiff's future medical care and her maintenance and upkeep.

The application is supported by the annexed affidavit of the next friend. I have read the same.

The main reason for the compromise is that execution for the entire decretal sum was not possible on account of the Defendant having gone out of business. The compromise discounted the decretal sum by a certain amount, but not a very large one. The Defendant is willing and ready to pay the discounted amount.

There is nothing inherently wrong with negotiating and compromising a decree, particularly where this may result in quick satisfaction of the same.

The proposed apportionment of the discounted decretal sum is fair and just, and will ensure that the Plaintiff finds a tidy sum that will no doubt be useful to set her off on her adult life when she attains majority. The apportionment also ensures that the next friend pays legal fees and the Plaintiff's future medical care, and also her upkeep.

In the circumstances, I will allow the application as prayed and grant the orders sought. There will be no order as to costs. Those will be the orders of the court.

DATED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2011.

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 25TH DAY OF NOVEMBER 2011