



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
Civil Suit 57 of 2007

CHARLES MWAVITA MWANGOME.....PLAINTIFF
-VERSUS-
GRACE ANYANGO DEFENDANT

R U L I N G

The Notice of Motion application dated 30th July 2007 is made under Order XLIV Rule 1 (1) (a) of the Civil Procedure Rules and section 3A Civil Procedure Act, seeking that the judgment and consequential order/decree made on 15-7-09 be reviewed to include the claim for loss of future earnings and the same be assessed. It is premised on grounds that there was an error apparent on the face of the record because the plaintiff pleaded for damages for loss of future earnings in the plaint but in the judgment and consequential orders/decree made on 15-7-09, the same was not included on the pleadings.

In the affidavit supporting the application, Mr. Bosire, Counsel for applicant deponed that the finding by the Court constituted an error apparent on the face of the record yet the plaintiff testified that he had lost his leg and could no longer engage in any income generating activity.

I have re-read the plaint dated 3-8-07 and confirm that lost earnings was pleaded and sought as a prayer and I erred in making a finding that the same was not specifically pleaded – for that reason the prayer to review the judgment has merit.

The applicant had produced salary vouchers from the firm of Muranje and Co. Advocates showing that he used to earn Kshs. 10,000/- per month and that he has now been unable to effectively discharge his duties as a result of his disability.

It was submitted by his counsel that at the time of the accident, the plaintiff was aged 31 years and Mr. Bosire suggested using a multiplier of 24 and a multiplier card of 10,000/- to give a sum of Kshs. 2,880,000/- as damages under that head.

I take into consideration the vagaries of life, the current trends in life expectancy in Kenya and I think a multiplier of 15 years is appropriate using the same multiplicand suggested by Counsel to work out as follows:

$15 \times 10,000 \times 12 = 1,800,000/-$

(One million, eight hundred thousands only).

I award costs of this application to the applicant.

Delivered and dated this 23rd day of **February 2010** at Malindi.

H. A. Omondi
JUDGE