



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 311 of 2008**

**(Minor suing through father and next friend) ..... PLAINTIFF**

**VERSUS**

**WILSON KAMAU KANYINGI ..... DEFENDANT**

**JUDGEMENT**

The suit herein arises out of an accident occurred on 2<sup>nd</sup> August 2003 involving the Plaintiff who was a minor and was a lawful passenger in a motor vehicle registration no. KAQ 793 D. The Defence was filed.

However, on the date of hearing following consent order was recorded.

1. ***The Judgment be entered on liability in the ratio of 10:90 against the Defendant.***

2. ***The Plaintiff shall give evidence only to produce the documents including three medical reports one from the Defendant without calling the maker.***

The plaintiff in his evidence as a father and next friend of minor, G.N.M, produced the documents showing proof of ownership of the said motor vehicle and to show that while lawfully in the vehicle, the minor sustained serious injuries due to an accident on

2<sup>nd</sup> August 2003. He also produced the records of his hospitalization as well as discharge from the hospital of 3<sup>rd</sup> October 2003, the out-patient treatment document, medical report of 24<sup>th</sup> March, 2005 prepared by one Mr. Akuku Okoth re- admission to and discharge from Nairobi Hospital to remove plates from his jaw and to perform a surgery on his eye, other two medical reports and the bundle of receipts for medical expenses.

The Plaintiff thus prayed for Judgment in special damages, general damages for pain, suffering and loss of damages with costs and interest.

On 16<sup>th</sup> March 2010 further consent order was recorded to the effect that the special damages be awarded in the sum of

KShs.1,154,569/= in favour of the plaintiff and I make the same as an order of the court.

It was conceded by the Plaintiff that the last time the minor was admitted in the hospital was in the year 2004.

I have perused the exhibits produced, pleadings and have considered the written submissions and authorities cited before the court.

I shall start my deliberations with the three medical reports provided.

The first one was from Dr. Patrick Akuku Okoth (PEX4) which is dated 24<sup>th</sup> March, 2005.

As per that report the minor was brought in the intensive care unit of the Nairobi Hospital on 2<sup>nd</sup> August 2003 with compound fracture on the mandible and fracture of the floor of the left orbits. C.T. Scan confirmed diffuse axonal injury and the above mentioned fractures. He also had a dilated left pupil. He was intubated and put on ventilator to assist breathing. His treatments as an inpatient and out patient have been also specified.

On 14<sup>th</sup> March, 2005 he was found to be steadier in his walk with an attempt to run. He has been advised to continue with physiotherapy and occupational therapy and it was noted that his speech was slurred.

In conclusion he opined that the minor has permanent residual disability of about fifty five percent.

Okoth is a consultant Neurosurgeon.

The second medical report is from one Dr. J. N. Muiro dated 4<sup>th</sup> April, 2008(P.E. Ex 6). It gives the back ground of the injuries and treatment.

On examination he was found with squint left eye with restricted movements, had discordinated gait, unable to balance when standing, unusual behaviour for his age, mentally challenged, cross-bite of teeth while other systems essentially normal.

His opinion and prognosis are formulated as under:

***“Owen experienced severe pain and sufferings from the injuries sustained. He had severe brain injuries and also the mandible. He has developed serious complication of head injury – staggering gait and poor mental development. He needs physiotherapy and a lot of social supporting. His life has been devastated by the injuries and will be dependant in life.”***

The last report is from the Defendant prepared by Dr. R. P. Shah on 22<sup>nd</sup> may, 2009 (PEX 7)

He mentioned the present complaints as under:

1. ***School performance low***
2. ***Non-interaction with other children***
3. ***Cannot run***
4. ***Slow speech***
5. ***Reads slowly***
6. ***Avoids using right hand***

His examination findings were:

***“Mental functions and speech seem alright. Cranial nerves are intact except for dilated, unreactive left pupil. There is a little incoordination in right upper limb. He has slightly unsteady gait.”***

It is admitted that his injuries were severe and his injuries to the brain has left him with a little in coordination of right hand and right leg.

But still he has good function and strength in both limbs.

Then he concluded:

***“After careful consideration of all the complaints, careful examination of the patient and his mental and physical functions, I conclude that he has been left with no disability of mental functions. He has been left with permanent small disability of a little in coordination of right upper limb and of right lower limb. There is also a dilated pupil of left eye.***

***His total permanent disability is 35 per cent.***

***I do not think there is any evidence indicating poor mental development or poor school performance which could be attributed to his injuries.”***

With the above evidence, the Plaintiff seeks the general damages in the sum of Kshs.3,000,000/=.

The three authorities were cited:

1. ***H.C.C.S No. 1977/00 Paul Musak Onyango vs. Dismas O. Nyanya (UR).***

***The plaintiff suffered head injury with right sided extra-dural Hematoma. The learned Judge on 25th November 2003, gave general damages in the sum of Kshs.1,500,000/=.***

***In the said case as per the medical report, the Plaintiff suffered permanent disability causing paralysis to the right of his body.***

2. ***H.C.C.S. No. 634/01. Lucy Wanja vs. Peter Nganga Njenga (UR)***

***This case involved burst fracture of 5<sup>th</sup> thoracic vertebra with paraplegia and other serious injuries.***

***On 24<sup>th</sup> January 2002 the court awarded 1,500,000/= for pain, suffering and loss of amenities.***

3. ***H.C.C.S. No.5733/91 Jane Elsa Oyoo vs. Lochal Brothers Co. Ltd. (UR)***

***In the Judgment of 19<sup>th</sup> November 1993 the court awarded Kshs.1,000,000/= in for pain, suffering and loss of amenities. In the same case, there was a total loss of sight in both eyes and total physical disability was assessed at 90 to 95 percent and she was found to be unable to do any manual work.***

I must note that the court awarded Shs.1,000,000/= in general damages and not shs.3,340,000/= as submitted by the counsel.

The Defendant in his submissions urged the court to award Shs.500,000/= to shs.600,000/= in pain, suffering and loss of amenities.

It is contended that as per observations made by the court of Appeal in the case of ***Ochieng vs. Ayieko (1985) KLR 494***, it was important to keep large amounts for personal injuries under control. However it was admitted that it is impossible to adequately compensate an injury in monetary terms and that what the court is expected to do is to arrive at a fair and reasonable compensation to be awarded.

The reliance was placed for comparable evaluation of the award of damages on the following cases which were more recent than the ones cited by the Plaintiff.

1. ***Beatrice Wairimu Wandura vs. C. Dorman Ltd (2002) e KLR (Civil Appeal No. 35/04)***

***In the Judgment dated 10<sup>th</sup> July, 2009 the Court of Appeal enhanced the sum of general damages to Shs.550,000/= from Shs.354,000/= given by the trial Judge.***

***The Plaintiff suffered injuries on left fibia and left ankle joint.***

2. ***Gichuki vs. Njoki and another (2004) e KLR.***

***In the Judgment dated 30<sup>th</sup> September 2004, Shs.500,000/= was awarded as general damages for almost similar injuries but it resulted in the plaintiff to be behind in school.***

The Plaintiff before the court was of a very tender age when he met with this accident. It is admitted by all the doctors that he did suffer severe injuries which left him with bad left eye and incoordination of his right upper limb and right lower limb. His speech is also a bit impeded although the report of Dr. R. P. Shah is silent on that issue. The defects which are mentioned are there to stay for the life of this young man and he would have to live with it for the rest of life, socially and emotionally.

In view of the fact that the first report was from a neurosurgeon, I would tend to rely more thereon.

I have considered the authorities cited by the counsel and would stress that no case is similar in nature and effect and has to be considered in view of its circumstances. I also look at the age of the Plaintiff while considering the assessment of damages.

Doing the best I could, I find that a sum of Kshs.1,750,000/= shall be an adequate assessment of compensation for pain, suffering and loss of amenities, and I do order the same.

Thus I shall enter the Judgment in favour of the Plaintiff as under.

General damages for pain,

Suffering and loss of Amenities    Kshs.1,750,000.00

Special Damages	Kshs.1,154,564.00
<b>Total</b>	<b>Kshs.2,904,564.00</b>
Less 10% liability accepted	Kshs.290,457.00
<b>Total</b>	<b>Kshs.2,614,107.00</b>

I also award the costs and interest as per the law on the said sum.

**Dated, Signed and Delivered** at Nairobi this 15<sup>th</sup> day of **April, 2010**.

**K.H. RAWAL**

**JUDGE**