



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Case 31 of 2007

**LCWM.....PLAINTIFF**

**VERSUS**

**HON. ATTORNEY GENERAL.....DEFENDANT**

**J U D G M E N T**

By her amended plaint amended on 26/10/09, the plaintiff sued the Honourable Attorney General for

- (a) Special damages amounting to 152,915**
- (b) General damages**
- (c) Aggravated damages**
- (d) Future Medical expenses**
- (e) Interest on the above**
- (f) Cost of the suit**

The plaint and summons to enter appearance were duly served on the Attorney General and one Mr. Njogu a senior state counsel signed a copy of the summons and acknowledged receipt. The Attorney General did not enter an appearance nor did he file any defence. The plaintiff therefore sought the leave of this court to proceed against the Attorney General ex-parte with a view to formally proving her case. The said leave was granted and so the matter proceeded by way of formal proof.

The plaintiff testified and called 3 other witnesses. One of the witnesses was her advocate in **KARATINA RMCC 275/02** which is related to this matter and the 2 doctors who examined her and prepared medical reports on her health status.

She also produced a bundle of documents which included the receipts she was issued with upon treatment and

also some medical notes. She also produced the court proceedings in Cr. Case No.....

At the close of her case, her counsel on record filed written submissions. He cited 2 authorities from England and urged this court to be persuaded by the same and award similar damages. I will come to this issue later.

So how did this matter start? On 27.6.01 at about 11.00 a.m. the plaintiff was standing beside the road at a place called PIAI waiting for public transport. A motor vehicle is said to have pulled over and the occupants called her.

Apparently she knew one of the occupants who was a police woman. They ordered her to board the motor vehicle and drove her to Karatina police station. There she was handed over to some eight officers from what was then known as the Flying Squad. Her nightmare then started. They started questioning her about her involvement with one Bernard Kibaara who the officers were looking for. She was locked up in custody and that is when the officers are said to have unleashed on her acts of terror that no normal human mind could fathom. She particularized the heinous act committed on her by the said officers in paragraph 3 of her plaint. The said acts included being stripped naked, being flogged and kicked on the buttocks while naked and spread eagled on the floor. The most repugnant of the acts perpetrated on her however was having a 300mls Coca Cola bottle forced into her vagina by a male police officer while others held her legs. Another threatened to insert a chili laced stick in to her vagina.

She was subjected to this inhuman and degrading punishment and treatment for a total of 13 days as she was locked up in cells. PW1 went to the police station and tried to plead on her behalf but his plea fell on deaf ears. Eventually, the plaintiff was taken to court where she complained of the injuries. The court ordered that she be taken to hospital for treatment which she was.

She suffered several physical injuries and complications as well as mental injuries as particularized in her plaint. She was treated in several hospitals among them Nyeri Provincial General Hospital, Kerugoya District Hospital, Nairobi Women Hospital and several others.

Her treatment included some surgical interventions as shown in the medical reports produced as exhibits. The 2 medical reports by Dr. Paul W. Mbaka and Julius M. Kiiru both outlined her condition and both doctors concluded that other than the physical trauma which manifests itself with low moods, headaches, body aches dyspepsia etc she has also suffered psychologically.

Even as she testified in court, she kept breaking down while narrating her ordeal and it was apparent that almost 9 years later, she is far from full recovery. She told the court that she still undergoes treatment and hence the claim for future medical expenses. She told the court that the incident traumatized her so much that she cannot engage in normal sexual relations. She was not just physically tortured but also humiliated and mentally dehumanized.

Her counsel has asked for general damages of KSh.24,011,520 Aggravated damages of 12,005,760 Sh. and future medical expenses in the sum of KSh.152,915.

He has calculated his damages on the basis of the 2 English authorities Re-G and Re-S. Before I venture into the assessment of the quantum of damages, it is imperative to deal with the issue of liability first.

In this case, no defence was filed by the Attorney General. That leaves the plaintiff's claim uncontroverted. There is no evidence before me to show that the plaintiff deserved to be treated in the manner that she was. Indeed she was even acquitted of the criminal charge she had been arrested for following a full trial. The defendant who is sued on behalf of the police officers who tortured the plaintiff is therefore 100% liable for the torture and injury suffered by the plaintiff.

On the issue of special damages, the amount pleaded is KSh.152,915. I have seen the document from the Independent Medico-legal unit showing that the plaintiffs treatment cost a total of KSh.101,170.00 There are several other receipts from pharmacies and the other hospitals and I believe those amounts are what has brought the figure for special damages to 122,915.00

I will therefore allow that figure as special damages. I disallow the 30,000 sh. for transport & subsistence because it was not specifically proved.

On the head of General damages, I note that counsel for the plaintiff did not furnish me with any local cases. On the foreign cases cited, my finding is that they can be distinguished from the present case. In the case of Re-G the plaintiff was a young girl who was subjected to the sexual assault continuously for 4 years. In my view, such torture was more aggravated and it was also visited on a young girl still in her formative years. It would take her longer to heal and outgrow the psychological trauma.

The general damages awarded to her also included damages for loss of earning capacity which is not the case here.

Damages in the Re-S were in respect of 2 applications and the same also included compensation for financial loss. They cannot therefore be the basis of our computation.

I am nonetheless satisfied that the plaintiff herein did suffer serious physical and mental torture at the hands of the Flying Squad police officers. It is my considered view that no amount of damages can actually assuage the pain the plaintiff suffered and continues to suffer. The conduct of the police officers was not just wrong. It was abnormal, crude and even demonic. Even the fact that male police officers could strip a woman suspect naked, flog her on the buttocks and even gleefully insert a bottle in her vagina is in itself not just the apex of vulgarity, but an obnoxious act which goes against all rules of common decency. It was an outrageous act that calls for unreserved condemnation by all right minded persons. The act of penetration with a bottle actually amounted to rape. This was gang rape given that the perpetrators were several. It amounts to an offence under **Section 10 of the Sexual offences Act** and punishable to a term of not less than 15 years imprisonment to life imprisonment. This therefore makes the torture aggravated and calls for an award of both general damages and aggravated damages.

After considering the entire evidence before me and the circumstances surrounding this matter I find the following award fair and just.

- General damages to the tune of 5 million.
- Aggravated damages of 2 million.

That amount is in my considered view sufficient to cover any future medical expenses and I will not therefore make any award for future medical expenses.

In sum, I am satisfied that the plaintiff has formally proved her case against the defendant on a balance of probabilities. I enter judgment for her in the following terms

- |                               |                                |
|-------------------------------|--------------------------------|
| <b>(a) Special damages</b>    | <b>KSh. 122,915.00</b>         |
| <b>(b) General damages</b>    | <b>KSh.5,000,000.00</b>        |
| <b>(c) Aggravated damages</b> | <b><u>KSh.2,000,000.00</u></b> |
| <b>TOTAL</b>                  | <b><u>KSh.7,122,915.00</u></b> |
- (d) Interest on the above at court rates**
- (e) Cost of the suit with interest thereon at court rates.**

Special damages to attract interest from the date of filing. General and Aggravated damages to attract interest from the date of this judgment.

Deputy Registrar to ensure that all uncollected court fees in this matter is collected before execution. It is so ordered.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 29<sup>th</sup> day of September 2010

**In the presence of:- Mr. Njage for plaintiff.**