



**Nganga v Oketch (Civil Suit 232 of 2004) [2009] KEHC 3887 (KLR) (27 March 2009) (Judgment)**

*Joseph Kirubi Nganga v Keneth Oketch [2009] eKLR*

Neutral citation: [2009] KEHC 3887 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 232 OF 2004  
MK KOOME, J  
MARCH 27, 2009**

**BETWEEN**

**JOSEPH KIRUBI NGANGA ..... PLAINTIFF**

**AND**

**KENNETH OKETCH ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff herein, Joseph Kirubi Nganga instituted this suit against, Kenneth Oketch the registered owner of motor vehicle registration number KAN 503 K. The plaintiff alleged that on the 29<sup>th</sup> August 2001 he was lawfully travelling in the defendant's motor vehicle along Webuye–Eldoret road when the defendant negligently drove or managed the said vehicle that it lost control and rammed into motor vehicle registration number KAL 469R as a result of which the plaintiff sustained serious injuries. A consent order was recorded by the parties on the 24<sup>th</sup> September 2007, in which parties agreed that judgment on liability be recorded at 70% on the part of the defendant and 30% on the part of the plaintiff.
2. The only outstanding issue for determination is the assessment of damages. The plaintiff testified that he was travelling in the defendant's vehicle. At the time he was self employed. He owned his own lorry, he was aged 49 years old, when the accident. As a result of the accident he sustained the following injuries:
  - a) Head-scratches/bruises of face
  - b) Fracture left scapula
  - c) Fracture left femur
3. A medical report prepared by Dr. Kiama Wangai was admitted by consent. After the accident the plaintiff was admitted at the Moi Referral Hospital for two weeks. A metal plate was inserted on the



fractured femur, however the fracture did not heal, and the plate was removed on account of infection. The plaintiff sought further medical treatment at the P.C.E. A. Kikuyu Hospital, he paid Kshs 36,706/=. He was also treated at the Thika Nursing home and incurred expenses of Kshs 223,410/=. the metal plate was reset. He continued with treatment and incurred other expenses on drugs of Kshs 24,311/=. He also paid Kshs 3,000/= for the medical report.

4. The plaintiff testified that he has not fully recovered from the injuries. The metal plate is not removed it also has side effects such as a wound which keeps recurring. The plaintiff now walks with the help of a walking stick. According to Dr. Kiama, the plaintiff needs further medical attention which will cost Kshs 15,000/=. and surgery which will cost Kshs 150,000/=. He opined that the further surgical intervention is anticipated at Ksh 165,000/=.
5. The defence did not adduce any evidence on the quantum. They however filed written submissions and urged the court to award Kshs 200,000/= as general damages for pain and suffering while relying on the following cases:
  - (1) Nairobi HCCC No. 5401 of 1993 Christine Syombua Mutua v Daniel Kamua Thuita & others.
  - (2) Nairobi HCCA No. 265 of 2004 Kinyanjui Wanyoike v Jonathan Muturi Choga.
  - (3) Nairobi HCCA No. 1427 of 1996 Chimal Hiralal Shah v Asgar Mahmood.
6. I have gone through the submissions by counsel for the defendant as well as the authorities cited, with tremendous respect; this is a gross understatement of the injuries suffered by the plaintiff.
7. On the part of the plaintiff, counsel filed written submissions and urged the court to award a sum of Kshs 2.5 million as general damages, future medical expenses and general damages all amounting to over Kshs 3 million. The evidence of the injuries suffered by the plaintiff is not in dispute. The plaintiff testified in court and produced receipts amounting to Kshs 343,974/= as medical expenses. When assessing a fair compensation for injuries sustained by a party the Court of Appeal have adopted the principle that:

“Damages must be within limits set out by decided cases and also within limits the Kenyan economy can afford. Large awards are inevitably passed on to the members of the public, the vast majority of whom cannot afford the burden, in the form of increased insurance or increased fees.”
8. See the case of Ossuman Mohamed & Another v Saluro Bundit Mohamed, Civil Appeal No. 30 of 1997 (unreported) quoting from the case of Kigaraari v Aya [1982-88]1 KAR 768.
9. While bearing in mind that there are hardly two cases that can be said to be similar in injuries, disability or the consequences, each case depends on its own facts but previous cases provide a useful guide. The plaintiff in this case was hospitalised for two weeks. He has continued with medication at the Thika Nursing Home and at P.C.E.A. Kikuyu hospital. A similar case in HCCC No. 27 of 2004 (Nyeri) Samuel Theuri Kibatia v Ephantus Ngugi Mwaura & Anor. The plaintiff was awarded 1.2 million. Although the medical report stated that the plaintiff will need future medical expenses no evidence was tendered and a sum of Kshs 165,000/= cannot be said to have been proved. In the circumstances I award the plaintiff a sum of Kshs 1,100, 000/= as general damages. The plaintiff produced receipts in support of the special damages sought in the plaint. I therefore award him Kshs 343,974/= as special damages.

Judgment is therefore entered for the plaintiff as follows:



(i) Pain and Suffering Kshs 1,100,000.00

(ii) Special damages Kshs 343,974.00

Total Kshs 1,443,974.00

Less 30% contribution Kshs 1,101,782 .00

The plaintiff will also have the costs of this suit and interest.

**JUDGMENT READ AND SIGNED ON 27<sup>TH</sup> DAY OF MARCH 2009.**

**M. KOOME**

**JUDGE**

