



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

**Civil Suit 1128 of 1993**

**LEAH NYAGUTHII KAMUNYA .....PLAINTIFF/APPLICANT**

**VERSUS**

**KENYA BROADCASTING CORPORATION...DEFENDANT/RESPONDENT**

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

1. This suit arises out of a road traffic accident which occurred on 26/10/1991 along the Gilgil/Naivasha Road. The fact of the accident is admitted. Judgment on liability y as against the First Defendant was entered on 10/11/2003 at 100%. The Defendant suffered the following injuries as per the consent order made on 3/03/2009:-

- (a) *Scalp cut wound*
- (b) *Cut wound left calf region*
- (c) *Multiple hand bruises*
- (d) *Blunt trauma right shin*

To support these injuries, the parties admitted into evidence by consent the medical reports by Kenyatta National Hospital (KNH) dated 10/09/1998 and the medical report by Dr. Wambugu P.M. dated 11/04/2008. Judgment on special damages in the sum of Kshs.7679/= was entered by consent on 3/03/2009.

2. The only issue for determination is quantum of general damages. To this end, parties filed written submissions. Learned counsel for the Plaintiff purposes a sum of Kshs.350,000/= as being reasonable in the circumstances. The Plaintiff contends that the soft tissue injuries sustained by herself were serious soft tissue injuries for which she should be adequately compensated. Learned counsel cited the following cases:-

**(a) Arrow Car Limited –vs- Elijah Shamalla Bimomo & 2 Others – Kisumu Court of Appeal C.A. No. 344 of 2001.** In the case, the First Respondent suffered the following injuries:-

- § Sprain to the neck with severe pain
- § Soft tissue injury at the back
- § Sprain to the left ankle joint with soft tissue swelling of the joint

§ Soft tissue injury to the right ankle joints

§ Lacerated cut wound with soft tissue loss to the left ankle region

The Third Respondent, **Dr. Jacob Stephano Maleche** suffered the following injuries:-

§ Cut on the forehead which needed stitching

§ A sprain in the neck

§ Bruises on both arms

§ Injuries on knee joints and ankle joints.

3. In its judgment, the Court of Appeal held that comparable injuries should be compensated by comparable awards. The court found that awards of Kshs.350,000/= in respect of soft tissue injuries for the First and Third Respondents were inordinately high and slashed the amounts to Kshs.150,000/= in respect of each of the First and Third Respondents who suffered comparable injuries during the accident.

b. **Vincent Cheruiyot Rono –vs- Mombasa Maize Millers Ltd. – Nakuru HCCC No. 2005**

4. It is to be noted that this case is of persuasive authority only. The Plaintiff in the case suffered the following injuries:-

§ Pain over the chest without rib fracture

§ Tenderness over the cervical spine without any fracture

§ Laceration over the left elbow

§ Painful swollen right knee with markedly reduced range of motion

For the above injuries, the Plaintiff was awarded the sum of Kshs. 400,000/= as general damages for pain suffering and loss of amenities.

5. On the Defendants' part, it is contended that the sum of Kshs.70,000/= would be sufficient compensation for pain suffering and loss of amenities. Learned counsel for the Defendants relied on **Nairobi HCCC No.3835 of 1988 – Andrew Gichecha –vs- Harrison Thiru & 4 Others** in which the court awarded the sum of Kshs.50,000/= in 1994. The Plaintiff, who was aged 27 years at the time of the accident suffered multiple bruises on the head, front of the chest, abdomen, left leg and lacerations on both legs. Learned counsel for the Defendant also relied on **Nairobi HCCC No.5219 of 1989 – Simon Namasaka Katasi –vs- East African Road Services Limited.** The Plaintiff therein suffered multiple bruising on the head, front of the chest, lower back, loss of one tooth from the lower jaw and multiple lacerations on the face, left hand and left leg. He was awarded the sum of Kshs.50,000/= for pain suffering and loss of amenities.

6. I have carefully studied the cited authorities against the medical reports admitted into evidence by consent. The report from Kenyatta National Hospital dated 10/09/1998, shows that some six years after the accident, there was still tenderness over the right lower limb which was still swollen, and remained persistently swollen during subsequent visits. A diagnosis of osteomyelitis/cellulites was made. There was an old scar over the tibia (right) and some oedema. Dr. Wambugu's report dated 11/04/2008 shows that the Plaintiff developed right leg cellulites and at time of examination suffered from recurrent headaches and forgetfulness and occasional pains in the right leg. Dr. Wambugu also noted a healed cut wound in the proximal calf region. Also noted two small healed puncture wounds mid-shin lateral to which is a firm non-tender mass.

7. After considering all the above, I am of the view that an award of Kshs.200,000/= would be adequate compensation for pain suffering and loss of amenities.

8. In the result, I do hereby enter judgment for the Plaintiff as against the Defendants as follows:-

(a) Liability - 100%

(b) General damages for pain

Suffering and loss of amenities - Kshs.200,000.00

(c) Special damages - Kshs. 7,679.00

Total - Kshs.207,679.00

8. The Plaintiff shall also have costs of the suit and interest at court rates on specials from the date of filing suit until payment in full and on general damages from the date of this judgment until payment in full. Right of Appeal within 28 days.

9. It is so ordered.

Dated and delivered at Nairobi this 19<sup>th</sup> day of June 2009.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent

..... Court clerk