



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Civil Suit 21 of 2005

**CHRISTINE CHELANGAT LELEI (*suing as administratrix and/or Personal Representative*
of the estate of JOEL KIPLANGAT LELEI (DECEASED)PLAINTIFF**

VERSUS

RICHARD MOSOTI1ST DEFENDANT

MOHAMMED BASHIR ABULAZIZ2ND DEFENDANT

EDWIN ONTERI3RD DEFENDANT

JUDGMENT

I: Background

1. On the 15th June, 2004, the original plaintiff (*now deceased*) Joel Kiplangat Lelei was traveling in a public service vehicle registration No. KAP 096V Toyota Hiace (*matatu*) along the Kericho Nakuru road. At around Mau Summit area known as Kapkatunga, the said vehicle being driven by one Edwin Onteri (*the third defendant herein*) over took another vehicle, lost control, veered off the road and overturned.
2. At all material times Joel was an authorized passenger in the said vehicle. The 1st defendant Richard Mosoti was the registered owner of the said vehicle registration KAP 096V and the 2nd defendant Mohammed Bashir Abdilaziz the beneficial owners.
3. The said passenger, Joel sustained injuries as a result he sued all three defendants. The 1 and 2 defendant were jointly sued and held vicariously liable for the negligence of the 3rd defendant and driver. The 3rd defendant was sued in negligence.
4. A notice of intention to sue was duly issued.
5. Unfortunately when the said Joel was admitted to hospital with paraplegic injuries on 15th June, 2004 he passed away on 5th June, 2005 - three months after he had filed suit against the defendant on 17th February, 2005. This was a little under a year after the accident occurred.
6. An application to enjoin a legal representative was granted (*Koome J*). The new administratrix to the estate of the late Joel Kiplangat Lelei (*aged 44 years old*) took over the conduct of this suit.
7. Though the plaint was accordingly amended, the plaintiff's advocate stated that he would not pursue in this suit the claim for a fatal accidents claim and that under the Law Reform Act as the cause of death

was not caused by the accident. This court on perusal of the death certificate noted that the cause of death was due to “*cardio respiratory arrest Septicaemia – extensive bedsores*”. Should the hospital concerned be sued?

II: Procedure

8. The parties in this case under took a pre trial conference under their own supervision (*as summons for directions had been done away by the rules committee in 2001*). This pre – trial was held on 4th February, 2009 at 3.00p.m in the Chambers of the sworn advocate being Sila Munyao & Co. advocates. This was extended by leave of the Court to 4th March, 2009 as the parties required more time.

III: Liability

9. On the day that this matter was set down for hearing namely 26th March, 2009, the parties admitted to the facts duly narrated in the background of this case, as a result the issue of liability was compromised namely judgment on liability entered at 100% against defendants 1,2,& 3 jointly and severally.

IV: Special Damages

10. The claim for special damages was reduced from Kshs. 274,000/= to Kshs. 206,499/= a consent judgment on special damages was entered into on 26th May, 2009 as follows (with the plaint accordingly amended to particularize the claim).

A) Treatment Bills

i) Siloam Hospital

21.7.04 - Kshs. 50,000/=

21.7.04 - Kshs. 20,500/=

23.7.04 - Kshs. 15,000/=

23.7.04 - Kshs. 4,500/=

9.8.04 - Kshs. 10,000/=

ii) Tenwek Hospital

26.8.04 - Kshs. 300/=

26.8.04 - Kshs. 899/=

iii) Moi Referral Hospital

2.9.04 - Kshs. 500/=

2.9.04 - Kshs. 400/=

2.9.04 - Kshs. 500/=

IV) Greenview Hospital

- Kshs. 100,400/=

B) Medical report - Kshs. 3,000/=

C) Search Certificate for motor

vehicle owner Kshs. 500/=

Grant Total Kshs. 206,499/=

V) General Damages

a) Pain suffering and loss of amenities.

11. The claim that the parties want this court to now determine, is that of General Damages under the heading of pain suffering and loss of amenities.

12. The medical report produced to court through PW1 was prepared by

DR A. Kasera Ochieng MBhb (Moi University) General Practice

He examined Joel Kiplangat Lelei on the 15th February, 2005 and found the following injuries.

- i) Spinal Cord Injury
- ii) Loss of teeth
- iii) Fracture of rib to both the left and right side

(Plaint pleads bruises to the left side of arm and leg)

12.1. He confirmed that the said patient was put on a skull fracture, analgesis and physiotherapy at the Siloam Hospital in Kericho. The patient developed bed sores and was under going treatment – home based care.

12.2. His finding was that the patient sustained sensory level at T6, was paraplegic. He had loss of abdominal superficial reflex, loss of deep tenderness reflexes of lower limbs bilaterally.

There were deep pressure sores at the knees bilaterally, tuberosty provinces bilaterally and sacral region of the spine.

12.3. He had missing dental teeth at 1/1 and 2/1.

12.4. The doctor concluded that the injuries sustained of paralysis was permanent and irreversible.

12.5. The degree of disability was at 100%.

VI: Proposal

13. The advocate for the plaintiff sought that I award a sum of Kshs. 2.8million in damages to compensate the estate. He seems to have based his case on an authority by Khaminwa J of **Dominic Mutua Maweu v Bestways Plumbers Ltd**

HCCC. 255/01 (2005 eKLR)

a passenger in a vehicle seated three in a row, including the plaintiff, were traveling in a vehicle within the game park at Mtito Andei area. The driver was actually struggling to drink or open a bottle of beer when the vehicle had a self-accident. The Hon. Judge awarded Kshs. 2.5 million for the head of damages

for pain, suffering and loss of amenities.

The advocate for defendant called no evidence which he is entitled to do under **Order 17 r 3 cpr** but submitted that the figure of Kshs. 2.8million was too large but would leave it to court to decide on this head of damages.

VII: Opinion

14. The evidence of the medical doctor is very crucial in injuries claim cases. I have stated in the past that doctors are specialists. You would have a consultant at all times who in effect would examine the patient in their specialized field and give an opinion as to the effect of such injuries now and in the long term.

15. For instance, the patient deceased had injuries to his spinal cord. A consultant neurosurgeon should have examined the plaintiff and not the practioner herein. His report was very scanty and failed to articulate the extent of the injuries. There was the injury to the teeth. Either a dental report or a maxifillar report and X-ray should have been given as to the extent of such damages. Was the jaw, for instance compromised?

16. I note in the authority of **John Kenyasa Miragi v Ezekiel Tochi & Anor.**

Nakuru HCCC. 149/00 Kimaru J

that the parties by consent agreed to an award for a paraplegic in 2004 at 1.5 million.

17. I find that the deceased sustained paraplegic injuries. To this end I would in effect find that this having been proved to compute the award of Kshs. 1.5 million under the heading of pain suffering and loss of amenities.

18. I accordingly enter judgment in favour of the plaintiff against the defendant 1, 2 and 3 jointly and severally.

In summary

19.1. Passenger male adult aged 44 years in 2004

19.2. Injuries

i) Special Injury /paraplegic

ii) Fracture to 4 ribs

iii) Loss of 4 teeth

iv) Bruises on left arms and legs.

19.3. Plaintiff dies, estate sues and continues on behalf

(dated 5th June, 2005)

19.4. Liability

100% against 1, 2, and 3 defendant jointly and severally 26.5.09

19.5. Quantum

A) General Damages

i) Pain suffering and loss of amenities Kshs. 1.5 million.

B) Special damages

i) Treatment bill Kshs. 202,999/=

ii) Medical report fee Kshs. 3,000/=

iii) Search certificate for motor vehicle Kshs. 500/=

Total **Kshs. 206,499/=**

Grand Total **Kshs. 1,706,499/=**

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19. I award the costs of this suit to the plaintiff. I award interest on special damages from the date of filing suit, Interest on General Damages from the date of this judgment.

DATED this 9th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

M. Sila advocate instructed by the firm of M/S Sila Munyao & Co. advocates for the Plaintiff – present

N.O. Bosire advocate instructed by the firm of M/S Bosire & Co. advocates for the Defendants – present