



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE 34 OF 2007

COLLINS KIPKEMOI KOSKEI (minor suing through his next Friend

RICHARD KIPKURUI LANGAT.....PLAINTIFF

VERSUS

KIRUI R. KIPLANGAT.....1ST DEFENDANT

ANTHONY KORIR2ND DEFENDANT

ERICK KIPRONO RUGUT3RD DEFENDANT

JUDGEMENT

1. Procedure

1. On being involved in motor vehicle/bicycle accident as a pillion passenger on a bicycle, Collins Kipkemoi Koskei then aged 15 years old on 14th October, 2006 filed this suit on 7th May, 2007 through his next of friend Richard Kipkurui Langat.
2. He sued the three defendants Kirui R. Kiplangat as the registered owner of motor vehicle registration No. KAU 617 E Pick up Anthony Korir as the beneficial owner and Erick Kiprono Rugut as the driver of the vehicle at that time.
3. The 1st defendant did not enter appearance nor file defence. No interlocutory judgment had been applied to be entered against him. The 2nd and 3rd defendant entered appearance and filed defence through their advocates M/s. Mose & Mose & Co. Advocates . A hearing notice was issued and served upon all 3 defendants. The 1st defendant failed to attend court. The 2nd and 3rd defendants filed a notice of change of advocates through their new advocates M/s. Mose Mirungi & Rigoto & Co. Advocates. They too failed to attend court to the call over held on 18th May, 2009 proceeding.

II: Background

4. Collins is a school student. On the material day of the 14th October, 2006 he and a cousin decided to travel by bicycle to do some visits. Collins was a pillion passenger. As they rode, they approached a junction along the Litein Sotik road known as Koiwa junction. His cousin actually stopped the bicycle off the road when they noticed a vehicle coming at a high speed swaying and having its head lights on.

The vehicle was traveling from the Litein direction to Sotik. The vehicle left the road and crashed into him and his cousin. His cousin died. He lost consciousness and was taken to the hospital for treatment.

5. The defendants 2 & 3 in their defence denied the allegations of negligence on that any accident occurred. They even stated that the plaintiff and the bicycle rider were negligence as they failed to keep a proper look out that they encroached on the area of the road designated for motorist that they suddenly emerged into the road when it was not reasonable to do so. That they were reckless idle, absent minded and dangerous. They failed to look both side to ensure their safety. They were joy riders.

6. They also went further to plead that the guardian had left the minor unattended and exposed the minor to danger.

III: LIABILITY

7. A notice to admit facts was filed by the plaintiff but not notice of non admission had been filed (*order 12 CPR*). I believe a period of 14 days was required to effect this notice.

8. Parties filed their agreed issues on 25th may, 2009 with the new advocates who had come on record.

9. Who was to blame for the accident and whether the plaintiff contributed to the said accident?

10. The plaintiff in his evidence and in the admission of facts to the defendants 2 & 3 denied that the 3rd defendant was at all times the driver of the vehicle registration KAU 617 E which was owned by the 1st and 2nd defendants as the registered owner and beneficial owner respectively.

11. It has also been established that an accident occurred on the material day of 14th October, 2006.

12. The question arises as to whether the plaintiff contributed to this accident?

13. The plaintiff in his evidence confirmed the bicycle was completely off the road. The defendant No.3 appeared to have lost control of the vehicle and collided into the plaintiff and cousin who rode the vehicle whilst he was a pillion rider.

14. A police abstract was produced by PW3 to confirm that an accident occurred.

15. My findings herein that the defendant No.3 was driving at a high speed lost control and traveled in a zigzag manner then knocked the plaintiff with another off the road thus causing the injuries sustained by the plaintiff.

16. I would find the 2nd and 3rd defendant liable as proved at 100%. Interlocutory judgment is required but has not been applied for 1st defendant. His case is dismissed accordingly to law provided. The 2nd defendant is vicariously liable.

iv: Quantum

A. General damages.

(a) Pain suffering and loss of amenities

17. The plaintiff stated he lost consciousness. He regained his mind at the Litein Cottage hospital. There he found he had sustained fractures to his leg which he was transferred to the Moi teaching and referral hospital. There his leg was amputated below the knee.

18. Other injuries sustained were soft tissue laceration and bruises to the head, wrist and groin.

19. The plaintiff was examined by Dr. Stephen Oketch MBCh B Moi Who gave a very brief and sketchy report of the injury.

He disclosed the injuries sustained as

- i. Severe concussion
- ii. Multiple cuts and bruises to face
- iii. Communitied right tabia /fibula fracture
- iv. Fracture right femur
- v. Dislocation of the left wrist joint
- vi. Degloving laceration over the left elbow
- vii. Laceration of groin/ perineum

20. The right leg femur (thigh) had internal fixation by nailing whilst the right leg was amputated below the knee.

21. I have been presented with a discharge summary from the AIC Litein hospital and from the Moi Teaching and Referral Hospital.

22. It would have been ideal if the plaintiff had been examined by and orthopedic consultant to give this court an in-depth analysis of the injuries as it is the report before court merely states the plaintiff was injured.

23. This court has in the past made a ward for amputated limbs at kshs. 800,000/=. I accordingly award this sum for being a fair award in the circumstances.

II: Special Damages

24. The law is clear that special damages must be pleaded and particularized. The plaintiff pleaded

- i. Treatment expenses kshs. 140,000/=
- ii. Medical report kshs. 5,000/=
- iii. Artificial limb kshs. 50,000/=
- iv. Search fee Kshs. 500/=

24. i) Treatment expenses Kshs. 140,000/=

This claim was not particularized. I note from the evidence that is a lump some of numerous treatments that do not add up to kshs. 140,000/=. I reject this claim as having not been particularized

24. ii) Medical report Kshs. 5,000/=

The doctor produced his fee note of Kshs. 5000/= duly paid for (receipt). I would accept this claim.

24. iii) Artificial limb Kshs. 50,000/=

The plaintiff stated he would require an artificial limb on prosthesis to enable him live a normal life. The doctor stated very briefly in his report that prosthesis would be needed for better amputation. I would grant this prayer.

24. iv) Search fee Kshs. 500/=

This item is actual a search fee to confirm the ownership of the motor vehicle. A Kenya government receipt was produced. I would allow this claim.

25. I enter judgment for the plaintiff against the 2nd and 3rd defendants jointly and severally with the 2nd defendant being vicariously liable

26. In summary

- a) Plaintiff minor aged 15 years old in 2001
- b) Pillion passenger on a bicycle, run down by defendant's vehicle
- c) Liability 100 % against Defendant 2 and 3 jointly and severally
- d) Injuries
 - i) Amputated below the right knee
 - ii) Fracture of femur
 - iii) Concussion
 - iv) Multiple cuts and bruises to the head
 - v) Dislocated left wrist.
 - vi) Degloving left elbow
 - vii) Laceration of groin/perineum

e) General Damages

- i) Pain and suffering and loss of amenities

Kshs. 800,000/=

Special damages

- i) **Treatment expenses**

Kshs. 140,000/= but only Kshs. 86,979/= shown ...NIL

as same was not particularized in the pleadings.

- ii) Medical report..... Kshs. 5,000/=

- ii) Artificial limb Kshs. 50,000/=

iii) Search for motor vehicle kshs. 500/=

Kshs. 55,500/=

Gross total kshs. 855,500/=

26. The award the costs of this suit to the plaintiff to be paid by defendant No. 2 & 3. I award interest on special damages from the date of filing suit interest on General Damages from the date of this judgment.

27. The suit against the 1st defendant stands dismissed.

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

M.A.ANG'AWA

JUDGE

Advocates

M/S Sila Munyao advocate instructed by the firm of M/S Sila Munyao & Co. advocates

for the Plaintiff – present

No appearance for the defendants