



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

Civil Case 1126 of 1993

MARY WANJIRU MURAGURI.....PLAINTIFF

VERSUS

KENYA BROADCASTING CORPORATION.....DEFENDANT

J U D G M E N T

1. This case is for assessment of damages. Liability for the accident was settled by the test case, namely HCCC No. 1128 of 1993 – Leah Nyaguthi Kamunya –vs- Kenya Broadcasting Corporation. The Defendant’s driver was found 100% liable for the accident in which the Plaintiff herein was injured. Interlocutory judgment was entered to that effect on 26/01/2006.

2. The Plaintiff, Mary Wanjiru Muraguri filed suit on 10/03/1993 praying for judgment against the Defendant for:-

- (a) *Kshs.1,100/= special damages as prayed in paragraph 7 hereof.*
- (b) *General damages as may be assured (sic) by this Honourable Court.*
- (c) *Costs of this suit.*
- (d) *Such further or other relief as this Honourable Court may deem fit to grant.*

The Plaintiff’s claim arises out of the road traffic accident involving motor vehicle Registration No. KAA 982P along the Gilgil/Naivasha Road on the 26/10/991.

3. The following medical reports were admitted in evidence by consent of the parties, that is to say

1. *Medical Report by Prof. J.A.O. Mulimba dated 1/07/2002.*
2. *Medical Report by Dr. Mary Kiaira dated 14/07/2000*
3. *Medical Report by Prof. J.A.O. Mulimba dated 29/03/2007.*
4. *Medical Report by Dr. Peter Mungai Ngugi dated 19/06/2008.*

4. From these reports, although there is no total agreement, the Plaintiff is shown to have suffered the following injuries:-

- (a) *Multiple cuts on scalp and hands.*

(b) Bruises on the left thigh and right leg

(c) Contusion on the right knee

(d) Fracture of the acetabulum on right hip.

The Plaintiff was hospitalized from 26/10/1991 to 29/11/1991. After discharge the Plaintiff continued attending hospital as an outpatient until May 1992. The cuts healed well leaving scars namely on the head.

5. All the doctors were in general agreement about the injuries suffered by the Plaintiff. Professor J.A. Mulimba's Report dated 29/03/2007 indicated that the Plaintiff had developed osteoarthritis in the hip joint secondary to the acetabular fracture. Professor Mulimba recommended a total hip replacement at a cost of Kshs.350,000/=.

6. The report by Dr. Peter Mungai Ngugi dated 19/06/2008 shows that the Plaintiff complained of pains on the left hand, the right side of the body, the right hand the right hip, headaches and that she had scars on the right leg and on the head. The doctor also noted that the Plaintiff had scars on both hands. He also noted that the right hip movements were tender and that there was osteoarthritis of the right hip.

7. On general damages for pain suffering and loss of amenities counsel for the Plaintiff, M/s Lillian Njuguna proposed a figure of Kshs.900,000/=. Counsel relied on 2 cases. In the case of Stephen Kihara Gikonyo –vs- Peter Kirimi Kingori – Nakuru HCCC No. 109 of 2002, the court awarded Kshs.800,000/=. The Plaintiff suffered the following injuries:-

1. *Central fracture dislocation of the right hip with right lateral popliteal, nerve paralysis*
2. *Head injury with cerebral concussion*
3. *Osteoarthritis right hip.*

The doctor had assessed the permanent disability suffered by the Plaintiff at 35% and classified the injury as Grievous Harm.

8. The second case is Enock Kedogo –vs- Hillary Isaac Jilani – Msa HCCA No. 176 of 2006. In that case, the Respondent, who was awarded Kshs.800,000/= for pain suffering and loss of amenities by the lower court suffered a fracture of the right hip. The award was upheld on appeal by the Appellant. Counsel for the Plaintiff herein said that the sum of Kshs.900,000/= is reasonable in view of the passage of time between the award in the cited cases and now. The Plaintiff also prays for costs and interest.

9. On its part, the Defendant submitted that the proposed sum of Kshs.900,000/= for pain suffering and loss of amenities is too high in view of the injuries sustained by the Plaintiff. The Defendant proposes a sum of Kshs.250,000/= for pain suffering and loss of amenities plus future medical expenses of Kshs.350,000/= totaling Kshs.600,000/=. Counsel for the Defendant relied on Cecilia W. Mwangi –vs- Rita N. Mwangi – Court of Appeal Civil Appeal No. 25 of 1996, quoted in the case of Mutua Kinuthia – vs- David Kamanda Kinuthia. The appellant sustained the following injuries:-

- *Cerebral concussion*
- *Wound over the vertex scalp*
- *Wound over the right lower leg*
- *Injury to the pelvis resulting in a fracture of the right superior and inferior pubic rami*

The Court of Appeal said that the award of Kshs.450,000/= as general damages for pain suffering and

loss of amenities was erroneous and too large.

10. I have now considered the evidence as per the medical reports. I have also considered the authorities cited to me. In my view, an award of Kshs.500,000/= for pain suffering and loss of amenities would reasonably compensate the Plaintiff. I will also award her costs for future medical expenses for replacement of the right hip. Accordingly I enter judgment for the Plaintiff as follows:-

(a) For pain suffering and loss of amenities - Kshs.500,000.00

(b) Future medical expenses - Kshs.350,000.00

Total - Kshs.850,000.00

The Plaintiff shall also have costs of the suit and interest at court rates. As specials were not proved, I decline to make any award under that head.

It is so ordered.

Dated and delivered at Nairobi this 18th day of September, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mrs. L. Njuguna (present) for the Plaintiff

No appearance (duly notified) for the Defendant

James Nyagah - court clerk