



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

**Civil Case 1127 of 1993**

**MIRIAM NJERI MURIMI.....PLAINTIFF**

**VERSUS**

**KENYA BROADCASTING CORPORATION.....DEFENDANT**

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

1. The Plaintiff herein, Miriam Njeri Murimi commenced suit by way of Plaint dated 3/03/1993 and filed in court on 10/03/1993 praying for judgment against the Defendant for

*(a) Kshs.1100/= special damages as prayed in paragraph 7 hereof.*

*(b) General damages as may be assessed by this Honourable Court.*

*(c) Costs of this suit*

*(d) Such further or other relief as this Honourable Court may deem fit to grant.*

2. The Plaintiff's claim arises out of a road traffic accident which occurred on or about 26/10/1991 involving motor vehicle Registration No. KAA 982P along Gilgil/Naivasha Road.

3. The issue of liability was settled by the test case namely HCCC No. 1128 of 1993 – Leah Nyaguthii Kamunya –vs- Kenya Broadcasting Corporation. The Defendant's driver was found 100% liable in negligence.

4. The Plaintiff suffered the following injuries:-

*a. Head injury*

*b. Fractured ribs L1-6 and R1-12*

*c. Fracture dislocation of the shoulder joint*

*d. Fractured dislocation of the hip joint.*

5. When the parties appeared before me on 1/04/2009, they agreed to put in the following medical reports without the need to call the authors, that is to say:-

*1. Medical Report by the Nairobi Hospital by Dr. Lwai Lume dated 9/02/2007.*

2. *Medical Report by Dr. Wambugu P.M. dated 10/03/2007.*
3. *Medical Report by Dr. Peter Mungai Ngugi dated 16/06/2008.*
6. The parties also agreed to file written submissions on the issue of quantum. The Plaintiff's counsel, Mrs. Lillian Njuguna filed her submissions on 8/04/2009. The Defendant's counsel M/s Mwangi Chege & Co. Advocates filed their written submissions on 30/04/2009.

7. The report from the Nairobi Hospital dated 9/02/2007 shows that Plaintiff suffered the following injuries:-

- *Cut wounds on the head*
- *Cut wounds on right forearm*
- *Bruising on both head and right forearm*
- *Fractured ribs L1-6 and R11-12*
- *Right haemothorax*
- *Fracture dislocations of the right hip*
- *Fracture dislocations of right shoulder joint*

8. Dr. Wambugu's report dated 10/03/2007 confirms similar injuries except that he does not mention bruising of the head. Dr. Peter Mungai Ngugi's Report speaks of similar injuries save that he does not mention fractured ribs either of the left or right rib cage. All the doctors reported that the Plaintiff walked with a limping gait on the right side and that the fractured hip exposed her to the development of osteoarthritis. Dr. Wambugu awarded the Plaintiff 12% permanent disability of the right lower limb.

9. In her submissions dated 8/04/2009, the Plaintiff asked the court to award her Kshs.800,000/= for general damages based on the following authorities:-

Edith Wanja Wairubi –vs- Newton Mbutia – HCCC No. 554 of 1996 at Nkr.

The Plaintiff in the case suffered

- (a) *Severe head injury – brain concussion with loss of consciousness for one week*
- (b) *Fracture of right clavicle*
- (c) *Fracture of the 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> ribs on the right side of the chest*
- (d) *Bilateral fracture of the pelvis both the superior and inferior rami*
- (e) *Devolving injury to the left leg just above the ankle joint*
- (f) *Severe soft tissue injuries of the lumbar-sacral spine and right shoulder joint*

The court awarded the sum of Kshs.550,000/= on 31/01/2001.

Enock Kedogo –vs- Hillary Isaac Jilan – Mombasa HCCA No. 176 of 2006. The Plaintiff therein who was a passenger in the motor vehicle that caused the accident suffered a fracture on the right hip. The learned Magistrate awarded him Kshs.800,000/=. On appeal, the award made by the learned Magistrate was upheld.

10. The Defendant submitted that the proposed sum of Kshs.800,000/= for general damages is excessive. The Defendant proposes a sum of Kshs.450,000/= general damages for pain suffering and loss of amenities. The Defendant says that since no specials were proved, there should be no award under this head.

11. I have now considered the medical evidence regarding the injuries sustained, namely head injury fractured ribs both on the left and right side of the chest, and a fractured dislocation of the hip joint and right shoulder joint. There was no concussion in this case, but the Plaintiff was assessed at 12% partial incapacitation of the right lower limb. I have also considered the authorities cited. I note that the Defendant did not cite any authorities but was able to dissect the authorities cited by the Plaintiff and to reach the conclusion that the injuries suffered by the Plaintiff herein were far less serious than the injuries suffered by the Plaintiffs in the cases cited. I would agree with submissions by counsel for the Defendant that the injuries suffered by the Plaintiff in this case were not as serious as those noted in the cited authorities. In the premises, I think that an award of Kshs.450,000/= for pain suffering and loss of amenities is reasonable. There are no documents to prove the special damages of Kshs.1100/=, nor does the Plaintiff make reference to the same in her submissions.

12. In the result, I enter judgment for the Plaintiff as against the Defendant as follows:-

(a) *Pain suffering and loss of amenities* - Kshs.450,000.00

(b) *Specials* - Nil

13. The Plaintiff shall also have the costs of the suit and interest at court rates.

Orders accordingly.

Dated and delivered at Nairobi this 18<sup>th</sup> day of September, 2009.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

Mrs. L, Njuguna (present) for the Plaintiff

No appearance (though duly notified) for the Defendant

James Nyagah- court clerk