



**REPUBLIC OF KENYA**

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

**Civil Suit 221 of 2007**

**MAUREEN MARY WAMWITHA NDURU**

**(a minor suing through the Grandmother and next friend**

**MARY WAMWITHA**

**NDURU.....PLAINTIFF/APPLICANT**

**VERSUS**

**HILL TOP PRIMARY SCHOOL AND HIGH  
SCHOOL...DEFENDANT/RESPONDENT**

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

**The Pleadings**

1. On the 5/03/2009, this case proceeded before me for formal proof to assess quantum of damages. Judgment in default of appearance and defence was entered on 24/07/2007. The Plaintiff Maureen Mary Wamwitha Nduru brings this suit through her grandmother and next friend Mary Wamwitha Nduru.

2. The Plaintiff filed this suit on 2/03/2007 claiming both special and general damages as a result of injuries sustained in a motor traffic accident which occurred on 4/03/2004 at about 4.45 p.m. along the Limuru/Kwambira/Kiboho Roads T. junction involving motor vehicle registration number KAM 237C. As a result of the said accident, the Plaintiff suffered the following injuries.

- (a) *Severe head injuries with compound fracture of the right parietal scalp.*
- (b) *Resultant abnormal behaviour and loss of concentration*
- (c) *Severe episodic headaches*
- (d) *Disposition to post traumatic epilepsy*
- (e) *Ugly and extensive facial scars.*

The Plaintiff prays for judgment against the Defendant for:-

- (a) *Kshs.35,906/= special damages*
- (b) *General damages*

- (c) Kshs.620,000/= future medical costs
- (d) Cost of this suit
- (e) Interest on (a) (b) (c) and (d) above

### The Plaintiff's Evidence

3. The Plaintiff Mary Wamwitha Nduru, gave evidence and said that she and the minor Plaintiff were passengers in the ill-fated motor vehicle registration no. KAM 237C when it got involved in an accident. The minor was thrown out of the window on impact and fell on the tarmac. She said the minor suffered a fracture of the skull. In her further testimony, she said that after the accident, the minor was rushed to Nazarene Hospital where she was given first aid before being transferred to kenyatta National Hospital (KNH). This was on 4/03/2004. As per Exhibit 1, which was the KNH attendance card, the minor was discharged from the hospital on 23/03/2004. She stated that during her stay at KNH, the minor underwent two operations of the head as per the Discharge Summary from KNH dated 30/03/2004.

4. The Plaintiff also produced the P3 forms as PExhibit 3 and a police abstract dated 30/05/2004. She testified that according to the police abstract the driver of motor vehicle no. KAM 974T one by the name James Ndumia Kimemia was convicted of careless driving. The Plaintiff produced as PExhibit 4(a) and 4(b) the police abstract and the payment receipt for the abstract. She also produced as PExhibit 5(a) and 5(b) the Copy Records of the accident motor vehicle and the Kenya Revenue Authority payment receipt for Kshs.500/=.

5. The Plaintiff also stated that she paid Kshs.28,706/= for the treatment at KNH vide the bundle of receipts produced as PExhibit 6; while the medical report prepared by Dr. Moses Kinuthia and for which she paid Kshs.1500/= was produced as PExhibit 9. The further medical report prepared by Dr. A.I. Aref was put in evidence as PExhibit 8. This report also contains assessment of future medical costs. PExhibit 7 was copy of cheque paid to Dr. A.I. Aref for Kshs.5000/=.

6. In her further evidence, PW1 stated that according to Dr. Aref, the Plaintiff would need Kshs.200,000/= for plastic surgery and another Kshs.60,000/= for anesthesia plus surgeons fee of Kshs.300,000/=.

7. PW2 was Dr. Moses Kinuthia a private medical practitioner practicing general family medicine, namely general surgery and general medicine. He said that when he examined the minor Plaintiff herein on 19/08/2005, she complained of the following:-

§ *Abnormal behaviour with loss of concentration since the time of the accident.*

§ *Severe episodic headaches*

§ *Poor performance at school (now always last in class)*

8. Dr. Kinuthia also said that on physical examination, she found a rugged and ugly 20cm scar traversing from the right parietal scalp across the frontal scalp to the left parietal scalp. In Dr. Kinuthia's opinion, the Plaintiff suffered grievous injuries during the accident and that she underwent much pain, suffering and loss of blood. Dr. Kinuthia also testified that the minor Plaintiff's abnormal behaviour was due to brain injury secondary to the fracture of the parietal scalp; and further that the low concentration and poor performance at school were also directly attributed to the severe head injury. Dr. Kinuthia also thought that these severe head and brain injuries would permanently minimize the Plaintiff's chances of realizing her full potential in life. He also said that the minor Plaintiff was now predisposed to epilepsy and would have to live on antiepileptics for at least 24 months after the accident at an estimated cost of Kshs.60,000/=. Dr. Kinuthia recommended plastic surgery to camouflage the facial scars that were not only ugly but extensive.

9. According to Dr. Aref, the wide hyperpigmented ugly scars over the minor Plaintiff's whole forehead would require two stages of scar revision under General Anaesthesia six months apart at a cost of Kshs.560,000/= as follows:-

- a. *Hospital fees* – Kshs.200,000/=
- b. *Anaesthesia fee* – Kshs. 60,000/=
- c. *Surgeons fees* – Kshs.300,000/=

#### The Defendant's Case

10. The Defendant failed to Enter Appearance and to file defence. As a result, interlocutory judgment was entered against him on 20/07/2007.

#### Plaintiff's Submissions on Quantum

11. Learned counsel Mr. M.M. Gachimu submits that from the available evidence, the injuries sustained by the Plaintiff were grievous. Learned counsel proposes a figure of Kshs.2,000,000/= in damages for pain suffering and loss of amenities. He also asks for Kshs.620,000/= being costs of future medical care and surgery. The Plaintiff also prays for costs of the suit and interest.

#### Authorities Relied on By Plaintiff

12. (a) Nrb HCCC No.749 of 1997 Wilson Kipksogei Maina – vs Harun Kerenda Jumba & Others

The Plaintiff in this case sustained the following injuries:-

- (i) *Severe head injury*
- (ii) *Nasoethmoidal complex fractures*
- (iii) *Left zygomatic complex fracture*
- (iv) *Orthopeodic injuries*

The court awarded Kshs.1,800,000/= general damages for pain and suffering and loss of amenities.

(a) Machakos HCC No. 226 of 1998 Zacharia Nyambuti Onchiri –vs- Tashrif Bus Services Ltd.

The Plaintiff therein suffered severe head injury with fractures, fracture of the seventh cervical spine compound fracture of tibia and fibula loss of consciousness and loss of teeth. For those injuries the court awarded the Plaintiff Kshs.1,650,000/= general damages for pain, suffering and loss of amenities.

#### On Special Damages

13. The Plaintiff prays for the sum of Kshs.35,906/= as supported by the receipts produced in evidence by both the Plaintiff and Dr. Kinuthia.

#### Findings

14. Upon consideration of the evidence before me, I do find and hold that the Plaintiff has proved her case against the Defendant on a balance of probability. I am also satisfied that the injuries suffered by the Plaintiff are grievous and will need continued corrective surgery and medical care. I have also considered the authorities cited to me by learned counsel for the Plaintiff. Although these authorities are only of a persuasive nature, their purpose is to provide a comparison and a basis for the damages that I will

eventually grant. In my view a sum of Kshs.1,600,000/= will suffice for general damages for pain and suffering and loss of amenities. I also think that a sum of 600,000/= will adequately cover future surgery and medical care. I also find that the Plaintiff has proved her claim of Kshs.35,906/= in special damages.

Conclusion

15. On the basis of the facts, the evidence and the law, I do enter judgment for the Plaintiff as against the Defendant as follows:-

- (a) *Special damages in the sum of Kshs.35,906/=*
- (b) *General damages in the sum of Kshs.1,600,000/= for pain and suffering and loss of amenities*
- (c) *Expected future medical expenses in the sum of Kshs.600,000/=.*

The Plaintiff shall also have the costs of this suit. She shall also have interest on special damages from the date of filing suit and on general damages from the date of this judgment.

It is so ordered.

Dated and delivered at Nairobi this 4<sup>th</sup> day of September 2009.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

..... For the Plaintiff

..... for the Defendant

..... - court clerk