



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO.2428 OF 1999**

**JAMES NJUGUNA (A *minor suing thro' Mother & next friend***

**TABITHA WANGECHI WANJAU) ..... PLAINTIFF**

**Versus**

**FREDRICK GITHINJI NDEGWA ..... DEFENDANT**

**JUDGMENT**

Using the Amended Plaintiff dated 18<sup>th</sup> April, 2006, the Plaintiff's claim against the Defendants was for general damages and also special damages of Kshs.2100/=. He further prayed for costs of this suit and payment of interest.

The case arises out of a motor traffic accident in which the Plaintiff sustained injuries when he was violently hit by the Defendant's motor vehicle registration number KZA 870.

The suit was initially filed by Plaintiff dated 17<sup>th</sup> December, 1999 when the Plaintiff was a minor and was therefore filed by his mother Tabitha Wangechi Wanjau.

On 12<sup>th</sup> January, 2001, interlocutory Judgment was entered against the Defendant who had not cared to defend the suit and he is therefore liable for the accident 100%.

On 18<sup>th</sup> April, 2006 the Plaintiff was amended removing the name of Tabitha Wangechi Wanjau because the minor, James Njuguna, had become an adult to conduct the case himself. Before me therefore was formal proof with James Njuguna himself giving evidence supported by his grandmother who gave evidence as P.W.2.

In his evidence, the Plaintiff testified that on 31<sup>st</sup> December, 1996 he, then a minor, was lawfully pushing a hand cart along Gitanga road in Nairobi when the Defendant's motor vehicle was negligently driven as a result of which it ran into the rear of the said hand cart and violently hit the Plaintiff causing him to sustain severe body injuries. He was admitted and treated at Kenyatta National Hospital where he was found to have sustained a head injury with depressed skull fracture, bruises on the left scalp and ear and bruises on the right leg hip. He produced as exhibits the attendance card and receipt from Kenyatta National Hospital (Exh.1); the P3 Form (Exh 2); the police Abstract (Exh.3); the Attendance cards from A1 Gadhira Medical Clinic and Mithoga Health Service; Treatment Notes from Kyondoni Dispensary; Discharge and case summary from Kenyatta national Hospital (Exh 4); Medical Report from Dr. Maina Ruga (Exh.5); KCPE certificate (Exh.6).

The Plaintiff's grandmother who gave evidence as P.W.2, Mary Wanjira Matheri with whom the Plaintiff has resided all his life also said Plaintiff was involved in the accident on 31<sup>st</sup> December, 1996.

According to the evidence adduced, the Plaintiff has not fully recovered. The head injury causes him to have a memory lapse especially on hot days. He takes drugs every day to control epilepsy. Dr. Ruga has classified his conditions as one of post traumatic epilepsy which is likely to remain for his life. His performance in his KCPE was very poor due to the head injury.

The Plaintiff told the court he is not employed. Having been involved in the accident while in class

IV, he subsequently managed to learn up to class VIII only.

M/s Ndirangu, learned counsel who handled the Plaintiff's case, subsequently filed written submissions in which she referred to the case of **HOSEA KIPRUO CHEPTUM vs- DICKSON NDICHO KIMANI & ANOTHER** where injuries were compounded fracture of the skull, injuries to right hand, left scapula, right ear lobe and chest. General damages for pain and suffering were assessed at **Kshs.702,000/=** on 11<sup>th</sup> April, 2000. In **MARGARET AMUKUNE -vs- JOSEPH KOECH & ANOTHER** where the Plaintiff sustained head injury, degloving injury over the right scapula, right shoulder joint and upper limb injury, soft tissue injuries of chest. General damages for pain and suffering were assessed at **Kshs.900,000/=** on 5<sup>th</sup> February, 2001.

Taking into consideration the above cited authorities which are more than five years old and the fact that injuries in the cited areas are comparable with the ones in the instant case and taking into account the rate of inflation, I do hereby assess general damages in this suit to be **Kshs.1,500,000/=** and Special damages to be **Kshs.2,100/=**. The Defendant to pay costs of this suit to the Plaintiff. He will also pay interest on the decretal sum at court rated.

I do order accordingly.

Dated this 30<sup>th</sup> day of May, 2008.

**J.M. KHAMONI**

**JUDGE**