



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1091 of 2002

1. Running Down Cause/Tort
2. Motor vehicle collision between two vehicles
3. Diver male adult aged 37 ½ years old in 2001
4. Injuries:
 - a) Fracture 5 right side rib
5. Material loss damage

Pre accident value of motor vehicle Ksh.335,000/-

Less salvage value Kh. 65,000/-

Ksh. 270,000/-

6. Liability: 100% against the defendant 1 and 2 jointly and severally with defendant No.2 being vicariously liable.

Defendant No.1 interlocutory judgment deputy Registrar (20.6.03)

Defendant No.2 consent judgment of parties (23.1.07)

7. Quantum:

I: General damages

- a) Pain and suffering Ksh.100,000/-

II; Material loss damages

- a) Pre-accident value Ksh.335,000/-

- b) Less salvage value Ksh.65,000/-

Ksh.270,000/-

III: Special Damages

A) Abandoned

a) Loss of user Ksh. 75,000/-

b) Storage charges

12.12.01 to 30.6.02 Ksh. 75,000/-

B) Subject to stamp duty act and or receipt

a) Towing charges ksh. 9,000/-

b) Assessment fee Ksh. 2,500/-

c) Medical report Ksh. 2,000/-

d) Medical expenses Ksh.119,240,85

C) Police Abstract fee Ksh. 100/- awarded

8. Case law

a) Hahn v Singh (1985) KLR 716 9KAK)

b) Eliud Ndegwa Mureithi v Louis Mbau Rukungu

(Hccc1849/99) unreported Ang'awa,J.

c) Susan Patricia Fernando & 2 Others vs Therion Safaris & Tours Ltd & Another.Hccc 32/95.
unreported, Ang'awa

9. Statute

Stamp Duty Act Cap. 480

10. Advocates:

B.A. Kairaira for Gitonga, Kamiti, Kairariu & Co. Advocate for the plaintiff

T.M. Macharia for Mbugwa, Atundo & Macharia Advocates for the defendant

PATRICK MWENDA BUCHAPLAINTIFF

VERSUS

RAPHAEL MAINKA OLE SEYA & ANOTHER.....DEFENDANTS

JUDGMENT

1: PROCEDURE

1. A motor vehicle accident occurred along Mbagathi road. The plaintiff herein Patrick Mwenda Bucha was lawfully driving his motor vehicle along the Mbagathi road when a collision occurred with an oncoming vehicle registration KAN 697C that collided into his vehicle registration KAM 307F. The

vehicle was being driven by the 1st defendant Raphael Manka Ole Seya and was registered to Stimuak Services International the 2nd defendant. The road being driven on is a one way carriage way. The 1st defendant was most certainly driving down a wrong carriage way with traffic going the opposite direction including that of the plaintiffs vehicle.

2. The plaintiff filed suit for damages on the head of pain and suffering and for material loss damage.

3. The defendant No.1 never entered appearance nor filed defence. Interlocutory judgment was entered against him on 20.6.03 by the deputy registrar (order 48 civil procedure Rule). The parties consented for judgment against the 2nd defendant on 23 January 2007 prior to the trial of this case being commenced.

4. The parties delayed in the prosecution of this suit as they were exploring an out of court settlement.

II: LIABILITY

5. I have therefore before me the issue of quantum to determine. Once Interlocutory judgment has been entered liability is at 100% against the defendant jointly and severally with the 2nd being vicariously liable for the acts of its agent and or servant.

III: QUANTUM

6. The issue I require to determine is:-

C) Special Damages

Pain and suffering

6. The plaintiff was admitted to hospital on the 12 December 2001 for four days. He sustained injuries and was treated. He was later examined by:-

Dr. Maurice Wambani

M.B. Ch.B.M. med (Surgery) Nbi

Consultant Surgeon

Who gave the following opinion.

Date of report 22.2.03

Injuries:

Fracture of 2nd to 7th ribs inclusive on the right side

Two fractures site 3rd/4th and 5th ribs

The plaintiff was treated by bed rest and observation no injuries to lungs were made. A year later all injuries were healed.

The advocate for the plaintiff prayed I award Ksh.200,000/-. He relied on the authority of:-

Eliud Ndegwa Mureithi v Louis Mbau Rukungu

Hccc 1849/99

A pedestrian male adult aged 42 years old in 1994 was involved in a road traffic accident. His injuries included fracture of left superior public rami and 3 – 8 left side fracture cranial fracture of naval arch C2 and loss of upper incisor. An award of Ksh.170,000/- for pain and suffering was awarded.

8. The advocate for the defendnt relying on the same case law awarded prayed that I award ksh.100,000/- as the injuries here are not as extensive as in the authority.

9) I have indeed noted that the plaintiff has been completely healed within the 1½ years. I would accordingly find that the authority had more serious injuries. I accordingly award ksh.100,000/-.

B) Material loss Damages

10) This is a special Damages claim and must be pleaded and particularized. The plaintiff called an assessor of motor vehicle, PW3, Elijah Wanjoya who examined the vehicle and took photograph. He described the impact on the vehicle as in also damaging that it was uneconomical to repair. The pre accidents value fo Ksh.335,000/-. The repairs costs and labour would come to Ksh.257,875. He did not therefore think it would be available to repair the same and for the vehicle to be written off.

11) The calculation of each and every spare part and the damage parts to be replaced must be particularized. It must therefore in essence be calculated and the costs of repairs do exceed the pre-accident value. In this case pre-accident value and costs of repairs were very close.

I would accept the well prepared assessment report and find that the repair costs are very close to the pre accident value. I would accordingly award this sum.

Thus pre-accident value Ksh.335,000/-

Less salvage Ksh. 65,000/-

Ksh.270,000/-

c) Special damages

The plaintiff abandoned the special damages claim for

a) Storage charged 12.12.01 to 30.6.02 ksh.75,000/-

b) Loss of user 2,500 x 30 days Ksh.75,000/-

The claim remaining are those of:-

a) Towing charges Ksh,9,000/-

b) Assessment fee Ksh.2,500/-

c) Police abstract Ksh. 100/-

d) Medical report Ksh,2000/-

e) Medical expenses Ksh.119240/85

Apart from the police abstract (which judgment is entered for) that does not require a stamp duty, the rest of receipts have revenue stamp placed on them after the receipts were issued. This means all these receipts are inadmissible and the they require to be paid penalty as assessed by the collector of stamp duty. It seems that this had not been done as no evidence under section 20 of the Stamp Duty Act Cap 480 laws of Kenya

een followed.

I hereby decline to make awards till there is compliance (see section 19 and 20 of the Stamp Duty Act Cap. 480).

12. Judgment is accordingly entered for the plaintiffs on the proved sum.

13. In summary

13.1. Motor vehicle collision between two vehicles

13.2. Driver male adult aged 37 ½ years old in 2001

13.3. Injuries:-

a) Fracture of right side rib

13.4. Material loss damages

Pre-accident value Ksh.335,000/-

Less salvage value Ksh. 65,000/-

13.5. Liability

100% against the 1st ad 2nd defendant with the 2nd defendant being vicariously liable.

N.B. defendnt No.1

Interlocutory Judgment entered on 20.6.03 (Deputy Registrar)

Defendant No.2 Consent Judgment of parties entered on

23 January 07.

13.6. Quantum

I: General Damages

a) Pain and suffering Ksh.100,000/-

II: Material loss damages

a) Pre-accident value Ksh.335,000/-

b) Less salvage value Ksh. 65,000/-

Ksh.270,000/-

III: Special Damages

A) Abandoned

a) Loss of user Ksh.75,000/-

b) Storage charges

12.12.01 to 30.6.02 Ksh.75,000/-

B) Subject to stamp duty act and
or receipts.

i) Towing charges Kh. 1,000/-

ii) Assessment fee Ksh. 9,000/-

iii) Medical report Ksh. 2,000/-

iv) Medical expenses Ksh.119,240.83/-

C) Police abstract fee Ksh. 100/-

Total Ksh.370,100/-

14. I enter judgment for the plaintiff on the proved sum. I award interest on special damages from date of filing suit. Interest on General damages from date of this judgment. Special Damages claim under B above is rejected subject to compliance of section 20 Stamp Duty Act.

Dated this 30th day of January 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

B.A. Kairara & Co. Advocates for the plaintiff

T.M. Machaira for Macharia & Co. Advocates for the defendant