



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Suit 109 of 2002

STEPHEN KIHARA GIKONYO PLAINTIFF

VERSUS

PETER KIRIMI KINGORI 1ST DEFENDANT

PATRICK GITHINJI 2ND DEFENDANT

JUDGMENT

On the 5th day of May, 2001, the plaintiff Stephen Kihara Gikonyo was travelling as a fare paying passenger aboard motor vehicle registration Number KZS 101 Nissan (hereinafter referred to as a matatu). The vehicle was travelling along Nyeri-Nyahururu road and at Solio Ranch the matatu which was driven recklessly by Patrick Githinji 2nd defendant burst the rear tyre and rolled. As a result of the said accident the plaintiff sustained head injuries, injuries to the right foot and dislocation of the right hip.

The plaintiff has instituted this suit against the 1st and 2nd defendant who were owner and driver of the matatu respectively. The defendants entered an appearance and filed a statement of defence which is not signed or dated. It is no wonder interlocutory judgment was entered against the defendants. Moreover the defendants did not attend court during the hearing of this suit despite having been served. The plaintiff thus proceeded to give evidence in support of his claim.

According to the plaintiff, he boarded the matatu KSZ 101 at Nyeri and he intended to travel to Nakuru on the material day. However he did not reach his destination as an accident occurred at Mweiga. The plaintiff attributed the cause of accident to the negligence by the driver of the matatu who was driving the vehicle very fast. As a result the vehicle lost control due to a tyre burst. The plaintiff sustained injuries and lost consciousness, he discovered himself the following day when he was admitted at the Nyeri Provincial General Hospital where he stayed for a period of six weeks. He obtained a police abstract Form that indicated the driver of the matatu was Peter Karimi Kingori and the owner was Patrick Githinji. The plaintiff was also summoned as a witness in a traffic case where the driver of the matatu was charged with offence of causing death by dangerous driving as some passengers in the same vehicle lost their lives.

The plaintiff was issued with P3 Form which was dully completed at the Nyeri Provincial Hospital, he was also examined by Dr. Angelo D’Cunha on 6th December, 2001. The medical report by Dr. D’Cunha confirmed that the plaintiff sustained:

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

3. Osteoarthritis right hip.

The Doctor assessed the permanent disability suffered by plaintiff at 35% and classified the injury as “**Grievous harm.**”

As indicated above the evidence of the plaintiff is not all contravened. The plaintiff was a passenger and I am satisfied he was able to prove the injuries he sustained as a result of an accident caused by the driver of the vehicle in which he was travelling.

Counsel for the plaintiff in their written submissions urged this court to award the plaintiff a sum of kshs.2,500,000/- for general damages suffered as a result of the accident. Counsel for the plaintiff relied on the case of *Hannington Agol Lusida vs Sogea (K) Ltd and others, Nairobi H.C.C.C. No.2404 of 1997* where the plaintiff was awarded kshs.1,203,000/= for similar injuries and the case of *Kibet Chelangat (a minor suing through his next Friend Samwel Chemering) vs Plan International HCCC NO.261 of 1995 Nakuru* where the plaintiff was awarded kshs.1,200,000/=.

I have taken into account the above authorities and the injuries suffered by the plaintiff. The injuries suffered by the parties in the above decision were more severe than those suffered by the plaintiff. In the case of Kibet Chelangat the head injuries resulted in Neuro psychiatric behaviour and severe headache. Even in the present case there is no doubt that the plaintiff suffered severe injuries as detailed in the medical report. He also suffered shortened leg and the left hand osteoarthritis of the right hand and taking into account the pain and suffering and loss of amenities, I hereby award the plaintiff kshs.800,000/= for general damages.

Judgment for the plaintiff as follows:

On liability

The defendants shall bear the total liability arising from the interlocutory judgment.

On quantum

The plaintiff is awarded Kshs.800,000/= as general damages. The plaintiff shall also have the cost of the suit and interest thereon.

It is so ordered.

Judgment read and signed on 23rd day of March, 2007.

M. KOOME

JUDGE