



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 711 of 2004**

**GEORGE OTIENO .....PLAINTIFF**

**VERSUS**

**THE HON. ATTORNEY GENERAL**

**SHADRACK CHALO .....DEFENDANTS**

**JUDGEMENT**

**I: BACKGROUND**

1. On the evening of the 18 July 2003 George Otieno a young man then aged 20 years old was at a bus stage in Kariobangi North. Whilst standing there with his sister waiting for transportation to come, he heard a gun shoot and fell down losing consciousness.
2. He later discovered that he had been shot by the police and had sustained injuries that were described as quadriplegia in nature. He gained consciousness after two weeks.
3. The plaintiff sued the Attorney General and the 2<sup>nd</sup> defendant Shadrack Chalo, the police administration officer who is said to have shot him.
4. The parties conceded to this suit but were unable to agree on quantum on assessment of damages.

**II: LIABILITY**

5. This was conceded as earlier stated at 100% against the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly and severally (on 18 January 2006). I hereby confirm this.

**III: QUANTUM**

6. The plaintiff claims under the General and Special Damages.

**A: GENERAL DAMAGES**

- a) Pain and suffering and loss of amenities.

One could call this a miraculous case. The plaintiff was shot through the neck. The bullet went through below his ears and effected the C4 – C5; C3 bone of the spinal code.

According to the initial hospital notes by:

Prof. Mulimba

Mbchb.M.Med FRCS

Consultant Orthopaedic

And Trauma surgeon

On 24.9.03, the plaintiff who was admitted to the hospital on 18.7.03 was diagnosis as having Quadriplegia injuries due to gun shots to his neck. All his limbs were weak.

A latest report was prepared dated 31 January 2006 by the same Professor Dr. J.A.O. Mulimba that showed that as from January 2005 the plaintiff began to use the crutches to walk. He had undergone physiotherapy and had seen marked improvement including lifting small things such as a tea cup.

To his opinion the bullet that fractured the spinous process of C3 was and did cause a minor fracture. This fracture was described as

“a nuisance but by no means incapacitating”.

“The damage to the cord by heat, waves and vacuolation is more significant. It is responsible for the changes seen at C3 – 4 region.”

He found that the

“regenerative power of the spinal code is very poor.”

That the plaintiff

“Will make some improvement to his function by physiotherapy to some degree after that no recover will be made”

II: Dr. Mr. Khan

MD PhD FCS (ECSA)

Consultant surgeon

The report by Dr. Khan is undated. He diagnosis the injuries sustained as:-

- i) Urethral stricture (long)
- j) Recurrent UTI
- k) Gastritis
- l) Cervical injury with weakness to both upper and lower limb

The doctor acknowledges in his very brief report that the plaintiff:-

“Sustained severe spinal injury and post traumatic syrienx of the spinal code at C3 level.

The MCU done in December 2003 showed urethral stricture in the posterior urethral cystoscopy done with direct vision urethrotomy which failed and later done 1<sup>st</sup> stage urethoplassty.

The plaintiff used to be carried but is now able to walk with walking aids. The neck was supported by a cervical collar.

7. The advocate for the defendants sort that I give an award of Ksh.300,000/- for the head of damages for pain and suffering. The advocate for the plaintiff sort an award of Ksh.3 million. The reasons being that past award for paraplegia was Ksh.1.5 million set by Shields J over 20 years ago. This amount should go up.

He relied on the case law of:

Stephen Kariuki Kahoro & Another V Nelliwa Builders & Another

Hccc1551/02 Ang'awa J.

Where a male adult aged 31 years old sustained paralysis to the upper and lower limbs cervical sprondylollstesis at C6 and C7. An award of Ksh.1.5 m was given.

A second case of:

Robert Gichuhi Maina V John Kamau

Hccc1162/02, Ang'awa,J.

A male adult aged 21 years old in 2001 sustained injuries in a motor vehicle road traffic accident due to a tyre burst. He sustained paraplegia injuries with a fracture to the left styloid radial process. Quantum in damages for pain suffering and loss of amenities was awarded at 1.000.000/-. The present plaintiff was admitted to Kenyatta Hospital as a quadraplegia – namely paralysis from the neck down wards. As per the doctors latest report (Prof Mulimba) the plaintiff can now walk with the aid of crutches. He has improved with the physiotherapy. What seems to have been injured was the C3 fracture to the spinal code.

8. It would have been of assistance if the plaintiff was examined by a neuro surgeon to give the extent of the C3 injury. I have the Othopeadic surgeons report whereby he states that the incapacity of the injury is 45%. That as it may be the plaintiff is no longer a quadriplegia. There are indication that he has problems with his urine but he is not incontinent.

9. I would in the circumstances note that there has been no similar authorities to this case and situation given. I would nonetheless taking into consideration the plaintiff youthfulness and marked improvement in his recovery award Ksh.900,000/- as a reasonable.

#### B. Special Damages

10. The plaintiff has pleaded in the plaint the following under this claim:-

Particulars and Special damages (To be furnished alter).

It is now trite law that Special damages must not only be pleaded but particularized. The advocates for the defendant relying on the authority of:-

Moses Olunyama Munala V World Vision

Where by the award for Special damages was dismissed having not been particularized.

11. All the plaintiff required to do was to amend his plaint. I nonetheless note that no evidence was infact led to the claim on Special Damages. I accordingly dismiss this claim as having not been pleaded nor particularized.

12. I accordingly enter judgment for the plaintiff. On quantum there was no claim for exeplinary damages or future medical costs and none will be awarded.

13. In summary

13.1. TORT

13.2. Police shooting

13.3. Male adult aged 20 years old in 2003

13.4. Injuries

a) Gun shoot to the neck (C3)

b) Quadriplegia

c) Improved after physiotherapy able to walk with walking aid

d) Disability now at 45%

13.5 Liability

a) 100% against the defendant (agreed on 18 January 2006).

13.6 Quantum

I: General Damages

a) Pain, suffering and loss of amenities Ksh.900,000/-

II: Special Damages

(To be finalized later not accepted) not pleaded nor particularized claims dismissed.

Total Ksh.900,000/-

13.7. I award the costs of this suit to the plaintiff. I award interest on General damages from the date of this judgment.

Dated this 14<sup>th</sup> day of February 2006 at Nairobi.

M.A. Ang'awa

Judge

Agina & Associates & Co. Advocates for the plaintiff

Attorney General for the respondent