



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL CASE NO.344 OF 1997**

**YUVENALIS ANGIMA ..... PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL ..... DEFENDANT**

**JUDGMENT**

The plaintiff YUVENALIS ANGIMA sued the Attorney General for damages arising from negligence when he was being treated at Kisii District General Hospital. There he was X-rayed and the fracture confirmed. A Plaster of Paris was put on the leg and he was released to go home. He was however told to go back to hospital if blisters occur on any of his toes. After 10 days blisters started occurring. He went back to hospital and on examination he was told the injury had become worse.

He was admitted and eventually the leg was amputated. He was told the fracture should not have been cast in the Plaster of Paris in the first place. The leg was amputated above the knee and he now uses clutches to walk. He obtained an artificial leg from Sudan. He was hospitalized for 3 months. He further told court that he used to work as a Trade Unionist with Kenya Commercial Food and Allied Workers. He was retrenched in the year 2001. He prayed for Special and General damages together with costs and interest.

The defendant filed a defence denying the allegations and stating that his agents were not negligent. However on the date the case was fixed for hearing he was absent though served. The case therefore proceeded in their absence. The plaintiff produced copies of Medical treatment notes from Kisii General Hospital. Defendant had custody of the original. The notes clearly indicate that his leg was amputated above the knee after the doctors found Gangrene had set. This fact is not in dispute. The only issue was whether the doctors were negligent in handling his case.

He told the court that when he went to hospital the fracture was put on plaster of Paris. When he returned there on 14th September 1996 he was told that the fracture should have not been put on Plaster of Paris. This has not been contraverted by any other evidence. The defendants agents, from Kisii Hospital should have come to explain what went wrong. The plaintiff had pleaded Res ipsa Loquitur. He explained what happened and there was no evidence from the defendant to explain why a simple fracture should have ended in amputation.

The conclusion one can make is that there was negligence in the managing of the fracture right from the day when he went to hospital and it resulted in his losing the limb. I am therefore satisfied that plaintiff has on a balance of probabilities proved his case and he is entitled to compensation from the defendant. On issue of quantum plaintiff had plead for shs.7500/- special damages. However there was no attempt made to prove them and I therefore make no award on that heading. As for general damages there are no doubts that the plaintiff suffered great pain and suffering. He was in hospital for 3 months and eventually lost his left leg.

It was submitted that a sum of shs.700,000/= would be fair compensation and court referred to the case of LOICE WANGECHI M. MWANGI VS JOHN NJOROGE NGIYA NBI HCCC.NO.674 OF 1990 where in 1992 the court awarded shs.400,000/= for loss of a leg. This was over 10 years ago and inflation has set up. However one has to consider that unlike in that case where the negligence of the defendant led to the injuries in this case the plaintiff was the initial author of the injuries. He told the court that he fell in a ditch.

He did not explain the circumstances it is not the Defendants agents who caused the fracture. Their negligence was only in managing and treating the same. Plaintiff is now over 55 years old. I feel a sum of shs.350,000/= is a fair sum to compensate him for pain and suffering, and I award the same.

I therefore enter judgment for the plaintiff against the defendant for shs.350,000/= general damages together with costs and interest.

Dated this 5th day of May 2005

**KABURU BAUNI**

**JUDGE**

**c.c. Mobisa**

**Mr. Soire for plaintiff**