



- 1) Running Down Cause
- 2) Female adult aged 40 years in 1989, Personal injury claim
- 3) Passenger, motor vehicle collision between two vehicles
- 4) Injuries:

- a) Multiple laceration over the face
- b) Injuries to the right eye with corneal perforation
- c) Head aches, chest pain, ankle pain
- d) Liability:-
Agreed) 85% against the defendant.
15% against the plaintiff

- e) Quantum:
 - 1: General Damages
 - i) Pain and suffering Ksh.200,000/-
 - II: Special Damages Nil – abandonedTotal Ksh.200,000/-

- f) Case law
 - a) Daniel Lengete Nkurne v Constatino Thomas
Hccc 4084/83 unreported J.V. Juma, J.

 - b) Leonard Kinuthia & William Sierma & Another
37/92 (unreported) Ang'awa,J.

 - c) Nur Ahmed Yusuf v Fredrick Kimani & Another
Hccc 2472/97 (unreported) Ang'awa,J.
- g) Advocates:
J..T. Makori advocate for the plaintiff
G.K. Opondo advocates for the defendant

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 4287 OF 1990**

ROSE MUTHONI MBUTU PLAINTIFF

VERSUS

MUSA MUCHIRU KARIMA DEFENDANT

JUDGMENT

Rose Muthoni Mbutu was travelling with her family from church in a motor vehicle Reg KZY 074 which was being driven by her husband. The defendant Musam Karuma & or his agent negligently drove his vehicle Reg KPW 451 so that he caused a collision between the two vehicles which occurred along the Rabai road in Nairobi.

Rose sustained injuries. She sued the defendant for damages on the 20th August, 1990. The defendant entered appearance and filed defence.

The court file went missing and has never been found. The plaintiff was permitted to reconstruct this file by the Deputy Registrar on the 3rd of June, 2003. This explains the delay in the prosecution of this case that has taken 13 years to be heard.

A) LIABILITY

On the day the suit was fixed for hearing on the 9th December, 2003 the parties conceded to liability.

The defendant was to bear 85% liability and a consent judgment was duly entered. I believe that this consent may have agreed to earlier but due to the file missing, the issue of liability was again dealt with for purposes of clarity.

The issue on quantum was pending for trial.

B) QUANTUM

i) General Damages

a) Pain and suffering.

The plaintiff gave evidence as to how after the accident occurred she sustained personal injuries to her face. She received laceration all over her face. She also sustained injuries to her right eye that had glasses embedded inside.

She produced three medical reports with the consent of the parties from three different doctors. These reports were prepared in 1990. It is imperative where a suit has stayed for a long period before being heard that parties obtain the latest report to confirm the present status of the injured plaintiff.

I would note the said reports though but bearing the above in mind.

1) DR SYMON W GUTHIA

Bds (Nrb.) M Med Sc (Harvard)

C.O.M.S (Harvard)

Consultant Maxillofacial & Oral Surgeon.

Date of report 16th May 1990.

Injury to the right eye

Maligned facial laceration

The doctor advised the plaintiff to consult an eye specialist Mr. Joshi

2) DR MUKESH JOSHI

MBBS, D.O.M.S MS (Sarashtra)

CMEI Credit (USA)

Consultant Ophthalmologist

Date of report 2nd June, 1990.

He first saw the plaintiff in October 1989 after the accident. He examined her vision being 6/60 to the right eye and 6/6- to the left eye.

The eye in question revealed the presence of multiple glass pieces embedded deep in the right corner and a large corneal scar extending for the pupil downwards. The doctor was of the opinion that the plaintiff wait for the glass pieces to become more superficial before the glasses are removed.

There was no sign of any conceal decomposition.

3) DR BUARTRE

MB ChB M Med (Surg)

Registrar

Aga Khan Hospital

Date of report 20th June, 1990.

The doctor confirmed that the plaintiff was admitted to the Aga Khan hospital on 10th September, 1989 with a

History of loss of consciousness,

Multiple lacerations over face

Injury to the right eye

With corneal perforation.

Her current status 13 years later is not very clear. What I saw was a lady who spoke confidently in her evidence. She said that there were glasses still embedded in her eyes. She is unable to see clearly through her right eye.

I find that indeed the plaintiff did sustain injuries to her right eye whereby glass seem to have lodged inside due to the road traffic accident. The eye had not shrunk as would be the case for a very badly damaged eye. Instead the eye seem to be in tact save to the plaintiff stating that she was not able to see clearly through the said eye. She wore glasses to protect the eye.

The advocate for the plaintiff relied on the case law of

1. Daniel Lengete Nkurne

v

Constatino Thomas and Another

HCCC 4048/83 unreported J V Juma J

Whereby a motor collision occurred and the plaintiff sustained blunt injuries to the head, chest right

knee bruises and cuts.

There was chest scars keloidic

An award of Ksh.100,000/- was awarded.

II. Nur Ahmed Yussuf

V

Fredrick Kimani & another

HCC 2472/97, unreported

Where the plaintiff a male adult personnel from the army was crossing the road along the Thika Highway. A vehicle with no head lamps came and collided and knocked him.

The plaintiff sustained:-

- a) Head injuries known as extra lacranal Heamatoma
- b) Left clavicle joint injury
- c) Soft tissue injuries
- d) Effects on the eye and left ear

An award of Kshs 600,000/- was made.

The advocate for the plaintiff prayed I award Kshs 350,000/- in this matter. The advocate for the defendant asked that Kshs 100,000/- would be fair.

I am disadvantaged in not having the latest report. I also note that the main severe injuries to the plaintiff is to the eye. This eye is still in tact and has not degenerated or decomposed. This means that there is still function in it save for the aspect of the vision.

The plaintiff mentioned that her other eye has a cataract. The doctors have not mentioned anything of this. She is indeed aged in her 50's and this would expect to occur at her age.

I find that the Mr Ahmed Yusuf case (supra) had more serious injuries.

Due to a concise lasted medical report not being available I would award a sum of Ksh 200,000/- to the said injury.

III: SPECIAL DAMAGES

The special damages claimed was for medical expenses. The plaintiff abandoned this claim prior to the trial. I duly dismiss this claim.

There will be judgment for the plaintiff on the perused claims. In summary

1. Passenger female adult aged 40 years in 1989.
2. Motor vehicle collision between the vehicles
3. Injuries

- a) Multiple laceration over the face
- b) Injuries to the right eye with corneal perforation
- c) Headaches, chest pain and ankle pain (not proved).

4. Liability:- Agreed 85% against the defendant

5. Quantum

I Special damages

i) Pain & suffering Ksh.200,000/-

ii) Special Damages Nil abandoned.

Less 15% Ksh. 30,000/-

Total Ksh.170,000/-

I award the costs of this suit to the plaintiff.

I award interest on general damages from the date of this judgment.

Dated this 20th day of May 2004 at Nairobi.

M Ang'awa

Judge

Mwaura & Mwaura Waihiga advocates for the plaintiff

Wangai Nyuthe & Co. Advocates for the defendant