



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 360 OF 1989

JOYCE WANJIRU KAMAU PLAINTIFF

VERSUS

KENYA CANNERS LTD & ANOTHER..... DEFENDANT

SUMMARY NOTES

- 1) Running Down Cause
- 2) Female adult aged 32 years old in 1988
- 3) Staff passenger involved in an accident multiple collision between four motor vehicles
- 4) Injuries:-
 - a) Fracture –Left collar bone
 - b) Fracture –right side of chest (not proved)
 - c) Multiple fractures of the pelvis.
- 5) Liability:-

100% in favour of the plaintiffs and apportioned.

50% against the 1s defendant

(Kenya Cannery Ltd –later C. Delmonte)

50% against the third third party

(Kenya road transporters) referred to as 2nd defendant in later proceeding.

TEST SUIT: (Hccc 4139/89 consolidated)

Part heard Ringera,J (30.1.95 –17.10.96)

Part heard Juma J (8.12.97 to 12.11.98)

Judgment on liability:-Judgment on liability confirmed by the court of appeal.

Hearing quantum, Ang'awa, J. (23.3.04).

6) Quantum:

1) General Damages

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

Workman's Compensation

to be taken into account.

II: Special Damages - Nil not proved

Total - Ksh.100,000/-

7) Case Law

a) Teresia Nduta v Patrick Mungai Njoroge

Hccc 3639/83 Juma, J.

b) Edith W..Warumbi v Newton Mbutia

Hccc 544/96, Unreproted Ondeyo,J.

c) Simon Githaiga Wachira v Timothy Ndirangu Mwangi

Hccc 723/98, Githinji,J.

8) Advocates:

M. Kigotho Advocates for the plaintiff

M. Waga advocates for the 1st

defendant

T.T. Tiego advocate for the 2nd

defendand

JUDGMENT

In 1988, a most horrific and tragic accident occurred in the Thika area.

A staff bus carrying workers to their home was travelling along the Oloitip road. As it approached the Chania river bridge, ahead of it was a pick up which was stationary behind a lorry. The two vehicles a head of the bus were waiting for a lorry trailer to cross the bridge. It was 5.00 p.m. in the evening. The visibility was clear. The bus instead of waiting behind the pick up came at a high seed and knocked the

pick up, which in turn knocked the lorry ahead of it. The bus swerved and knocked the on coming lorry trailer which was indeed travelling at a high speed.

Joyce Wairimu Nguru Kamau then aged 32 years old was in the staff bus. She had been employed in the 1st defendants company as a supervisor.

She sustained personal injuries although others amounting to a total of 26 workers died in the horrific accident.

On the 25.1.89 she filed suit against the defendants claiming damages by way of compensation for the injuries sustained.

As there were several suits filed by various victims of the accidents and their representatives, the parties agreed to go for a TEST SUIT.

1) TEST SUIT ON LIABILITY.

I am not able to clearly know what transpired between the year 1989 to 1995 no hearing or trial was held.

In 1995 Ringera J. commenced the hearing of the suit between (30.1.95 to 17.10.96). He was appointed a solicitor or General.

The Hon. Chief Justice Cockar J (as he was then) directed that the judge in charge of the running down cases continue the trial.

Juma J subsequently heard the rest of the case between 8.12.97 to 20.11.98. He was permitted to do this under order 17 r 10 CPR whereby the rules permitted a judge to take over a suit where another judge has left the station and or is deceased; and or for other good cause.

Juma J finalized the suit on 20.11.98 and held that the liability be found at 50% against the bus owned by Kenya Cannery Ltd (now C. Delmonte Co. Ltd) (1st defendant) and 50% against the lorry trailer owned by the Kenya road transporters (third parties-referred herein as 2nd defendant).

The defendants appealed to the court of appeal. The court of appeal confirmed the issue on liability. This explains the delay between 1998 and 2003 as to why the matter had not been finalized.

The plaintiff comes to this court for an award in damages.

II: DAMAGES

The plaintiff stated that she heard a bang and lost consciousness. She did not know what happened until she found herself at the Nairobi hospital.

She was aware that she was taken to Thika Hospital and then transferred to Nairobi Hospital.

She was aware that she was taken to Thika Hospital and then transferred to Nairobi Hospital. She said she had been told of this.

According to her complaint, she sustained the following injuries:-

- a) Fracture of the left collar bone
- b) Fracture of rib right side of chest
- c) Multiple fractures of the pelvis

When the trial came up for hearing on the 23.3.04 the defendants insisted that the plaintiff be re-examined again as to her medical status. The reasons being that the time the doctor one, Peter N. Njagi examined the plaintiff he did so without the x-ray reports.

When Dr. Peter N. Njagi came to court he produced his report which bore the date of 19.4.00 but had some changes to it.

The doctor admitted that he amended his report and that he purportedly wished it to pass as the original reports which in fact was handed to the defendants prior to the trial and perhaps the doctor was not aware of this.

The doctor had relied on a report by another doctor in Thika that stated the plaintiff had broken ribs. Dr. Njagi had not seen the xrays and concluded that this was correct.

It seems that it was not correct when he saw the x-rays. There was no broken ribs accordingly to the x-ray report. The doctor should have prepared a fresh report using the current date and admitting that he was wrong in considering the injuries sustained.

In cross-examination the doctor admitted that he was not an Othopedic but a general practitioner.

I have been asked by the defendants to find injuries only to the pelvis and left clavicle.

These injuries as sustained kept the plaintiff in hospital (Nairobi) for about 3 weeks.

The advocate for the plaintiff sated that I should award Ksh. 1.2 million under the head of damages for pain and suffering. He relied on the case law of:-

1) Siemon Githaiga Wachira v Timothy Ndiragu Mwangi

Nbi Hccc 723/85

Unreported Githinji J.

Whereby the plaintiff aged 39 years (in another medical report). Sustained personal injuries of:-

i) Blunt injury to chest

ii) 7th rib

iii) Abdomen

iv) Pelvic bone fracture

v) Urethral injury

The plaintiff underwent a skin graft to close scirotal ulcer. There was donation from the mid thigh. A small cysto perneal fistula occurred.

An award of Ksh.800,000/- was given with other awards the total care to Ksh.1.050,000/-.

The defendants relied on the case law of:-

II Teresia Nduta & Another v Patrick Mungai Njoroge

Hccc 3639/83 Juma,J.

Where plaintiffs No.1 was awarded Ksh.150,000/- for a fracture of left collar bone. Plaintiffs No.2 awarded Ksh.250,000/- for personal injuries sustained of a left superior pubic ramii.

III: Edith Wanja Warubi v Newton Mbithi

Hccc 554/96 Ondeyo,J.

An award of Ksh.550,000/- was made for general damages of:-

- “i) Brain concussion
- ii) Fracture left clavicle
- iii) Fracture of 5,6 and 8th rib on right side of chest
- iv) Bilateral fracture of pubic both superior and inferior ramii.
- v) Degloving injury on left leg above ankle joint.
- vi) Severe soft tissue injury of lumbo Sacral spine and right shoulder.”

I find in this case that the medical report by the doctor revealed serious anomalies namely, stating injuries that in fact had never been sustained. I believe this indeed affects the plaintiffs case considerably. Though it may be established the plaintiff sustained injuries the degree of such injuries is most certainly in doubt due to the medical report.

The plaintiff was in fact compensated by her employer through the workman’s compensation. She is permitted by law to bring a further claim to court seeking for more damages. The claim under the workman’s compensation, if paid, would be taken into account any award made.

It was interesting to note the plaintiff stating that she sued dispute her hospital bills being taken care of because she new there was “insurance money” to claim.

It must be understood that claiming insurance compensation money for damages is not a “Money making venture.” It is a way of saying sorry to the person injured.

Thus the claim of Ksh.1.2 million sought by the plaintiff for injuries sustained is indeed far too excessive. Large awards will only have the effect of increased premiums to the rest of the public to bare.

I find that in the circumstances of this case an award of Ksh.100,000/- is sufficient under the head of damages of pain and suffering.

Special Damages

A claim under this head was made for:-

- a) Medical report Ksh.700/-

The doctor never spoke of this claim.

- b) X-ray report Ksh.450/-

The doctor admitted he never had any x-ray taken. No proof of such fee was shown as having been charged.

- c) Police abstract.

No receipt from the Kenya government was shown and as a result no award can be made as proof having not been established.

The claim under Special Damages be and is hereby dismissed.

I enter judgment for the plaintiff on the proved claim.

In summary

1) Staff passenger female adult aged 32 years old in 1988

2) Injuries:-

- a) Fracture left collar bone
- b) Fracture rib right side of chest (not proved)
- c) Multiple fractures of pelvis

3) Liability:-

100% in favour of the plaintiff approved:- 50% against the 1st defendant (Kenya Caners Ltd – Later known as C. Delmonte).

50% against the third third party (Kenya road transporters) later referred to as 2nd defendant in the proceeding.

And TEST SUIT Hccc4139/89 (Consolidated) (Ringera J, Juma,J.) (as they were then).

4) Quantum:

I: General Damages

a) Pain and suffering	Khs.100,000/-
Workman's Compensation to be taken into Account	
b) Special damages	Nil not proved
Total	<u>Ksh.100.000/-</u>

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

Dated this 2nd day of June 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Mwangi Kigotho & Co. Advocates for the plaintiff

Archer & Wilcock Co. Advocates for the 1st defendant

Shah & Parekh & Co. Advocates for the 2nd defendant