



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.CIVIL SUIT NO. 151 OF 1994

PHILIP KIMANI NGUGI PLAINTIFF

V E R S U S

THE ATTORNEY GENERAL..... DEFENDANT

J U D G M E N T

The plaintiff herein is suing through a next of kin. It is alleged that he lost his speech and coherence after the incident of the night of 15th and 16th January, 1993 at Nyamakima, Nairobi. The case of the plaintiff as pleaded is that on the aforesaid night at Nyamakima/River Road the Police Officers ran amok and beat the plaintiff with several others. The plaintiff was beaten till he lost his senses and was left for dead.

He sustained serious injuries particularized in paragraph 6 of the plaint.

It was evident that the plaintiff was not coherent in his speech and by consent it was agreed that one Mrs Salina Wanjiku Ngugi shall interpret his sign language.

The preliminary objection raised in statement of defence was dealt with under my ruling of 10th November, 1999. I dismissed the objection as incompetent based on the fact that the validity of the notice was admitted. No application on appeal or review is made against the ruling. Thus I shall not dwell on the said issue in this Judgment. The plaintiff prior to the incident was a Matatu driver employed by one Mr. Ng'ang'a. On the specific night .i.e on 15th January, 1993 at about 9.15 p.m. he was on duty and he was stopped by a group of police men and was taken out from his vehicle. They started beating him till he became unconscious. He was not asked any question before they beat him. He said they were in police uniform. He produced cuttings from Daily Nation of 17th January, 1993 and that of 11th May, 1994. He produced several receipts for the payments to hospital and for medical use.

As a result of such beatings the plaintiff suffered following injuries:

- (1) Head injuries resulting in a fracture of the skull.
- (2) Blunt injuries to the chest.
- (3) Blunt injuries to the trunk and limbs.

Dr Samwel Gachohi Kuria who examined him after the hospitalization, testified that his main injury was depressed fracture of skull on his left side. Due to blood there was hemorrhage into the brain tissue which resulted in severe brain injuries. He categorized all the three injuries as follows:

(i) Head and Brain

(a) Cranial nerve palsies due to structural damage to the left cerebral hemisphere.

(b) Expressive aphasia due to damage of more speech center located in left cerebral hemisphere.

(c) Brain contusion and hemorrhages in the legs cerebral hemisphere with presence of air in the brain.

(ii) The right upper limb

a. Total paralysis of the limb.

b. Dislocation of right shoulder.

c. Loss of power to the right upper limb.

(iii) The right lower limb

(a) Muscle wasting

(b) Walking with a limb

(c) Cuts and lacerations on the chest, tenderness over the sternum and over the lower left chest, fracture of the 7th 8th and 9th ribs.

It was his opinion that the plaintiff would not be able to recover from the injuries. The court noticed his inability to talk coherently and disability to his upper right limb. His disability was assessed at 63 %.

In my opinion, the plaintiff has proved on balance of probabilities that the police officer unknown to the plaintiff have assaulted the plaintiff which resulted in a pathetic and tragic state in which the plaintiff is at present. The Defendant's lame efforts to avoid the liability for such action only on the ground that the plaintiff has not named the police officers is ludicrous and unfair.

The police officers wantonly set upon an unsuspected citizen and left him for dead and yet insists on the disclosure of identity of its officers. No court which upholds the sense of justice and fairness can uphold this objection and I do not want to be out of the list of those judges.

I also find that the discrepancy in the pleading and evidence as to the employment of the plaintiff is not fatal. It is proved satisfactorily that he was at the material time and place working as a driver and that in my view is sufficient in this case.

The plaintiff's counsel has submitted that a sum of Kshs.2,000,000 shall be appropriate damage in respect of pain, suffering and loss of amenities. She has relied on three authorities i.e.

(1) John Kimani Kamau V. Stephen Warui Kiarie H.C.C.C.S No. 4503/93 (U.R) (in my view the case is not so much relevant to the facts of this case)

(2) Martha Mulila Muyu V/S Samuel Obilla Allela. H.C.C.S No. 5527/90. (U.R.) (The plaintiff in this case had her rectum paralysed and she was awarded Kshs.1,000,000 for pain, suffering and loss of amenities in year 1992.

(3) Herman Gaithira V. Mohamed Dharamshi and Others H.C.C.S No. 4019) 1990 (U.R.)

(The plaintiff in this case suffered severe brain injuries giving risk to chances of epilepsy, blindness in right eye; deafness in left ear. The plaintiff was given Kshs.768,060 for pain, suffering and loss of amenities in the year 1992.

It is evident that each case presents its individual facts and circumstances. The present plaintiff visibly is a person with some disability. He cannot talk, cannot use his right upper limb and is not walking

straight. He was admittedly a driver by profession and cannot occupy now in that profession. He has lost his normal enjoyment of the life due to reckless revenge the police officers were seeking against the death of their colleague.

Considering all the factors presented to me in this case, I shall award the plaintiff a sum of Kshs.1,500,000/= in respect of pain, suffering and loss of amenities with costs and interest. The plaintiff has not pleaded special damages and thus I cannot award any except witness cost of Kshs.5,000/= for P.W.2's attendance in court.

Thus there shall be Judgment for the plaintiff against the Defendant in the sum of Kshs.1,805,000/= with costs and interest.

Dated and delivered at Nairobi this 21st day of January, 2003.

K. H. RAWAL

JUDGE