



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C. CIVIL CASE NO. 158 OF 1994**

**WERU GICHUKI NDEGWA.....PLAINTIFF**

**V E R S U S**

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

**J U D G M E N T**

The plaintiff herein claims damages against assault perpetuated by police officers unknown to him on the night of 15th and 16th January, 1993 at Nyamakima/River Road, Nairobi.

The incidence of such brutal action by the police officers is not denied. The plaintiff testified that at the material time he was coming from Kisii and he got down at T junction of Tom Mboya Street and Luthuli Avenue. When he reached Manyo street he was arrested without any reason shown by three police officers. He was asked to sit down with other persons arrested. While they were sitting as asked, the other group of police officers came towards them and asked them what were they doing and why they have not been yet beaten. A police officer hit him on left side of his head and thereafter was asked to leave with other police officer who took them along Sheikh Karume Road. He found other persons there outside a Bar called Gatamboya Bar. According to him while he was there with other persons a police officer started beating them. He suffered injuries near his ankle, back and all over upper body. This continued upto 5 a.m and then he was taken to Central Police Station. There he was beaten. Eventually at Kasarani Police Station he was taken to a dispensary. Thereafter he was discharged on 17th January, 1993.

Dr. Samuel Gichoru Kuria testified to give his medical opinion and produced the medical report of his examination of the plaintiff. He got the plaintiff's X-rays done and put a cast on his left ankle. He specified his injuries which were:

- (1) Septic skull wound 5" long on left side.
- (2) Swelling over left elbow and right shoulder region.
- (3) Fracture of right ankle joint.

The testimony of the plaintiff leaves no doubt that he was beaten by the Police officers without any reason and was taken to several police stations and kept there for two days.

He had sustained the injuries above mentioned due to the said assault by the police officers. He also produced the statutory notice under section 13A of the Government Proceedings Act (cap 40).

The plaintiff's counsel submitted that a sum of Kshs.500,000/= should be given in general damages. She relied on two authorities of John Kamau v/s Stephen Warui Kiarie H.C.C.S No. 4503 of 1993 (U.R) and Stephen Kagoorio V. John Waithaka Kahai and 3 others. H.C.C.S No. 4089/98 (U.R.) wherein for

somewhat similar injuries the damages in the region of Kshs.200,000 were awarded in the year 1995.

The plaintiff, in addition to a very traumatic experience, suffered quite serious injuries which could be categorized as a grievous harm.

This court has to be mindful of consistency while awarding damages to the victims. It is unfortunate that the plaintiff was a victim of a premeditated and callous act of the very Police Force to whom every citizen looks up for protection.

Before I deal with the quantum of damages for injuries suffered by the plaintiff, I have to satisfy myself that the suit is competent and does lie as per the provisions of Section 13A of the Government Proceedings Act. The Notice of intention to sue has been produced by the plaintiff, and the notice does comply with the provisions of Section 13 A of the Act.

However, it was urged by the Attorney General that as the notice does not name the officers who had allegedly beaten the plaintiff, the notice is bad. Generally and in ordinary circumstances the plaintiff would be aware of the details or names of the Government Officer who would have wronged him. But it shall be a height of injustice and impropriety to expect from this plaintiff to name the officers who were beating him.

I also take it that the Attorney General is not denying the occurrence of tragic incident on that night. Because of the peculiar circumstances of this case, I shall have no hesitation to find that the notice is competent and complies with Section 13A of the Government Proceedings Act and that the suit is competent and is properly before this court.

Now coming to the quantum of damages, I shall, after considering all the relevant facts and authorities, find that a sum of Kshs.350,000 shall be adequate compensation for pain, suffering and loss of amenities.

I also agree with the Defence that no special damages can be awarded in absence of specific pleadings. However, I shall award Kshs.5,000/= for the attendant of P.W.2.

Thus there shall be Judgment for the plaintiff against the Defendant in the sum of Kshs.355,000/= with costs and interest.

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

**K.H. RAWAL**

**JUDGE.**