



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 597 OF 2001 RD**

VERONICA MWONGELI KILONZO ..... PLAINTIFF

VERSUS

ROBERT KARUME ..... DEFENDANT

**JUDGMENT**

On the 17th October 2000 VERONICA MWONGELI KILONZO (the Plaintiff) went to the yard of EXTELCOM HOUSE situated along Nyerere Road, Mombasa, to make a telephone call. The time was 3 p.m. or thereabouts. Several telephone booths are erected within that yard for use by members of the public. After making that telephone call the plaintiff started walking out of the yard towards Nyerere Road. At that point in time a motor vehicle Registration No. KAM 170P was driven into the yard and crashed into her, seriously injuring her.

The Plaintiff established later that the said motor vehicle was owned and driven by ROBERT KARUME (the defendant). In spite of demand made and notice of intention to sue, the defendant neglected, ignored and/or refused to admit liability. Consequently on the 30th November 2001 this suit was instituted by the plaintiff through Mrs. Veronica Maina Advocate.

Judgment on liability was entered by consent on the 26th September 2002 where liability was apportioned at 70% against the defendant and 30% against the plaintiff.

The Plaintiff had prayed for judgment for both general and special damages. On the 19th November 2002 special damages were agreed at KSh.106,260/- and a consent order was accordingly recorded.

The case is before the court now for assessment of general damages. The Plaintiff has given evidence. The defendant did not give evidence or call witnesses.

The Plaintiff was first examined by Dr. J.M. Muthuuri who prepared a medical report now tendered into evidence as exhibit No.4. The following is recorded in this medical report as a result of that examination:

**“HISTORY**

*Miss Kilonzo was knocked down by a vehicle. She was admitted at AGA KHAN HOSPITAL for two weeks, then at Coast Provincial General Hospital for three months.*

**INJURIES AND TREATMENT**

Miss Kilonzo sustained the following injuries:-

1. Compound fracture right tibia/fibula. X-rays showed metaphysical fracture right tibia. This was immobilised with an external fixator and later skin grafted. She had wound dressings for three months.

2. Fracture/dislocation left ankle. Manipulation was done and a pop cast applied for eight weeks. She received analgesics, anti-tetanus toxoid and anti-biotics.

### **Present Opinion**

Miss Kilonzo complains of painful left ankle, deformity and shortening of the left leg. On examination, the right leg is scarred (large scar 10 x 5 cm medially). There is shortening of the right lower limb of about 2 cm. The limb alignment is optional.

### **Opinion**

Miss Kilonzo sustained multiple lower limb fractures in the road traffic accident. She was treated conservatively. She now has shortening of the lower limb. This is permanent incapacity estimated at fifteen percent (15%)

### **DR. J.M. MUTHUURI ”**

The plaintiff was also referred for further medical examination to Dr. Rasik Patel on the 17th July 2002 at the instance of the defendant's advocates M/s Tutui, Adogo Advocates Mombasa. A medical Report which Dr. Patel prepared has been tendered into evidence as Exhibit 5.

I have examined this report and it is more detailed than the one prepared earlier by Dr. Muthuuri (Exhibit 4), particularly on the injury the plaintiff sustained and the treatment she received. I will quote verbatim from the report (Ex.5)

### **“INJURY AND TREATMENT**

*She had a painful right leg and left ankle. X-rays: compound fracture of upper shafts of right tibia and fibula with a large cut lacerated wound on the left 8” x 4” with loss of skin. Left ankle: Fracture of the tip of medial malleolus with subluxation of ankle joint. The wound of right leg was stitched as much as possible and the fracture fixed by external fixator by wire needles. The leg wound was dressed daily. The left leg ankle was immobilised in plaster after manipulation. After two weeks she was transferred to Coast General Hospital. The leg wound was dressed daily and when clean and granulating – the raw area was skin grafted – donor skin from left thigh. When the graft took well, the external pins were removed and the leg was immobilised in plaster. The plaster from left leg was removed after 6 weeks and from right leg after 3 months when she was discharged from the Hospital.”*

There are essentially three complaints which the Plaintiff raised during her medical examination by Dr. Patel and when she was giving evidence in court. The first complaint is that she has pain in the left ankle when walking. She walks, however, with a normal gait and no limp. The second complaint is that the right leg is now shorter by 1”. The third complaint is that she is now left with ugly scars to her right leg measured to be 8” x 3”.

The total effect of the evidence adduced before me by the plaintiff, and from the medical reports received in evidence as exhibits 4 and 5, is that the plaintiff received serious injuries to her body, in particular she sustained compound fracture of the upper shafts of the tibia and fibula, a large cut lacerated wound on the leg measuring 8” x 4” with loss of skin, fractured, left ankle and this was immobilised in plaster. The Plaintiff remained in hospital for about 3 ½ months. The fractures have now fully united.

Based on the above injuries Mrs. Maina pleads for the plaintiff that an award of KSh.1,300,000/- would be adequate compensation. In support thereof she has cited two decided cases.

Mrs. Maina has first cited **CHARLES AMUSALA & ANOTHER VS. MICHAEL NDUNGU MBUGUA & ANOTHER HIGH COURT MOMBASA CIVIL CASE NO.287 OF 1987**. The facts were that the plaintiff aged 48 years, sustained a compound comminuted fracture 1/3 of the left tibia and fibula involving the upper articular surface and to some skin loss on the right leg. He was admitted in Hospital in a state of shock and remained in I.C.U for 48 hours, was hospitalised for 8 months, legs were operated and metal screws, plates inserted to immobilise the fractures. He underwent another operation to remove the said plates and screws. The fractures healed with osteoarthritis changes in the right leg. He is unable to attain a squatting position ever in his future life and would never drive heavy trucks. He was awarded KSh.600,000/- general damages for pain suffering and loss of amenities.

The second case was **TEREZA NYAMBURA KIMORU VS. MICHAEL KYALO KIILU, HIGH COURT MOMBASA CIVIL CASE NO.718 OF 1990**. The plaintiff there was a 52 years old housewife who suffered compound fractures of the left tibia-fibula and right tibia-fibula of both legs. Was hospitalised for 4 ½ months. The fractures were immobilised in plaster for two months. Her legs were weak after that and she was made to walk with the aid of crutches and walking sticks. She was awarded Sh.750,000/- general damages for pain and suffering.

Each case has its own peculiarities, merits and demerits. It is for this reason that Miss Adogo Advocate, for the defendant, distinguished the above two cases from the facts of this case now before the court and proposed an award of Sh.400,000/-. She relied, however, on the case of **ERASTUS SHEM V. KENYA PORTS AUTHORITY HCCC NO.318 OF 1991 MOMBASA**.

There the facts were that the Plaintiff aged 26 suffered a compound fracture of the tibia and fibula left leg, was hospitalised for 3 months during which he underwent an operation of surgical toilet and repair manipulation and skeletal external fixation. He also underwent skin grafting the donor area being the thighs. The plaintiff also had sustained ugly scars on his leg, paralysis of muscles of left foot, scars on thighs and inability to walk fast and run. He was awarded Sh.400,000/- general damages for pain and suffering.

The plaintiff before me exposed her legs to the court to a reasonable and safe length upwards and the court noticed very ugly scars to the right leg. In her testimony which Mrs. Maina amplified, the plaintiff stated that she can now only wear long dresses to cover her ugly scars, that her personality has been affected, that she has lost confidence in herself and that, in fact her chances of getting a spouse, have diminished. I have taken these considerations into account but would add that to wear long dresses is neither a disability nor a condemnation.

It is my holding that in two cases cited by Mrs. Maina, the plaintiffs there suffered more serious injuries to their bodies and do not support a single award of Sh.1,300,000/-. At the same time I hold the view that an award of Sh.400,000/- will not adequately meet the end of justice in this case.

For the above reasons I award the plaintiff in this case Sh.500,000/- general damages for pain and suffering, and loss of amenities.

Final judgment for the plaintiff is now entered against the defendant in the sum of Sh.424,382/- made up as follows:-

(a) General damages .....	Shs.500,000/-
(b) Special damages .....	Shs.106,260/-
Sub-total .....	Shs.606,260/-
Less 30% liability .....	Shs.181,878/-
Total .....	Shs.424,382/-

I award interest at court rates from the date of this judgment and costs of the suit to the plaintiff.

It is so ordered.

**Dated and delivered at Mombasa this 17th June 2003.**

**A.G.A. ETYANG**

**JUDGE**