



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL SUIT NO. 6 Of 2003**

**JANE KARIMI MWANIKI.....PLAINTIFF**

**VERSUS**

**JAMES NGARI MWANIKI**

**JOHN BOSCO GATUMO .....DEFENDANTS**

**JUDGEMENT**

Jane Karimi Mwaniki hereinafter referred to as the Plaintiff brought this suit against the Defendant James Ngari Mwaniki and John Bosco Gatumo seeking general damages for personal injuries suffered by her as a result of being assaulted by the two Defendants whilst lawfully traveling as a fare paying passenger in Motor Vehicle KAJ 526 P. Both the Defendants were tried and convicted in the Senior Principal Magistrate's Court at Embu for the assault .

Both Defendants having been dully served neither entered appearance nor filed any defence. Interlocutory judgment was therefore entered and the suit listed for formal proof.

In proof of her case the plaintiff testified as to how the two defendants who were driver and conductor of M/V KAJ 526 P assaulted her causing her serious injuries. Dr. Stephen Maina who examined the plaintiff produced a medical legal report showing the extent of plaintiff's injury which included multiple bruises and lacerations which have left the plaintiff with scars on the face and on the legs and a permanent disability as she continue to suffer pain in the back and hip.

As a result of the injuries the plaintiff was unable to effectively perform her duties as a nurse in the private wing of Kenyatta National Hospital. She had to be re-assigned to the pediatric wing as a result of which she suffered loss of income. P.W.3 John Kariuki Njuki an Executive Officer at Embu Law Court produced the Cr.Case file in respect of Cr. Case No. 1433 of 2000 showing that the two defendants were convicted and fined for assaulting the complainant.

Counsel for the plaintiff has filed written submissions urging the court to award damages of Kshs. 1 million for pain and suffering , Kshs. 700,000/- for loss of future earning capacity and Kshs.200,000/- as punitive damages. I have considered the medical report and the evidence adduced . The plaintiff's injury were basically bruises and lacerations. Though the Doctor classified the pain experienced in the back and hip as permanent disability, I find this no more than an exaggeration possibly to attract a higher award of damage.

While I have no doubt that the plaintiff suffered a lot of pain and humiliation due to the dehumanizing treatment that the Defendants subjected to, I have to guard against falling into the temptation of treating this case as a road traffic accident case where insurance is involved. Indeed all the cases cited by the Advocate for the plaintiff involved road traffic accident cases where the injury included fracture which is not the case herein.

Moreover although the plaintiff testified that she suffered loss of income as she had to be re-assigned

duties, she did not adduce any evidence from her employer in support of this.

All in all I find that there is no justification for the amount of Kshs.1,900,000 proposed by the plaintiff's advocate as general damages. I find that in the circumstances of this case a sum of Kshs.150,000/- would suffice as general damages for pain and suffering.

The defendants having already been subjected to the criminal process I do not find it appropriate to award punitive or exemplary damages.

The upshot of the above is that I do give final judgment in favour of the plaintiff as against the two defendants jointly and severally in the sum of Kshs. 204,294 special damages and Kshs.150,000/- general damages. The plaintiff shall have costs of the suit and interest thereon from the date of this judgment . Orders accordingly.

**Dated Signed and Delivered at Nyeri this 10th day of December, 2003.**

**H.M. OKWENGU**

**JUDGE**