



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 998 OF 1999**

**STEPHEN KARIUKI KARANJA ..... PLAINTIFF**

**VERSUS**

**MURANDIA FARMERS CO-OPERATIVE SOCIETY ..... 1ST DEFENDANT**

**SAMUEL NDUATI MWANGI ..... 2ND DEFENDANT**

**JUDGMENT**

1. Running Down Action

2. Male adult aged 40 years old in 1997

3. Passenger in a motor vehicle that overturns

4. Injuries

(a) Deglazing injuries to the fingers of both hands

(b) Damage to muscle and tendons on the left hand

© Cut wound on left side of forehead

(d) Dislocation on the left knee joint

5. Liability - 100% - Interlocutory judgment entered by the Principal Deputy Registrar on 24.9.01 vide powers under Order 48 Civil Procedure.

6. Quantum

I General Damages

(a) Pain suffering and loss of amenities - Kshs.150,000/-

II Special Damages

(a) Police abstract report - nil

(b) Medical expenses - nil

(c) Medical report - nil

(d) Future medical costs

7. Authorities referred to - Nil

### **JUDGEMENT**

On the 3rd of March 1997 at about 9.30 a.m. Stephen Kariuki Karanja was lawfully traveling in a motor vehicle that was owned by M/s Murarada James Dairy Co-operative Society the 1st defendant herein and driver by Samuel Nduati Murange the 2nd defendant herein according to the plaint the vehicle registration number KAG 567C was driving along the Thika/Nairobi road when as the result of the negligence of the 1st defendant who lost control the vehicle overturned.

The plaintiff sustained injuries and sued both the defendants in negligence for the wrongful acts occasioned to him.

It is by a suit-dated 18.5.99, that the two defendants having been duly served failed to enter appearance and file their defence.

By powers conferred on the Principal Deputy Register under Order 48 Civil Procedure interlocutory judgment was duly entered against the two defendants on the 24.9.01.

#### **A. Liability**

This judgment takes care of the issue of liability which the court computes at 100% against the two defendants jointly and ..... The 1st defendant is liable mostly for the negligence of them against and or servant – namely defendant no. 2.

I now turn to the issue of assessment of Damages on Quantum.

#### **B. Quantum**

The plaintiff told this court that as a result of the accident he sustained injuries. His arms were injured and he was admitted to the Kenyatta National Hospital.

He called on Dr. M. Kuria Kamau a medical practitioner.

I have stated in past judgments that the doctors who examine the injured victims should be those qualified and specialized in such injuries. The doctor in this case holds MBChB – a bachelor of medicine degree. Nonetheless he examined the plaintiff of whom he stated had

(a) bruises on the forehead

(b) Degloving on both forearms

(c) And right hand

(d) Business or the left knee joint

(e) There was no fracture sustained by the Plaintiff. The stay at the Kenyatta National Hospital was for 7 weeks. It must be noted further on the injuries that there was deformity and stiffness of the arm – There was a bit of muscle arresting.

The plaintiff himself complained to this court that he is a peasant farmer. He is unable to continue with the said family work as he did in the past.

The doctor admitted when this court questioned him that the 40% he attributed as a parental liability was in fact not correct. He had guessed at his figure.

I would assess the damage for pain suffering and loss of amenities as being reasonable at Khs.150,000/-. I would not agree to the figure of Khs.900,000/- as suggested by the advocate for the plaintiff.

**(b) Loss of earning**

In his submission the advocate prayed I award Khs.1,044.000/- as loss of earning. This is made up of multiplicand Khs.3,000/- multiplier 29 years.

This 3,000/- x 29 x 12 x 2/3 = Khs.Khs.1.044,000/-

I was indeed surprised at this because the plaintiff never spoke of his income. Further the prayer for loss of earnings had never been pleaded. Even if it was the multiplier of 29 years being the plaintiff's to work at the age of 70 years as a farmer is questionable.

I dismiss this claim as having not been pleaded.

**© Special Damages**

The plaintiff never spoke of any of the claims as pleaded under special damages.

**(a) Police abstract – Kshs.100/-**

The plaintiff failed to prove he incurred an expense of Khs.100/-

**(h) Medical expenses Kshs.21,000/-.**

The plaintiff failed to prove he incurred the medical expenses. I see no proof of payment made.

© Medical report Khs.1,500/-. I see no proof of payment made for these expenses. Under the head of Special Damages I dismiss the same as not having been proved.

I enter judgment for the plaintiff on the proved head of damage.

**(d) Future **medical costs****

The doctor never mentioned in his report that this was required. I dismiss this as having not ever pleaded.

**In summary**

(1) Running Down action

(2) Male adult aged 40 years old in 1997

(3) Passenger in motor vehicle that overturns

**(4) Injuries**

(a) Deglowing to the forearm of light hand,

(b) Damages to muscles and that on the left hand

(c) Cut wound on left side of forehead

(d) Bruises on the left knee joint

(5) Liability 100% - Interlocutory judgment entered by the Principal Deputy Registrar on 24.9.01 vide powers under Order 48 Civil Procedure.

(6) Quantum

I General Damages

(a) Pain suffering and loss of amenities Khs.150,000/-

II Special Damages

(a) Police abstract report nil

(b) Medical expenses Nil

(c) Medical report Nil

(d) Future medical costs (not pleaded) Nil

(e) Loss of earnings (not pleaded) Nil

Total cost 150,000/-

I award costs of this suit to the plaintiff. I award interest on general Damages from the date of this judgment.

Dated this 24th day of July 2002 at Nairobi.

**M.A. Angawa**

**24.7.02**