



1. Fare paying passenger
2. Interlocutory judgment Plaintiff absent and
3. No evidence called.
4. Submission that judgment be entered on special damages
5. Claim for General damages abandoned

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1229 OF 1999

PHILEMON K. ROTICH PLAINTIFF

VERSUS

JOHN KIHARA KARANJA DEFENDANT

JUDGMENT

The plaintiff, Philemon K. Rotich sued the defendant, John Kihara Karanja for damages for injuries incurred in a road accident whereby he was a passenger traveling in the defendants vehicle. The suit dated the 17th of June 1999 was filed on the 22nd of June 1999.

The defendant failed to enter appearance nor file defence. On the 31st of May 2000, interlocutory judgment was entered against the defendant by the Principal deputy Registrar. The orders he gave was that:-

“Interlocutory judgment against the said defendants as prayed in the plaint [be entered]. The award of costs shall await judgment when the suit will be set for formal proof”

The suit was set down for hearing on 24.7.00. The plaintiff sort adjournment through his advocate on grounds that his doctor was not present. This was duly granted by the Hon. Justice Kuloba.

Fresh dates were taken on 12.6.2001 when the advocate came for the plaintiff he mentioned that there may be a settlement (although the defendant was not in court). At 10.30 a.m. of the same day the advocate offered no settlement from the other side.

In his opening address to this court the advocate stated that as interlocutory judgment had been entered, he wished to abandoned the claim for General damages. He then went on to state that he would like to:-

“Have Interlocutory judgment entered on 31.5.00 to be full judgment in this suit. That is all.”

I asked the advocate if the plaintiff was present. He said no. This took the court by surprise, as at no time did the advocate state that plaintiff was not in court. At all times he gave the impression that he was proceeding with his case.

As the advocate has abandon the claim for General Damages, there is nothing the court can do but to

accept this.

The only claim left in this suit is that of Special Damages. The advocate stated he wanted a full judgment on this. If he wishes to do so, he required to call the plaintiff to prove the Special Damages by way of Formal proof. Instead, the advocate stated the plaintiff was absent.

Under order 9A r 4 CPR Interlocutory Judgment once entered is then the judgment of the court on pecuniary amount owned in a contract.

Order 9A r 5 CPR, on the other hand, requires that there be formal proof on damages so demand.

As no evidence was called to this effect I believe that this case cannot stand. The same is and is hereby dismissed.

I make no orders as to costs as the defendants failed to appear.

Dated this 13th day of June, 2001.

M.A. ANG'AWA

JUDGE