



1. Motor vehicle collision
2. Passenger
3. Male adult aged 32 years in 1995
4. Liability 100% against the 1st defendant  
Nil against the 2nd defendant

5 Quantum possible

- (a) General Damages
  - i) Pain and suffering .....Ksh. 200,000/-
  - (b) General Damages nil not proved

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

**AT NAIROBI  
MILIMANI LAW COURTS**

**CIVIL CASE NO. 1277 OF 1997**

**JOHN EUSTACE NJOROGE ..... PLAINTIFF**

**VERSUS**

**DAVID WAHUMBU MUNGAI & ANOTHER ..... DEFENDANTS**

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

**Facts**

Daniel Wahumbu Mungai was found guilty and duly convicted in the subordinate courts at Kikuyu for a traffic offence. According to the subordinate courts' judgment produced by consent of the parties, Traffic Case No. 1015/96 Resident Magistrate's Court the said David Wahumbu Mungai had traveled in his vehicle along the Nairobi-Naivasha road. Thus road is divided by a concrete wall. There was a gap in the wall which the said Daniel Wahumbu Mungai made a U turn in his vehicle. The said vehicle before completion of the U turn was hit from behind by James Shakali Irungu who was traveling in another vehicle. James saw the vehicle at the last moment and was unable to avoid the accident. As a result of the accident one passenger traveling in the vehicle of David Wahumbu Mungai died. The other passenger sustained severe injuries and survived. He is John Eustace Njoroge alias John Eustace Njoroge Njogu. He sued both drivers in negligence and filed this current suit on the 27.5.97 HCCC 1277/97 Nairobi. John E. Njoroge only requires to sue both defendants as shown that he was injured in the accident. It is not his task to establish who is to blame save that both were negligent.

The 1st defendant – David gave evidence in court and said he was hit from behind. He did not

intend to be held liable for the accident. He admitted that he was duly convicted and sentenced for traffic offence for the said accident. He nonetheless failed to in fact appeal against the sentence on conviction. The reasons being that the same was fair and he saw need to appeal against it.

The 2nd defendant did not appear to give evidence.

## **2. Liability**

On the case of liability I rely on the lower court proceedings. These proceedings (produced under Section 34 of the Evidence Act cap 80) clearly states how the accident occurred. The plaintiff himself failed to describe to this court that in fact the 1st defendant was making an illegal 'U turn' within the wall separating the road being a dual carriage way. As such I find the defendant No. 2, duly convicted and sentenced and as such his sentence is relevant under Section 47A of the Evidence Act to be negligent for this accident. He is liable at 100%. I approve no blame on the 2nd defendant.

## **Quantum**

The plaintiff prays for an award in General Damages for pain suffering and loss of amenities.

He also prays for:-

- i) Special Damages**
- ii) Future medical case**
- iii) Loss of expectation of life**
- iv) Loss of earnings**
- v) General Damages”**

### **i) The Special Damages**

The plaintiff was unable to prove this damages despite an opportunity given him by the court to do the same. The same be and is hereby dismissed.

### **ii) Future medical care**

The plaintiff did not mention this claim nor speak on it. The same to be and is hereby dismissed.

### **iii) Loss of expectation of life**

The plaintiff is still alive. He has not yet died. As a result this prayer, mainly for deceased persons, is dismissed.

### **iv) Loss of earnings**

The plaintiff stated he was a managing director running a construction company. He informed the court that he earned Ksh.300,000/- per month. This figure was not produced in the plaint. If it was to be relied on, the plaintiff ought to have amended his plaint to this effect. What was pleaded was Ksh. 10,000/-. I decline to make an award on this head of damages on the grounds that no supporting document was produced such as the registration certificate of the company; Income tax returns; income from the plaintiff accountant. These documents were not part of the plaintiff's list. The plaintiff said he forgot them at home. His advocate ought to have included them on the said list and had them relied on to prove this head. As it stands, this head is dismissed.

**v) General Damages**

In order to prove this head of damages there must be a medical report produced either by consent or the maker. The plaintiff failed to comply despite being given time to do so.

I hereby dismiss this head of damages. In the event that I am required to compile the damages I would have awarded for pain and suffering a sum that was not Ksh. 2 million, as the accident for the plaintiff prays. I would have awarded Ksh. 200,000/- for concussion of several days. No proof of epileptic fits have been given. I would otherwise dismiss this suit with costs to the defendants.

**In summary**

1. Motor vehicle collision
2. Passenger male adult aged 52 years in 1998
3. Liability 100% against the 1st defendant

Nil against the 2nd defendant

4. Quantum - possible

i) General Damages

ii) Pain and suffering ..... Ksh 200,000/-

iii) Special damages nil – not proved

5. The suit stands dismissed with costs to the defendant

**Dated this 20th day of December 2001 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**