



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 2632 of 1995**

**DANIEL KINYUA THAARI .....**  
**PLAINTIFF**

**VERSUS**

**KENYA WILDLIFE SERVICES .....****1ST**  
**DEFENDANT**

**MICHAEL KINYUA .....****2ND**  
**DEFENDANT**

**JUDGEMENT**

The parties to this suit are Daniel Kinyua Thaari, the plaintiff. He was originally being represented by M/s Khaminwa & Khaminwa & Co. Advocates. Later Mr. C.M. Kirugara & Co. Advocates took over the matter and conducted trial.

The 1st defendant is represented by M/s Susan Kahoya & Co. Advocates. Mr. P. Wamae of the said firm appeared and conducted trial.

The 2nd defendant is also represented by M/s Susan Kahoya & Co. Advocates. There seem to be an application by M/s Khaminwa & Khaminwa & Advocates filed on the 27.4.99 praying for the 2nd defendant to be struck out as party to the suit as he has since died. That there be an amendment of the Plaintiff.

This application was never heard at all. Simply because Khaminwa & Khaminwa & Co. Advocates were no longer on record when the same was filed. It was withdrawn with no orders as to costs before the Deputy Registry on the 16.10.99.

This is a motor accident vehicle case involving pedestrian. The plaintiff was a turnboy (conductor?) in a lorry that he was travelling in. The lorry was travelling from Ongata Rongai area towards Karen. Whilst on the Mbagathi road the vehicle was unable to climb up the hill. The driver requested him to alight and quickly place stones behind the tyres (wheels). He alighted - as he proceeded to go to the other side of the road he suddenly saw a vehicle travelling at a high speed. He stepped back but it was too late. His leg was knocked. He at once fell on the road and lost consciousness. He gained consciousness in hospital. After a few days his leg was amputated.

He sued the defendants and prayed for compensation by way of General and Special Damages, Costs of medical expenses incurred.

The defence called no evidence. The plaintiffs advocate relied on case law from Mombasa namely:

Odeyo Naye v Shaby Hccc No.40/95

Michael Mutua Kiarie v Harison Mahindi Mwangendi

Hccc No.89/89

Amin Ali Hassan vs. Dominc Mware & Another

Hccc No.162/96

For an amputated leg the advocate for the plaintiff prayed that an award of Ksh.500,000/- was reasonable. The above authorities having awarded a slightly highest figure.

As to the aspect of loss of future earnings - the plaintiff is said to be no longer working. He incurred expenses for his medical. The church provided him with an artificial leg. (He had earlier been given a free artificial leg. He discarded this as being too heavy).

The advocate for the defendant stated no documents had been produced to prove the injuries had in fact been sustained and or medical report. No case has been proved.

From the evidence before me the plaintiff states that the defendant's vehicle knocked the plaintiff. The registration number of that said vehicle is not mentioned in the Plaintiff or at all. It would have been of assistance if this had been done and further for a registration of motor vehicle for the Registrar should have been obtained to prove the same. Nonetheless this was not an issue.

The agreed issues being whether an accident occurred on the 1.3.95 between the plaintiff and the defendants.

I would find that an accident occurred and the plaintiff sustained injuries. A police abstract report was produced.

The accident was caused by the negligence of the defendant in the absence of any other evidence but that of the plaintiff. It appears that the vehicle was overspeeding. I enter judgement on liability against the defendant on this.

I also find that the plaintiff sustained injuries.

On quantum I would award for General Damages on pain suffering and loss of amenities as Ksh.250,000/- as recommended by the advocate for the defendant's being reasonable. I would agree that awards are made on damages as opposed to separate injuries under the heading of pain, suffering and loss of amenities.

As to loss of future earning, I would hold that no proof was given by the plaintiff of this either orally or by way of documents (pay slip etc).

As to Special Damages I hold that the plaintiff has failed to prove this head of damages. No evidence was led to support this claim. As such I would dismiss his claim.

In summary.

Injuries: amputated left leg above knee.

Liability

There will be judgement for the plaintiff on liability against the defendant at 100%.

General Damages for pain, suffering and loss of amenities Ksh.250,000/-.

Loss of earning      NIL

Special Damages      Nil

(not proved)

I award costs of this suit and interest from the date of this judgement to the plaintiff.

Dated this 3rd day of February, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE