



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2561 OF 1998

JAMES NGUGI GAKUNJU PLAINTIFF

VERSUS

WILLIAM NJAU KAMAU 1 ST DEFENDANT

JACINTA WANJIRU KAMAU 2 ND DEFENDANT

JUDGMENT

James Gakunju Ngugi, filed this suit against the 1st and 2nd defendants herein William Njau Kamau and Jacinta Wanjiru Kamau.

The two defendants failed to enter appearance or file a defence. An interlocutory judgement was entered against them both jointly and severally on the 8.10.99 by the Principal Deputy Registrar.

The case came up for Formal proof hearing before me. What the plaintiff stated was that he was at Githurai off the Kamiti road. This was in Zimmerman. He was crossing the road. He was going to go to the lorry on the other side. A vehicle came and knocked him.

He was admitted to the Nairobi hospital for three months. He was seen and attended to finally by Prof. S.W. Guthua (PW2).

PW2 specialised in maxillofacial surgery. It seems that the plaintiffs injuries was all concentrated around his face. This involved the jaws, nose, denture. The Professor produced the report at the initial stage dated 30.9.96 where he confirmed the injuries sustained by the plaintiff. He noted that from the X-rays there were fractures of the zygoma, nasal bones maxilla and mandible. He assessed his disability at 50%. A regular follow up visit was required especially with the ENT surgeon.

On the 23.2.2000, he came up with a latter report. He noted that the plaintiff was now stable and had improved. The fractures he had had completely healed. He recommended that plaintiff continues with his exercises. That the long span madibualr plate be removed. The recovery was good. He assessed the disability at 35%.

The plaintiff produced to this court the receipts incurred in hospital treatment. This corresponded to the invoices also produced.

He also produced expenses incurred as an out patient; hospital fees. Drs. fees. A demand letter to the defendants was produced but I noted that it was in fact a demand notice in connection with one Winnie Nyakio (now deceased) and not the plaintiff.

I noted that the advocate had prayed award Ksh.1.2 million for the General damages for Pain and

suffering. This is as per the case law of :-

Timo Kalavi Chepwani & another Vs Texcal House services Station Hccc No.220/97 Justice Rimita at Nakuru. He admitted he obtained this authority from another advocate in court.

He nonetheless brought a subsequent authority of:- Samuel Hure Murage Vs. Moses Kiiru Kamau & Another Hccc No.6779/91

Whereby an award of Ksh.450,000/- was made for injuries sustained that were less serious.

He recommended Ksh.900,000/- be awarded. I note that the plaintiff has substantially improved and recovered. He is assessed at 35% liability. The regular visits to the specialist and exercises is all that he requires.

I note that a plate in his jaws may be required to be recovered at a later state. This was not asked for nor did the plaintiff estimate he costs of it.

I hereby enter judgement for the plaintiff for pain, suffering and loss of amenities at Ksh.400,000/-.

I enter judgement on Special Damages as pleaded and proved by the plaintiff at Ksh.844,520/-. I do not award Ksh.3,100/- as no receipt for the police abstract report was tendered nor the fee for the medical report was spoken of by PW2. In summary Liability

Interlocutory Judgement entered by the Principal Deputy Registrar for non appearance on the 8.10.99.

Injuries

Fractures of the:-

- a) zygoma
- b) Nasal bones
- c) Maxilla and mandible

Award

General Damages

For pain, suffering and loss of amenities Ksh.400,000/-

Special Damages (proved) Ksh.844,520/-

Total Ksh1.244.520/-

I award cost of this suit to the plaintiff. I award interest on Special damages from the date of filing suit. Interest on General Damages from the date of this judgement.

Dated this 2nd day of March, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE