



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1079 OF 2002

SULEIMAN MBANGOPLAINTIFF

VERSUS

MBOYA WAMBUA

SAMUEL MAINA KAVETU

EQUATOR AUTO MOBILS

G. KINGOO

FK MUKORA.....DEFENDANT

JUDGMENT

1. The accident which is the subject of this judgment occurred on 5th December 2001 along Kangundo road. The accident involved motor vehicle registration KAN 166 C belonging to the 1st defendant and a Lorry registration KQL 420 belonging to the 2nd to 5th defendants. The plaintiff was a passenger in 1st defendants motor vehicle. I heard the case and delivered my judgement on 25th September 2015 on liability where I apportioned equal liability between the 1st and 2nd - 5th defendants. The issue of liability having been settled, what follows is the question of quantum.
2. The parties adduced evidence on quantum. The plaintiff testified as PW1 where he stated that he was aged 40 years when the accident occurred. He stated that he relied on his witness statement. He averred that he is confined to a wheel chair due to the accident and needs a helper to help him move around, which helper he pays kshs 300/= per day. He uses urine bags as he cannot control urine and stool passage, which bags need to be changed every day. He stated further that he was admitted at Buru Buru Metropolitan Hospital and later at Kenyatta National Hospital for a year for treatment of his spinal Injury. He produced in exhibit treatment notes medical reports of **Dr. Siminyu and Dr. Wambugu**. He also stated that he cannot find employment as he was a casual driver with Bafta Holdings Limited before the accident, which company paid him kshs 500/= per day. He asserted that the wheel chair was worn out since he has had it for 13 years and he will need to replace it.
3. The plaintiff called a witness PW2, **Elijah Masinde** who testified that he assists the plaintiff who compensates him with kshs 300/=. He stated further that he pushes his wheelchair, changes the urine bags daily and generally assists the plaintiff. He said that he is not a trained nurse but assists

the plaintiff.

4. The defendant did not summon witnesses.
5. The parties adduced evidence and filed their respective submissions which I have taken into consideration including the authorities cited by the parties.
6. The plaint outlined the plaintiff's injuries which included Neck Injury with subluxation of C3 over C4, Quadriplegia, Stool incontinence, loss of libido and urine incontinence. This injuries were corroborated by the doctors' reports. The parties submitted on the damages payable.
7. I will begin with proposed multiplier. The defendants argued that since the plaintiff was 45 years at the time of the accident and given that the life expectancy in 2001 was 52 years and also considering the nature of the work undertaken by the plaintiff, then a multiplier of 5 years would be adequate. They relied on the cases of **Rosemary Wanjiru Kungu v Elijah Macharia Githinji & Another [2014] eKLR**, where the court used a multiplier of 15 years for the deceased and the case of **Eva Mueni Wambugu v Simon Peter Githae and Far East Bank H.C.C.C 202 of 2009 Machakos**, where the court taking account of the fact that the plaintiff who was aged 25 years was 100% permanently disabled adopted a multiplier of 10 years.

The plaintiff on the other hand proposed a multiplier of 15 years after taking into account the retirement age of 60 years and the fact that the plaintiff was 40 years of age at the time of the accident. He has relied on the cases of **Jacqueline Syombua vs Ekalala Sec School, HCCC NO. 118 of 2006**, **Nancy Oseko vs Board of Governors Masai Girls High School HCCC171 B of 2009** and **Eva Mueni Wambugu vs Simon Peter Githae & Another, HCCC NO. 202 of 2009**

Considering the arguments as laid out by the parties and the injuries suffered by the plaintiff, am inclined to agree with the plaintiff that the plaintiff would have worked until he is 60 years old and he is not in a position to continue working as a driver given the circumstances. I believe that the proposed multiplier of 15 years is considerable in the circumstances.

General Damages:

8. On general damages, the plaintiff submitted that an award of kshs 6,500,000/= would be fair. He relied on the cases of **Jacqueline Syombua vs Ekalala Sec School, HCCC NO. 118 of 2006** where the plaintiff who suffered 100% disability that consigned her to a wheel chair was awarded general damages of kshs 6,500,000/= and in the case of **Nancy Oseko vs Board of Governors Masai Girls High School HCCC 171 B of 2009**, where the plaintiff suffered from a fractured spine and was awarded kshs 3,000,000/= . He however gave a disclaimer that the injuries in the two cases were paraplegics unlike the current case that is worse as the plaintiff suffered quadriplegic with paralysis from neck downwards. The defendant on the other hand, submitted that since the plaintiff has sought compensation for loss of earnings and loss of earning capacity then a sum of kshs 1,000,000/= would be enough. He referred the court to the case of **Nancy Osekovs Board of Governors Masai Girls High School supra**, where the plaintiff aged 23 years that is 20 years younger than the plaintiff and who was permanently disabled was awarded a sum of kshs 2,500,000/=.

I have considered the quoted damages. It is apparent from the evidence adduced that the plaintiff is totally paralysed with a 100% disability. He is not in a position to do anything for himself and has to be assisted. He will be in that state for the rest of his life. In the circumstances am inclined to agree with the plaintiff that a sum of kshs 6,500,000/= as was awarded in the **Nancy Oseko** case *supra* is fair.

9. Other damages include:

- i. **Physiotherapy**

The plaintiff on this head submitted that a sum of kshs 500/= per session for 3 days a week would be favourable. the total sum he concluded would amount to kshs 810,000/= (1,500X3X12X15). The defendant conversely recommended that an award of kshs 60,000/= would be fair since the plaintiff suggested a figure of 500 per session which session was fortnight per the doctor's recommendation. The figure was broken down as 500X 2 times X12 months X 5 years= 60,000/= . I have looked at the doctor's reports, **Dr. Siminyu** supposes that the physiotherapy costs kshs 200/= per day which translates to kshs 1,000/= per week insinuating that the therapy is a five days affair. **Dr. Wambugu** on the other hand supposes that physiotherapy per fortnight would be enough. Considering inflation rates I agree with the parties that Kshs 500/= would be the considerable amount for each session of physiotherapy. In that case I will agree with the plaintiff that 500 per session for 3 days is adequate. I therefore find that an award of kshs 720,000/= (500X3X4weeksX12MonthsX10) is a favourable amount.

ii. **Urodom Condom and Urine Bags**

On this head the plaintiff submitted that the reports confirmed the importance of these items. **Dr. Siminyu** suggested that the items would cost him kshs 600/= per week hence a total of kshs 432,000/= (600X4X12X15). The defendant on the other hand, proposed that the plaintiff will be using kshs 600/= per two weeks therefore kshs,72,000/= (600X2X12X5) would be enough. I will take into account the doctors report and adopt the plaintiffs sum of kshs 432,000/=

iii. **Cost of laxatives**

On this issue, the plaintiff submitted that the doctor proposed kshs 500/= per week for this medication and therefore a total of Kshs 360,000/= (500X4X12X15) would be adequate. The defendant proposed that 500 per month would be adequate for 5 years which would bring it to a total of kshs 45,000/=. I will again here consider the doctors proposal in his report and allow Kshs 360,000/= on this head, as submitted by the Plaintiff in line with the doctors recommendation.

iv. **Cost of the wheel chair**

The defendant agreed with the plaintiff on the cost of the wheelchair were being kshs 60,000/= to be bought twice in the period of five years bringing the total to kshs 120,000/=. The plaintiff proposed an award of kshs 300,000/= being (60,000X15/3) the plaintiffs proposal I find to be fair, considering the fact that the doctor opined that the plaintiff will have to change the wheel chair every 2-3 years

v. **Cost of an assistant**

In regard to compensation of an assistant, the defendants proposed that the kshs 300/= per day paid to an assistant as stated in the evidence be maintained, subsequently a total of kshs 540,000/= to be paid being (300X30X12X5 years). The plaintiff considered the Kshs 300 per month already used from 2003- 2015 which amounts to Kshs 1,310,400/= and proposed kshs 10,000/= per month future costs hence a total of kshs 1,800,000/=. I have considered the fact that plaintiff used the services of a neighbour and friend and not a professional nurse. He clearly could afford one and in the circumstances it would unjust to subject him to further discomfort as far as this issue is concerned. In any case the defendant has proposed kshs 300 per day amounting to kshs 9,000/= per month while the plaintiff has proposed kshs 10,000/= per month the difference between the two sums is very minimal. I believe kshs 300 per day would be fair. Therefore a sum of kshs 1,620,000/= (300X30X12X15) is awarded under this head.

vi. **Adult nappies**

On this head, the plaintiff proposed kshs 600 per week at a total of kshs 432,000/= while the defendant argued that the products are sold in packs that can be used for more than a week and a

pack can last a fortnight. He proposed kshs 72,000/= to be paid calculated as (600X2X12X5 years), i believe this nappies are too essential to limit them packs used for more than a week in the circumstance, I will uphold the plaintiff suggestion and award Kshs 432,000/=

vii. Hospital attendances

The plaintiff argued that the visits would have to be regular specifically monthly hence kshs 540,000 being attendance of kshs 2000 per month and kshs 1,000/= per month for transport. This argument was rejected by the defendant who proposed a quarterly visit that would require a total of kshs 3,000X12/4X5 years= kshs 45,000/=. Looking at the doctors report, **Dr. Siminyu** proposes quarterly visit which would cost Kshs 3,000/= per month while **Dr. Wambugu** supposes an annual visit. I will therefore agree with the defendant that a quarterly visit of kshs 3,000/= per quarter would be adequate. In the premise a total of kshs 135,000 (3,000X12/4X15) would be fair.

viii. Loss of earning and earning capacity

The plaintiff recommended loss of earning capacity of kshs 2,160,000/= plus loss of earnings of kshs 1,209,600/= while the defendant recommended a total of kshs 1,641,600/= being loss of earnings of Kshs 432,000/= and loss of earning capacity of kshs 1,209,600/=. On loss of earning I will take the proposed kshs 1,209,600 and Kshs 1,296,000/= being (kshs 7,200/= X 12X15). I award a total of kshs 2,505,600/= under this head.

ix. Costs of drugs

The plaintiff proposed that the costs payable here should be Kshs 2,000/= per month while the defendant recommended that the money has been covered under laxatives. I don't see any recommendation by the doctors on this head I will therefore concur with the defendant that any drugs issues have been covered by laxatives.

10. The plaintiff submitted that a sum of kshs 223,100/= would be sufficient for special damages which proposal the defendant was agreeable to.

In summary, I enter judgment on quantum for the Plaintiff against the Defendant at Kshs 13,227,700/= made up as follows:-

1. General damages..... Kshs 6,500,000/=
2. General loss of earnings and earnings capacity..... kshs 2,505,600/=
3. Physiotherapykshs 720,000/=
4. Urodom Condom and urine bags.....kshs 432,000/=
5. Cost of laxatives ,.....kshs 360,000/=
6. Cost of the wheel chair.....kshs 300,000/=
8. Cost of an assistant..... kshs 1,620,000/=
9. Adult nappies.....kshs 432,000/=
10. Hospital attendanceskshs 135,000/=
11. Costs of drugs.....Kshs nil

12. Special damages.....kshs 223,100/=

Total ksh.13,227,700/=

To be paid as follows:

1st DefendantKshs 6,613,850/=

2nd& 5th Defendants.....kshs 6,613,850/=

11. The sum shall carry interest at court rates from the date hereof till payment in full. The plaintiff shall also have the costs of the suit.

Dated and delivered in open court this 12th day of February, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant