



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 298 OF 1990**

**GEOFFREY MUTIMBI ..... PLAINTIFF**

**VERSUS**

**MUNENE THURANIRA & ANO. .... DEFENDANT**

**JUDGMENT**

The suit before me is a running down matter. It was originally heard by the Hon. Mr. Justice A. Ringera (as he then was) who has since left the judiciary on secondment to the Attorney-General chambers.

He had heard the evidence of the Plaintiff and his doctor. The proceedings had proceeded ex parte and in the absence of the defendants.

The Plaintiff closed his case and the suit was adjourned for Mr. Muriithi for the plaintiff to put in his submissions on the 23.4.96 at 2.30 p.m.

For three years nothing happened on this file. The duty judge for May 1999 placed the file before me for further directions as I am dealing with the running down matters.

I invoked order 17 r 10 CPR that reads:-

“Where a judge is prevented by death, transfer or other cause from conducting the trial of a suit or the hearing of an application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his duties under the said rules and may proceed with the suit or application from the state at which his predecessor left it.”

Mr. Muriithi proceeded with his submission whereby he stated that the injuries sustained by the plaintiff should be awarded Ksh.450,000/- as 15 years ago. Bhandari J. had awarded Ksh.200,000/- similar injuries in the case of

Charles Sunguti

v

Associated Sugar Co. Ltd. Co.

Hccc133/85 Mombasa.

I have read this file and noted that the defendants had entered appearance and filed defence in this

case. They had been represented by Mbae Mwarania & Co. Advocates who had been actually participating in this file.

Both parties wished to have this file transferred to Meru as most of the witnesses reside there. Unfortunately no action had been taken by the Deputy Registrar of courts to effect a consent to this effect. I believe the parties ought to have realised that files cannot be transferred from one High Court to another by consent or at all. They could have made application under Section 18 CPA to transfer the case to the lower courts at Nyeri/or Meru.

The advocate for the defendant did not appear for hearing on 19.3.96, when he had been duly served. He did mention to the advocate for the plaintiff that he was no longer on record. This is not enough. Order 3r 6 CPR is very clear that the advocate ought to file a notice to case from acting, or parties file a notice to act in person or a notice of charge of advocate when a new advocate comes on record.

In absence of any indication my brother was correct in proceeding with he trial on 20.3.96 under order 9b CPR.

From the evidence before the court the plaintiff stated that he boarded the defendants lorry. Motor vehicle KWL 306 Souza Lorry, that was driven on the material day by the 2nd defendant. He had hired the vehicle on 9.8.87 to carry goods for him to Nairobi. He was in the said vehicle to escort his goods and denied he was lawfully ridding in it.

On the way to Nairobi and near Kariene Market, the driver over sped and the vehicle overturned. He sustained injuries on the right side, of his head, right elbow left shoulder right limp, lower right leg. He lost his three upper teeth which were removed. The lower teeth were close. He claimed his back was hurting.

He was admitted in hospital for two months. He later attended physiotherapy on being discharged.

The doctor stated as a result of the said injuries the plaintiff had, he was unable to chew his food properly. He had stiffness of the right finger, his lower teeth were loose and he had scars on him.

The elbow joint on the right was deformed and stiff.

The doctor found that in future he was likely to develop problems such as epilepsy and anticipated osterotitis.

I find in this case, that the driver of the said vehicle KWL 306 was negligent in the manner that he drove the vehicle. There is no evidence whether the defendant No.1 kept the vehicle in good and mechanical conditions.

The issue was not raised by the Plaintiff.

The issue of whether he accident was an act of God was also not raised and I would hereby reject and hold that there was no act of God.

The accident was foreseeable on the basis that the defendant No.2 was overspeeding, as a result he lost control fo the vehicle.

I find that the defendants are liable in negligence for the accident which I compute at 100%.

The plaintiff is entitled to Pain, Suffering and loss of amenities under the head of General Damages of Ksh.150,000/- as reasonable.

The case of Charles Sunguti v. Associated Sugar Company Ltd. the plaintiff had sustained injures on his leg and could not walk without crutches. The degree of liability was assessed at 65%.

In this case the disability was not included by the doctor.

In a summary:-

I hereby enter judgement of the plaintiff on 100% liability against the defendants.

That General damages for Pain, Suffering and Loss of Amenities as assessed at Ksh.150,000/-. I make no award for Special Damages as no proof to this has been given. Costs of suit and interest from judgement to the plaintiff.

Dated this 18th day of May 1999 at Nairobi.

M. ANG'AWA

JUDGE