



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 2461 OF 1998**

**MAJOR T.M. MALOMBE ..... PLAINTIFF**

**VERSUS**

**D.M. MBUGUA & ANO. .... DEFENDANT**

**JUDGMENT**

Originally this suit was filed at Nakuru High Court as Civil Case No.253 of 1997.

On the 13th of August, 1998 the plaintiff swore an application requesting for the case to be transferred to the High Court of Kenya at Nairobi for hearing. This application was granted by the Hon. Justice Mbogholi-Msagha on the 21.8.98 under section 3A of the Civil Procedure Rules. I shall say no more on this point. The Plaintiff had by the 7th of August, 1997 obtained an interlocutory judgement against the defendants. The only aspect left of this case was the issue of assessment of damages.

The Plaintiff narrated in brief of how he was travelling in a Land Rover registration number 29 KA 35 along the Naivasha-Nakuru road when they reached a road block manned by the police. This was on the 17 January 1996.

The Plaintiff an Army Officer of the rank of Major was travelling in the said vehicle on his normal duties with three others of his soldiers in vehicle.

Whilst waiting at the road block the vehicle registration number KZD 264, Isuzu Tanker, owned by the two defendants, (and which registration number he came to know later) was travelling at a high speed came and collided with their vehicles.

The Plaintiff sustained injuries and was taken to Naivasha hospital where he was “evacuated” to Nairobi Hospital for treatment. The Plaintiff sustained injuries that necessitated him to be admitted at the Nairobi Hospital and the Kenyatta National Hospital. The injuries were summarised by PW2 the Medical doctor who attended him, a consultant Physician and nephrologist.

This was

i) Service Life threatening operations. He stated that the plaintiff had dream in operations several times.

ii) Loss of the Plaintiffs Spleen. The effect of this is that the plaintiff would be prone to infection and repeated infections by organism (included Malaria infections).

The spleen was removed giving 100% disability.

iii) Loss of the Plaintiffs Kidney Both kidneys had failed to function. The plaintiff had to

undergo a kidney transplant under his supervision. This transplant was successful but it meant that the plaintiff would have to be dependant on anti-rejection of kidney drugs all his life. Namely steroids, azathioprine to depress the bone marrow, cyclosporine to prevent kidney rejection.

The side effects of these drugs is to raise the High Blood pressure. It therefore means that the plaintiff would have to be on high blood pressure medication.

The other alternative was for the plaintiff to go back to dialysis - blood purification method. Either way he'd have to be on this treatment all his life if the kidney transplant may perhaps fail.

iv) Permanent scaring of pleura and lower zone right lung (25% disability). this is where the being of the lung is effected.

v) 15% skin loss due to permanent on face .... and limb.

I find in this case that the Plaintiff was involved in a road accident whereby he sustained injuries. I find that the defendants motor vehicle was so driven negligently and at a high speed that it collided with the vehicle in which the plaintiff was in.

The defendants vehicle was being driven by their agent, servant and or driver.

I therefore find them liable for the accident. Inter locutory judgement has already been entered.

As to quantum, the advocate for the plaintiff was unable to find local authorities as he stated that this case was unique. He was only able to obtain the latest authorities in Kemp & Kemp which were basic guidelines for this court to arrive at the correct quantum.

The said authorities did not have the full text to them.

The advocate for the plaintiff stated that this court award damages for:-

a) Kidney at ksh.6.4 million

b) Spleen at Ksh.1.2 million.

Total Ksh.7.6 million

Say Ksh.8 million

He asked this court to then award Future treatment at Ksh.4.8 million (being 16 years x 12 x 25,000/-).

Loss of earning he prayed for Ksh.468,000/-. This is taking a salary of Ksh.39,000/= and 11 years left after reaching 55 years. (The Army retire at 44 years where there is no promotion Ksh.5.148,000/- recorded.

On the issue of General damages, I must state that one does not give awards according to heads of injuries. This is an incorrect way of computing pain. The award is given under Pain, Suffering and loss of amenities.

The Pain suffered is therefore one as opposed to the various injuries.

The advocate for the plaintiff is to compute the various heading of damages, and not of injuries.

I hereby would award General damages for Pain, Suffering and Loss of Amenities at Ksh.1.5 million.

As to the plaintiffs future medical treatment the doctor (PW2) stated that the plaintiff was fit and back to normal although he was not to exert himself in some ways.

The advocate put the future medical treatment at Ksh.4.8 million.

The doctor did not suggest any figure as to this.

I believe it would be medications that are required. No evidence as to this has been deduced. I make no award as to this head of damages.

The loss of earnings has not been proved. The advocate concedes that the plaintiff is still in employment. [www.kenyalawreports.or.ke](http://www.kenyalawreports.or.ke) 7

Nonetheless the advocate prayed that 5.148,000 be given by this court for the time after the plaintiff reaches his retirement age of 44 years old base don his salary.

The plaintiff stated that he had a farm which his wife used to run. She now is in employment due to his illness. I do not think this head of damages has been proved and the same is dismissed.

The reasons being further that at the retirement age of 44 years the plaintiff would be paid in court salary of 20,130/ The same is subject to increase if the salary increases. The basic salary is Ksh.20,130/- and not 39,000/-.

As to Special Damages a totals sum of ksh.4,600 /- was pleaded but not proved. I decline to make an award under this heading.

General Damages:

Pain Suffering and loss of Amenities Ksh.1.5 million

Special Damages has been dismissed as

not proved.

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

Dated this 18th day of May, 1999 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**