



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
AT NAIROBI  
CIVIL CASE NO. 1698 OF 1994**

**CHARLES MARANGA BAGWASI & ANO. .... PLAINTIFF**

**VERSUS**

**SAMUEL KAMONJO MUCHIRI & ANO. .... DEFENDANT**

**JUDGMENT**

The first Plaintiff is related to the second plaintiff as father and son respectively.

According to the evidence before the court, the two were travelling in the motor vehicle registration No. KQQ 536 along the Ongata-Magadi Road, which vehicle was being driven by the second plaintiff.

There was a vehicle registration number KUV 103 that approached from the opposite direction. The vehicle, driven by the second defendant and owned by the first defendant, was travelling at a high speed that the driver lost control of the said vehicle and collided with the plaintiffs vehicle.

By this time the plaintiff had completely reduced his speed and come to a stand still.

The motor vehicle was a pick-up. When the said vehicle hit the plaintiffs vehicle it rolled.

The Plaintiff No.1 was taken to Nairobi hospital together with his son plaintiff No.2 where they were admitted.

The plaintiff stated that he sustained injuries on his head and face due to cuts, a thumb had been dislocated, there were 4 ribs that had been fractured. Bruises of ankle and knee.

The Plaintiff stated that injuries for plaintiff No.1 were Multiple bruises on right arm and forearm.

Fracture of the right fibula.

Fracture of the lips and multiple facial cuts.

Fracture of sternum.

The Plaintiff No.2 stated that he had a deep wound on his thigh and foot which were just cuts.

The Plaintiff indicated that the plaintiff No.2 had a large open cut on the lateral aspect of the right thigh and multiplier bruises on the right and left leg.

The Plaintiff No.1 then reported the case to the police.

He later filed suit on his own behalf and sued as the next of friend on the behalf of the Plaintiff No.2.

Both prayed for compensation for damages General and Special.

The Plaintiff tried to pray for the loss of user of his motor vehicle but he had not pleaded this in his Pleint.

He also referred to several documents put to him by his advocate that included a police report, judgement, P3 form, medical reports, invoices and accident assessment report. He did not comply with order 10 r 11a CPR. He did not apply under order XII r3 Cpr for a notice to admitt document.

The advocate for the plaintiff was as such taken by surprise when the advocate for the defendant objected to the documents going in by consent and did not agree to any of them.

It thus meant that the plaintiff had to prove the documents. He failed to do so.

It thus meant that proof of hospital bills and the nature of the motor vehicle which he did not speak of were not perused.

I would find that the Special Damages have not been proved in this case at all and would dismiss this head of damages as not being proved.

I must note that proof should be supplied by documents if these documents are invoices, there must be a receipt of proof of payment.

On the issue of quantum, the advocate for the plaintiff failed to call the doctor to given evidence.

I find that the plaintiffs injuries if proved according to the plaintiff would be Kshs.500,000/- and 100,000/- respectively whilst according to the defendant Ksh.300,000/- and 50,000/- respectively.

The defendants advocate supplied authorities to which to support this contention. The advocate for the plaintiff had no authorities to support his case. On the said point I would agree with the defendants compilation.

I find on the issue of liability that the defendant ought to be held 100% liable for the accident. No evidence was called by the defendant to deny negligence although, they pleaded the negligence was contributed by the Plaintiff.

As there has been no proof to prove Special damages and General Damages.

I hereby dismiss this suit with costs to the defendant.

Dated this 2nd day of June 1999 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**