



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1154 OF 1990**

**JANE WANGARI MUTUNE ..... PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL & ANO ..... DEFENDANT**

**JUDGMENT**

The Plaintiff sued the Attorney for General Damages, for injuries caused on her whilst in hospital.

Exactly fourteen years ago, the plaintiff was expectant. She was admitted to the Kenyatta National Hospital on the 14.7.87 and delivered a child by caesarean birth on the 20.7.97.

She later found that she has sustained blisters on her legs.

She could not tell how this came about.

She nonetheless filed suit on 6.5.90 and relied on the doctrine of "Res Ipsa Loquitor".

The advocate for the state called no evidence. She did say that negligence as pleaded was never proved. I am satisfied that the plaintiff had been admitted to the Kenyatta National Hospital. That she underwent a Caesarean delivery. That soon thereafter felt and saw the effects of her burnt legs.

No explanation for this was given to her.

I find that the defendants are hereby liable in negligence for the plaintiffs injury.

As to quantum the advocate for the plaintiff stated that due to inflation an award of Ksh.400,000/- be awarded.

The advocate for the defendant relied on the case of

Pope John's hospital & Another V Karozi

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whereby it was held that the doctrine of Res Ipsa loquitor cannot apply to a mistake or error of judgment of a surgeon during a difficult operation.

She recommended a sum of Ksh.50,000/- or Ksh.30,000/- for similar awards.

I find that the plaintiff had shown her injuries so sustained were superficial blisters formed left leg

wounds. That they have been healed almost ten years later.

The P3 form- the only medical evidence produced and put in by consent by the plaintiff indicated the injuries sustained was “har.....”

I would therefore agree that a reasonable award for pain, suffering and Loss of Amenities be and is hereby awarded as Ksh.50,000/-.

I award costs of this suit and interest from the day of recording this judgement at court rates.

I make no award on special Damages it had not been proved.

Dated this 7th day of May, 1999 at Nairobi.

**M.A. ANG’AWA**

**JUDGE**