



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE 2727 OF 1991**

**JAMES NGUGI KAMOCHE ::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**JOSEPH N. MUNIU & 3 OTHERS ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

**JUDGMENT**

The plaintiff was injured on the 6th April 1990 when the vehicle he was travelling in collided with another. He brought suit against all the parties concerned. Liability has been agreed upon by the Defendants. This case proceeded on assessment of damages.

The injuries sustained by the plaintiff are also not in dispute. The plaintiff called Prof. Mbindyo to testify on his behalf while the Defendants called Prof. Jeshrani to testify.

Both consultants agree that the plaintiff sustained severe injuries. Those injuries were set out in the respective medical reports as follows:

- (i) Fracture of neck of left femur (ii) Fracture dislocation of right hip joint
- (iii) Fracture of pelvis right superior and inferior pubic rami
- (iv) Minor cuts on the face, arms and legs

He underwent surgical operation for fixation of fracture of neck of left femur. The right hip joint was reduced by manipulation and put on traction, was hospitalised for 52 days then discharged on crutches. He later fell while at home. The right hip was dislocated again and there was some disturbance of the fixation of his left hip fracture. He did not undergo any surgery of manipulation following this episode.

The left lower limb is short by 2.5 cm. compared to the right limb. The muscles around the hip and thigh showed some wasting due to lack of normal stress and exercise According to Prof. Jeshrani it is unlikely that the plaintiff will ever be able to obtain normal hip joints from further treatment in future. The difference in opinion between the two professors is on the question of further surgery. Prof. Mbindyo is of the opinion that the two hip joints should be replaced while Prof. Jeshrani is of the opinion that hip joints should only be replaced in patients who are over 60 years and only as a last resort. He would not advise the plaintiff who is in his 40s to undergo such an operation.

Counsel for the plaintiff has submitted that a sum of Ksh.2 million would be appropriate as general damages for pain suffering and loss of amenities. Counsel for the first and Second Defendants reckons that at the most Shs.250,000 would be in order while counsel for 3rd & 4th Defendants is of the opinion that shs.350,000 would be adequate. I have considered the authorities cited by counsel in this case and assess general damages for pain, suffering and loss of amenities at Kshs.400,000.

As regards cost of future operation I am persuaded by the evidence of Pro. Jeshrani as to why a person under the age of 60 years should not undergo a hip joint replacement operation. The plaintiff fell down and redislocated the joint while he was still under treatment. He did not undergo further surgery as a result of the fall. The report of Pro.Jeshrani is clear on this point. The plaintiff had pleaded the cost of surgical osteotomy and this is what Prof. Jeshrani recommended in his report. I award Shs.350,000/= as cost of future surgery.

I disallow the claim for loss of future earning as the plaintiff is still able to work as an accountant. His

employer, the Kenya Meat Commission went under and this was not due to the Plaintiff's accident. He had been offered another job but declined to be relocated.

I award Shs.27,720/- as agreed special damages. I therefore enter judgement for the plaintiff against the Defendants jointly and severally in the sum of Kshs.777,720/=. The Plaintiff will also have the costs of this suit and interest.

As regards liability of the Defendants, the First and Second defendants shall pay 80% of the awards plus proportionate costs while the 3rd and 4th Defendants shall pay 20% of the award plus proportionate costs in terms of the consent letter dated 18th February 1994.

I would like it to be noted that the court frowns on litigants who take it upon themselves to write to court on matters still pending before it. Such matter should be raised by the advocates on record but not through correspondence by litigants.

Delivered this 4th day of March, 1997.

J.V. JUMA

JUDGE