



REPUBLIC OF KENYA

**Jefa v Kenya Ports Authority**

**High Court, at Mombasa**

**June 9, 1992**

**Omolo J**

**Civil Case No. 721 of 1988**

June 9, 1992, **Omolo J** delivered the following Judgment.

Kazungu Kenga Jefa, the Plaintiff herein, was employed by the Defendant Kenya Ports Authority as a seal-man. On the 10th October, 1987, he was injured in the course of his employment with the Defendant. He brought this action against the Defendant claiming that the Defendant was negligent and that it was such negligence which occasioned the accident. At first the Defendant denied liability for the negligence but on the 30th October, 1991, the parties agreed that the Plaintiff was himself 10% negligent while the Defendant was 90% negligent. Liability was accordingly agreed on those terms and I do not have to deal with the issue of liability. Special damages were also agreed at Shs.1,150/-.

What general damages should I award to the Plaintiff? To answer that question I must first consider the injuries the Plaintiff sustained during the accident. A medical report by Mr. Hemant Patel, F.R.C.S, dated the 25th April, 1988 was produced by consent of the parties without Mr. Patel himself giving evidence. Nor did the Plaintiff himself give evidence about the injuries so that I must rely only on my understanding of the report produced in the circumstances I have stated. As I have pointed out before in other cases, this is not a satisfactory way of conducting cases and the parties must understand that they run the very real risk of the court not fully appreciating the gravity or otherwise of their injuries.

At the time of examination by Mr. Patel, the Plaintiff was 49 years old so he must have been 47 years of age when the accident occurred on the 10th March, 1987. According to the medical report the injury he sustained was a Potts fracture of the right ankle. When Mr. Patel saw the Plaintiff on the 25th April, 1988, just over one year after the accident, the Plaintiff was complaining of pain and swelling of the right ankle and inability to walk long distances or run. A physical examination by the doctor showed diffuse swelling of both malleolar area. The movements were nearly full except for some pain and stiffness in the final 20° range. An x-ray examination showed a mal-union of the lateral malleolar fragment and a slight post traumatic deformity of the fibula end. There was evidence of secondary osteoarthritis change. A calcaneal spur had developed and the subtalar, joint margins were sclerotic.

The Plaintiff was hospitalised for nine days and remained off work for a total period of two months. When he was seen by the doctor the fracture of the fibula had healed with some deformity and the then symptoms of the right ankle, namely pain and swelling, were due to after-effect of the injury and early osteoarthritis. According to the doctor this was a permanent incapacity but the Plaintiff would not need further surgical treatment. This was the position as at the 26th April, 1988; I do not know the condition of the Plaintiff as at now.

The case of George Onyango Otieno v Edward Mwema & A.B.N. Bank and James Nzyimi, H.C.C.C. No. 536 of 1989 (MSA) (unreported) was cited to me and counsel on both sides told me that the case is very relevant to the one under consideration. In that case the injuries sustained by the Plaintiff were:-

1. Laceration 2" by 1" on the right lower leg; and
2. Potts fracture of the right ankle.

The doctors who saw that Plaintiff concluded that:-

“Conclusion:

..... present x-rays show non-union of the medial malleolus of tibia and  
filing of the joint giving him swelling and painful joint. He shall get arthritic changes due to  
the trauma which shall make it more painful in future. These are permanent disabilities.

I agree that the injuries sustained in the Onyango Otieno case are by and large similar to those sustained by the present Plaintiff. For these injuries Mr. Justice Wambilyangah awarded Otieno shs.125,000/- as general damages and this was on the 4th March, 1992, that is some three months ago. I note that in the Otieno case, there was a non-union of the fracture while in the present case there is a mal-union, but taking into account the fact that three months have gone by since the award in the Otieno case was made, I would award to this Plaintiff the same amount, namely, shs.125,000/- as general damages for pain, suffering and loss of amenities.

1. Special Damages – Shs.1,150/-, less 10% thereof, with interest thereon at court rates with effect from the date when the suit was filed;
2. General Damages – Shs.125,000/-, less 10% thereof, with interest thereon at court rates with effect from the date hereof.
3. Costs of the suit less 10% thereof.

These shall be my orders.