

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO 386 OF 1987

LUCY NYAMBURA WAIRIUKO.....PLAINTIFF

VERSUS

JOHN WARUI WANYOIKE & ANNE W MBUGUA.....DEFENDANT

JUDGMENT

In this action, the plaintiff, Lucy Nyambura Wairiuko, claims special damages and general damages for personal injury, pain and suffering.

In paragraph 5 of her plaint, which was filed in court on 27th January, 1987, the plaintiff alleges that on 2nd March, 1986, at about 5.30 am, she was traveling in a motor vehicle owned by Anne W Mbugua, who is the second defendant to the suit. The vehicle was being driven by John Warui Wanyoike, who is the first defendant. The plaintiff alleges that, along the Gilgil-Nairobi road, the vehicle in which she was traveling went on to the wrong side of the road and collided with an oncoming vehicle. The plaintiff attributes the collision to negligence on the part of the first defendant. In paragraph 4, the plaintiff alleges that at all material times the first defendant was acting as the servant or agent of the second defendant, and, by implication, that the second defendant is to be held to be vicariously liable for the consequences of the negligence of the first defendant. Those consequences are set out in paragraph 7 of the plaint. The plaintiff suffered bruising of the dorsal spine, bruising of the left lower front chest, bruising of the right thigh, abrasion with bruising of the right leg, and bruising of the left leg.

The defendants failed to enter appearance. On 10th day of March, 1987, the Deputy Registrar entered interlocutory judgment for the plaintiff against the defendants in the sum of Kshs 27,237 being the amount of the special damages claimed in paragraph 7 of the plaint. The assessment of general damages comes before me. The plaintiff is represented by Mr Chawler; the defendants are not present, and are not represented. The plaintiff has given evidence, and has put in evidence as Exhibit 1, a report dated 15th April, 1986 and signed by Mr S C Patel, the Consultant Orthopaedic Surgeon – Mr Chawler has put in written submissions and authorities or previous decisions in other cases. From the sum awarded in those cases, and making allowance for the continuing fall in the value of money, Mr Chawler argues that Kshs 115,000 would reasonably compensate the plaintiff for her injuries.

The plaintiff survived this accident without losing consciousness and it may be assumed that her head was not injured. Moreover, the plaintiff suffered no bone injury such as a fracture of the leg or arm. The plaintiff was treated in the casualty department of Naivasha Hospital as an out patient suffering only from extensive bruising. When examined about a month after the accident, the plaintiff complained of pain and tenderness particularly in relation to her spine. Mr Patel did not find any permanent disablement but, under the heading Prognosis and Opinion, he said that dorsal backache and stiffness, contusion of the lung, and pain in the legs would continue for some time. Her lower right leg would remain permanently soared.

Of the five cases cited by Mr Chawler in his written submission, only two, numbered 3 and 4, are examples of damages running to six figure sums. In both cases, the injuries were, in my estimation, much worse than the injuries sustained by the plaintiff in the present case. I am unable to accept the figure

proposed by Mr Chawlar, and consider it to be excessive. I assess damages for a soar which is permanent and for bruising, pain and suffering which are tranient, in the sum of Kshs 70,000.

The plaintiff has already been awarded interlocutory judgment for special damages of Kshs 25,740 but I repeat that judgment here so that the entire judgment will be found in one place.

There will be judgment for the plaintiff against the defendants in the sum of Kshs 25,740 special damages together with interest thereon calculated at court rates from the date of filing the plaint herein, viz 27th January, 1987 until the same are paid by the defendants to the plaintiff.

And there will be judgment for the plaintiff against the defendants in the sum of Kshs 70,000 general damages for scarring, bruising, pain and suffering, together with interest thereon calculated at court rates from the date hereof viz the 16th October, 1987 until the same are paid by the defendant to the plaintiff.

And it is ordered that the defendants do pay to the plaintiff the costs of this suit, such costs to be taxed if not agreed and to bear interest thereon calculated at court rates from the date of such taxation or agreement until the same are paid by the defendants to the plaintiff.

October 16, 1987

Butler-Sloss

JUDGE