

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO 2779 OF 1984

MORRIS MWANGI PLAINTIFF

versus

WILFRED MUTURI DEFENDANT

JUDGMENT

The plaintiff was injured in an accident on Nairobi/Thika road in which the vehicle he was in overturned.

He got a nasty cut on his right wrist and on his forearm that have left scars ugly over.

He fractured his right clavicle which was supported and it was healed with some deformity and pain on heavy use.

He was a barman and he said that he lost his job after the accident but there is no medical support for his claim that he could not work due to his injuries.

What he did was to go home and work in the shamba for a year, and then return to Nairobi where he got the same kind of work. I am not satisfied he has done his best to mitigate costs.

He still has pain in his right collar bone, and it is deformed. He has scarring on right forearm and wrist, and numbness in his right little and ring fingers Mr Waihiya has referred me to Karora v Murathe and Boro HCC 3577/79, in which Todd, J awarded Kshs 1,200 only in respect of a fractured clavicle which healed well; no deformity, and full range movements. This matter is more serious than that.

In Waiyunka v Bamburi Portland Cement Co Ltd, Mombasa HCCC 230/80 Muli, J awarded Kshs 12,000 general damages in 1980 for a fractured clavicle as a result of which the plaintiff was unable to follow his employment, unlike the plaintiff. This case was a little more serious than the present matter.

Doing the best I can, and taking into account inflation, I make a global award of general damages in the sum of Kshs 15,000 in respect of pain, discomfort, loss of amenities, to include a nominal figure in respect of loss of earnings.

I enter judgment for that sum together with special damages of Kshs 500 with interest and costs.

D C PORTER

JUDGE

5.2.86