



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Mwanthi & another (Civil Suit E006 of 2021)  
[2022] KEHC 3370 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 3370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL SUIT E006 OF 2021  
MM KASANGO, J  
MAY 26, 2022**

**BETWEEN**

**ELIZABETH MUKAMI KAMAU ..... PLAINTIFF**

**AND**

**STEPHEN NZUE MWANTHI ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KARIUKI KWERI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Elizabeth Mukami Kamau, the plaintiff filed this case against the three defendants claiming damages in respect to injuries she suffered on 18<sup>th</sup> December, 2018. She pleaded that on that day she was a pedestrian along General Kago Funeral Home in Thika. She further pleaded that the 3<sup>rd</sup> defendant negligently and dangerously drove or controlled the motor vehicle registration No. KBL 837M thereby causing that vehicle to hit the plaintiff occasioning her severe bodily injuries. Judgment was entered for the plaintiff against the three defendants in default of appearance and defence on 28<sup>th</sup> May, 2021. Following the entry of that judgment liability for the accident was determined in favour of the plaintiff. Having received the plaintiff's evidence, this Court is called upon to assess the damages. See the case [\*David Maina Njoroge vs. Gingalili Farm Limited\*](#) (2011) eKLR where the court stated;-

“The role of this court in terms of Order 10 rule 6 aforesaid after judgment was entered was succinctly explained in the case of *Kavindu & Another V. Mbaya & Another* (1976) KLR 164, which was cited with approval in the case of *Felix Mathenge v. Kenya Power & Lighting Company Limited*, Civil Appeal No.215 of 2002.

In the latter the court stated that:-

“The respondent having failed to enter appearance within the prescribed time after the appellant had requested for it, it became mandatory upon the court to enter interlocutory



judgment and for the appellant to set down the suit for assessment of damages. Having entered interlocutory judgment, it was not open once again for the same court in the instant case to state that the appellant had not proved liability against the respondent. The role of the court after entering the interlocutory judgment in such a case like this was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to quantum of damages.”

2. The plaintiff produced in evidence receipts for medical treatment that she received both in this country and in Boston Massachusetts where she ordinarily resides. The plaintiff therefore proved on a balance of probability her claim in special damages of Kshs.144,698 and USD 372,791.41.
3. The medical reports produced in evidence revealed that the plaintiff sustained the following injuries:- Linear fracture – occipital bone – right side Right frontal lobe (brain) contusions. Degloving injuries – Lower limb. Degloving injury – right upper arm.
4. I have considered the authorities relied upon by the plaintiff, namely *Kiru Tea Factory & Another Vs. Peterson Watheka Wanjohi* (2008) Eklr, *Hellen Kwamboka Onchong'a vs. John Ouko Oyoo* (2010) Eklr And *Sophia Wanjiru vs. Kyoga Haulier Kenya Limited* (2020) eKLR. In all those cases, the injuries suffered by the claimants were far more serious than those suffered by the plaintiff, herein. Having considered the injuries suffered by the plaintiff, I am of the view an award of Kshs.900,000 in general damages is appropriate.

## Conclusion

5. In the light of the above judgment is hereby entered for the plaintiff against all the defendants jointly and severally as follows:-
  - (a) Special damages : Kshs.144,698 and USD 372,971.41
  - (b) General damages Kshs.900,000
6. The plaintiff is awarded costs of the suit in line with the provision of Section 27 of the *Civil Procedure Act* which was restated in the case *Orix Oil (kenya) Liited vs. Paul Kabuu & 2 Others* (2014) eKLR as follows:-

“... even if costs had not been awarded the court should have been guided by the law that costs follow the event, and the Plaintiff being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied the costs or the successful issue was not attracting costs.”

7. Orders accordingly.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 26<sup>TH</sup> DAY OF MAY, 2022.**

**MARY KASANGO**

**JUDGE**

**Coram:**

Court Assistant : Mourice

For Plaintiff: - No appearance

For Defendants: -No appearance,



**JUDGMENT delivered virtually.**

**MARY KASANGO**

**JUDGE**

