



REPUBLIC OF KENYA



KENYA LAW
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**Ndungu v Mwangi & 2 others (Civil Case 360 of 2011)
[2022] KEHC 12613 (KLR) (Civ) (25 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 360 OF 2011

JK SERGON, J

JULY 25, 2022

BETWEEN

ANDREW NG'ANG'A NDUNGU PLAINTIFF

AND

WILSON WAWERU MWANGI 1ST DEFENDANT

ANNE W OBINGO 2ND DEFENDANT

WILLIAM WAWERU MURAGE 3RD DEFENDANT

JUDGMENT

1. Andrew Ng'ang'a Ndung'u, the plaintiff herein instituted a suit against the defendants by way of plaint dated 24th August 2011 and sought for general damages and special damages of Kshs.2,053,700/= together with costs of the suit and interest thereon.
2. The plaintiff pleaded in his plaint that on or about 27th August 2008, the plaintiff's motor vehicle was lawfully being driven along Nakuru-Nairobi highway at view point, uplands area when the 1st defendant negligently drove, managed and or controlled motor vehicle registration No. KAC 356H that it collided with the plaintiff's motor.
3. The plaintiff further pleaded in his plaint that it holds the 2nd and 3rd defendants vicariously liable for the 1st defendant's negligence which was particularized on paragraph 6 of the plaint as follows:
 - i. He drove the said motor vehicle at a speed that was too fast in the circumstances
 - ii. Failed to have any proper control of the said motor vehicle
 - iii. Drove without due care and proper attention.



- iv. Failed to have any or any sufficient regard for the safety of other road users and in particular the plaintiff's motor vehicle.
 - v. Failed to brake, swerve, slow down or in any other manner to so manage and or control the said motor vehicle as to avoid hitting the plaintiff's motor vehicle.
 - vi. Suddenly swerving onto the lane of motor vehicle KAU 028 J and thereby obstructing its path.
 - vii. The plaintiff will further rely on the doctrine of *res ipsa loquitur* on the fact of the accident.
4. Despite being served with Summons to enter appearance, the defendants neither entered appearance nor filed any defence. Therefore, a default judgment was therefore entered in favour of the plaintiff and against the 1st and 2nd defendants pursuant to the request for judgment dated 23rd April 2012. The suit was therefore set down for hearing as an undefended suit.
 5. In his evidence in chief, the plaintiff identified himself as a resident of Naivasha in Nakuru County, and he produced his bundle of documents as PEXH 1-7 and Exhibit No. 3 and b are comparable. He also adopted his witness statement, which was signed, as evidence. The witness added that his hand had become entirely paralyzed.
 6. At the close of the hearing, this court invited the plaintiff to file his written submissions. In his submissions, the plaintiff stated that the plaintiff sustained various injuries as outlined in the medical report of Dr. Cyprianus Okoth Okere amongst them:-
 - i. Compound fracture of the right humerus
 - ii. Compound fractures of the right radius and ulna.
 - iii. Close comminuted fracture of the left humerus.
 - iv. Comminuted fracture of the right tibial condyle and head of fibula.
 7. The plaintiff submitted that he was hospitalized for about a month and the permanent incapacity of the right arm was assessed at 70%.
 8. The plaintiff further submitted that the specials damages are as pleaded in the sum of Kshs.240,000/= and for future medical expenses were as per the doctor's estimation.
 9. The plaintiff relied on the following authorities;
 - i. In *Mwaura Muiruri v Suera Flowers Limited & Another* (2014) eKLR The court awarded damages of Kshs.1,450,000/= only for injuries that were almost similar in nature. This was almost eight years ago.
 - ii. *Denshire Muteti Wambua v Kenya Power & Lightning Co.* (2013) eKLR The court of Appeal interfered with the Superior Court award of Kshs.100,000/= only as general damages and increased it to Kshs.1,500,000/=. This was in respect to injuries almost similar and was approximately nine (9) years ago.
 - iii. *Moi Teaching and Referral Hospital Board & Christopher K Kinyua v Leonard Kibiwott Kosgei* (2020)eKLR The Superior Court upheld an award damages of Kshs.2,000,000/= awarded by the lower court.
 10. The plaintiff contends that considering the nature, severity, and extent of the plaintiff's injuries as well as his testimony that he never regained the use of his right hand.



11. He therefore urges the court to award Kshs.2,000,000/= only as damages and taking into account the rate of inflation and this also being within the limits set out by decided cases. On this the plaintiff relied on the case of *Arrow Car Ltd v Bimomo & 2 Others* (2004) eKLR noted that the method of approach in respect to personal injury claims should be compensated by comparable awards keeping in mind the correct level of awards in similar cases.
12. The plaintiff therefore prays that judgment be entered in his favour as follows:-
 - a. General damages –Kshs.2,000,000/=
 - b. Special damages –Kshs.2,053,700/=
 - Total - Kshs.4,053,700/=
 - c. Costs of the suit and interest thereon at court rates.
13. Upon considering the evidence on record, the submissions and authorities relied upon by the plaintiff, it is apparent that the only issue which commends itself for determination is quantum since a default judgement was entered.
14. On the issue of special damages, the plaintiff sought Kshs.2,053,700/= as special damages. It is trite law that special damages must be specifically pleaded and proved. The plaintiff pleaded special damages for which he produced receipts in support thereof totaling Kshs.2,053,700/=.
15. The plaintiff pointed out the future medical expenses that the medical charges, medical report and doctors attendance fee that the receipts for these amounts were filed and the court should award him. I am satisfied that the plaintiff was able to prove special damages in the sum of Kshs.2,053,700/= as special damages. That amount is allowed.
16. On general damages, in *H. West and Son Ltd v. Shepherd* (1964) AC 326 the Court held: -

“... but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional ...”
17. In *Dorcas Wangithi Nderi vs. Samuel Kiburu Mwaura and another Embu HCCA No. 58 of 2013*, where the court upheld the lower court’s award of Kshs.2,000,000.00 for multiple soft tissue injuries, blunt injury to the head, fracture of the ulna and radius, and compound fractures to both tibia and fibula.
18. Also in the case of *[Duncan Kimathi Karagania vs. Ngugi David & 3 others](#)* (2016) eKLR, where, on 22nd March 2016, an award of Kshs 4,000,000.00 was made for blunt head injury with loss of consciousness, multiple, lacerations, comminuted fractures of the maxilla and right humerus and compound fracture of the mandible.
19. I note that the injuries sustained by the plaintiff are comparable to those sustained by the plaintiffs in *Dorcas Wangithi Nderi vs. Samuel Kiburu Mwaura and another*, *Duncan Kimathi Karagania vs. Ngugi David & 3 others* and *Sabina Nyakenya Mwanga vs. Patrick Kagoro & another*. These awards were made in 2015 and 2016. I am persuaded that an award of Kshs.2,000,000.00 would be adequate



compensation for the pain suffered by the plaintiff on account of the very severe injuries that he suffered.

20. In the end, judgment is entered in favour of the plaintiff and against the defendants jointly and severally. The plaintiff therefore is awarded as follows: -

- i. General damages for pain & suffering ksh.2,000,000/ with interest at court rates from the date of judgment until the date of full payment.
- ii. Special damages Kshs.2,053,700/=, with interest at court rates from the date of filing suit until the date of full settlement.
- iii. Costs of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF JULY, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant

..... for the 3rd Defendant

