



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE NO. 12 OF 2016

CHRISTINE MWIGINA AKONYA.....PLAINTIFF

VERSUS

SAMUEL KAIRU CHEGE.....DEFENDANT

JUDGMENT

1. The Plaintiff in this case approached the Court vide a Plaint dated 14/09/2012 and filed in Court on 01/11/2012 seeking for special damages of Kshs. 1,522,000/=; general damages; costs of the suit as well as interests. Her claim is that she was a passenger in Motor Vehicle Registration number KAP 530P when, by reason of negligence on the part of the Defendant, that Motor Vehicle was involved in a road traffic accident with two other Motor Vehicles along the Ndenderu-Kabuku Road in Kiambu County as a result of which the Plaintiff says she suffered serious injuries and had to be hospitalized for a period of time for treatment.

2. The Plaintiff's case as pleaded in the Plaint is that she was a passenger in Motor Vehicle Registration No. KAP 530P, a Subaru Legacy, when the Defendant drove his Motor Vehicle Registration No. KAG 352D so negligently that it caused a collision with Motor Vehicle Registration No. KAU 691G. As a result of the collision, the second Motor Vehicle ended up hitting the head of the Motor Vehicle the Plaintiff was travelling in causing injuries to the driver and passengers in it.

3. The Plaintiff pleaded the following particulars of negligence of the defendant:

- a. Driving at a speed which was too fast in the circumstances.
- b. Failing to keep any or any proper look out or to have any or sufficient regard for the traffic on the said road.
- c. Failing to see Motor- Vehicle Registration KAU 619G in front of him in sufficient time to avoid the said collision or at all.
- d. Driving too close to the said Motor-Vehicle.
- e. Driving the said Motor-Vehicle along the said Road paying away or any sufficient regard to other Motor-Vehicles and road users on the said road.
- f. Failing to give any or any adequate warning of his approach.

g. Running into the rear of the Motor-Vehicle Registration KAU 619G.

h. Failing to stop, to slow down, to swerve or in any other way so to manage or control the said Motor-Vehicle as to prevent the said collision.

4. As a result, the Plaintiff pleaded that she suffered the following injuries:

a. Fracture of the right femur;

b. Fracture of the ribs 3-6;

c. Pain in the right side of the chest and the right thigh;

d. Persistent pain in the right knee.

5. The Plaintiff also pleaded that as a result of the injuries, she had to undergo several operations, still had persistent pains in the right chest and right thigh and had to be on two crutches. In addition, she needed to undergo an operation to remove the metal implants and has to undergo knee replacement surgery.

6. The Defendant filed a Statement of Defence which is, in essence, a total denial. In the first place, the Defendant denies that there was a road traffic accident as alleged in the Plaintiff or at all. In the second place, the Defendant averred that any accident or injuries she allegedly obtained were as a result of her own negligence and the driver of the Motor Vehicle she was travelling on as well as that of the driver of Motor Vehicle Registration No. KAU 691G.

7. The Defendant particularized what he claimed was the negligence of the Plaintiff as follows:

a. Distracting the attention of the driver of KAP 530P.

b. Failing to wear a safety belt while riding in the said vehicle

8. Additionally, the Defendant also particularized what he claimed was the negligence of the driver of Motor Vehicle Registration No. KAU 691G as follows:

a. Driving too fast in the circumstances.

b. Failing to keep any or any proper look out or to have sufficiency regard for the traffic on the said road.

c. Failing to take any or any sufficient evasive action to avoid colliding KAP 530P.

d. Failing to stop slow down, swerve or in any way so to manage or control the said vehicle as to prevent the said collision.

e. Allowing the Plaintiff travel in the said vehicle without wearing a seat belt.

9. Finally, the Defendant particularized the alleged particulars of negligence of the driver of Motor Vehicle Registration No. KAP 530P as follows:

a. Driving at a speed which was excessive in the circumstances.

b. Failing to keep any or any other proper look out or to have any sufficient regard for other motor vehicles in particular KAG 352D and KAU 691 G.

c. Failing to heed the presence of KAU 619G on the said road.

d. Overtaking other traffic on the said road when it was not safe to do so and attempting to squeeze in front of KAG 352D when it was dangerous to do so and causing it to collide with the defendant's vehicle on the right front side.

e. Overtaking KAG 352D when it was not safe and colliding with KAU 691G on its lane.

f. Allowing the Plaintiff to distract his attention.

g. Allowing his critically ill child to be carried in the front seat and thereby cause distraction.

h. Failing to stop, to slow down, to swerve or in any other way manage or control the said vehicle as to avoid the collision with KAG 352D and KAU 691G.

i. Driving contrary to the traffic rules.

j. Causing the accident.

10. The Plaintiff filed its list of three witnesses and their written statements pursuant to Order 3 Rule 2 of the Civil Procedure Rules. The Plaintiff later on filed a statement of a fourth witness statement. Additionally, the Plaintiff filed copies of her documents which included the following:

a. Police Abstract

b. Patient's sick sheet for inpatient and outpatient reports

c. Medical receipts from M.P. Shah Hospital

d. Taxi Receipts

e. Medical Reports

f. X-rays

g. Letter dated 10/12/2010 from Defendant's advocates

h. Reply from Defendant's advocates dated 25/07/2011

i. Proceedings and judgment in Limuru SRM Traffic Case No. 724 of 2009 (R v Samuel Kairu Chege)

11. Despite directions by the Court on different occasions, the Defendant's Counsel failed to comply with pre-trial directions. In particular, the Defendant failed to file any Written Statements by his intended witnesses or Statement of Agreed Issues. All the Defendant did was to file an Application for leave to file Third Party Proceedings – on the day the case was scheduled for hearing. It is not clear if the Defendant ever served that Application on the Intended Third Party.

12. The case was set for Pre-Trial conference on two occasions – on 16/11/2016 and 28/11/2016. On both occasions, the Defendant had failed to obey a categorical Court order to pay Court adjournment fees to gain audience before the Court. In any event, the Defendant had filed no documents at all other than the Statement of Defence and had neglected to respond to the Statement of Issues filed by the Plaintiff's Counsel.

13. During the Pre-Trial Conference on 28/11/2016, the Plaintiff's Counsel applied to have all the Plaintiff's documents as filed on 01/11/2011 and 07/03/13 admitted as evidence without the need to call the makers since the Defendant had never filed any opposition to them. Mr. Anyonje who appeared for the Defendant at the Pre-Trial Conference did not object to the admission of the documents although he

would have preferred for the makers to be called to give viva voce evidence.

14. In the end, the Court directed the documents to be deemed as admitted and that parties file their written submissions followed by oral highlighting.

15. The parties have filed their respective submissions.

16. The Defendant insists that liability against the Defendant has not been proved. His argument is that liability for the accident should be shared between the drivers of the two other Motor Vehicles involved in the accident. He has cited the following passage from the Written Statement by Wilberforce Musira Munubi, the driver of the Motor Vehicle the Plaintiff was traveling in:

However, the vehicle which appeared to overtake another one did not heed my dipped lights and came on with full lights. As a result, I slowed down and as I did so, I immediately saw a blue vehicle approach me and hit mine with a bang....the vehicle that hit me head on belonged to G4S, Registration number KAU 352D

The Defendant argues that this exonerates him from liability. The Plaintiff disagrees. In her Written Submissions, she cites this same paragraph and then adds the next passage by the self-same Willberforce Musira Munubi:

The vehicle which hit me head on belonged to G4S, Registration No. KAU 619G. It hit me after it was in turn hit by Vehicle Registration Number KAG 352D thereby losing control and diverting it into my direction and running into me head on. The driver of KAG 352G, one Samuel Kairu, was the one responsible for the events which led to the accident.

18. The Plaintiff points to the following passage in the Statement of Nickson Kimutai Biwott, the Police Officer who visited the scene of accident:

My investigation established that there were skid marks on the road leading to the Motor Vehicle KAG 325D. I marked the scene....The following day, I came back early and drew up the sketch maps and measurements....I charged the driver of Motor Vehicle Registration number KAG 325D before Limuru Law Courts after serving him with Notice of Intended Prosecution.....

19. I have also perused through the proceedings of the Traffic Case. I noted that the Defendant was acquitted of the offence of causing death by careless driving. However, it is noteworthy that the acquittal was primarily based on the fact that the Notice of Intention to Prosecute was never served on the Defendant(Accused person in the Traffic case). Looking at the proceedings of the Traffic Case in totality, it appears that two versions emerged. One version was that the driver of KAG 352D was trying to overtake KAU 691G but on realizing that Motor Vehicle Registration No. KAP 530P was on-coming, swerved on to the path of KAU 691G hence hitting it in the rear. The impact of that collision caused the driver of KAU 691G to lose control and swerve onto the oncoming Motor Vehicle Registration No. KAP 530P. This was the version shared by the Plaintiff, Wilberforce Musila Munubi; and Nickson Kimutai Biwott.

20. The other version that emerged is that it was the driver of Motor Vehicle Registration No. KAU 691G who came out of his lane in an attempt to overtake a lorry that was in front of him hence precipitating the accident when he attempted to swerve back to his lane on noticing Motor Vehicle Registration No. KAP 530P oncoming from the other direction. This was the version shared by the Defendant and, to some extent, not discounted by the Motor Vehicle Inspector who, judging from the damage to the vehicles opined that this version had at least a possibility of being true.

21. From my review of the evidence, I am prepared to hold that the Defendant in this case bore 70% liability for this accident. I am persuaded by the mutually corroborating evidence of especially Wilberforce Musila and Nickson Biwott – and especially the sketch map with Biwott, a neutral third-party drew showing the skid maps. However, I am also persuaded by the totality of the evidence that the

driver of Motor Vehicle KAU 691G could have done more to avoid the accident if (a) he was driving at lesser speed in the circumstances; and (b) he dimmed his lights as the circumstances required. By his own reckoning, the driver of Motor Vehicle KAU 691G was driving at a speed of 70-80KMs per Hour in a busy stretch at night. Additionally, he saw the oncoming vehicle about fifty metres away as it dimmed its lights – and cautionary and defensive driving techniques would have cautioned that he should have slowed down. Lastly, it appears improbable that the driver of Motor Vehicle KAU 691G did not see the third Motor Vehicle on his driving mirrors as he tried to overtake his Motor Vehicle. Again, caution would have demanded that he slows down to let the other Motor Vehicle pass. The driver of Motor Vehicle KAU 691G gave no evidence whatsoever that he even attempted to slow down at any one time.

22. The Defendant raised a few other issues in his Written Submissions to obviate liability. I have found them unavailing and I will briefly address each below.

a. First, the Defendant argues that the Plaintiff was not a lawful passenger in the Motor Vehicle Registration Number KAP 530P. This is a blunt allegation which is unsupported by the evidence. The owner of that Motor Vehicle had a statement admitted into evidence and also testified in the Traffic Case that the Plaintiff was an invited passenger in his vehicle. Indeed, she was assisting the driver and owner of the Motor Vehicle to take his son to the hospital.

b. Second, the Defendant suggests that the Court should come to the conclusion that the occurrence of the accident was not proved because no Police Abstract was produced as proof. The Defendant relied on *Harrison Mbogo v The Attorney General (Nairobi HCCC No. 2610 of 1993)* in this regard. I would only point out in answer that the Plaintiff's documents were admitted into evidence and one of them is a copy of the Police Abstract.

c. Third, the Defendant claims that the Plaintiff did not prove that the Defendant was the owner of Motor Vehicle Registration Number KAG 352D because the Police Abstract was not produced and neither was some other proof of ownership. Again, both of the Defendant's claims are wrong. As stated above, there was, in fact, a Police Abstract. Secondly, the proceedings of the Traffic Case confirm that the Defendant is, indeed, the owner of the Motor Vehicle.

23. I will now turn to quantum.

24. In regard to special damages the law is quite clear on the head of damages called **special damages**. Special Damages must be both **pleaded and proved**, before they can be awarded by the Court. Suffice it to quote from the decision of our Court of Appeal in *Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716*, at P. 717, and 721 where the Learned Judges of Appeal – Kneller, Nyarangi JJA, and Chesoni Ag. J.A. – held:

Special damages must not only be specifically claimed (pleaded) but also strictly proved...for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The decree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.

25. Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted. A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party. In this regard, our Courts have held that an invoice is not proof of payment and that only a receipt meets the test. See *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited [2015] eKLR*; *Zacharia Waweru Thumbi v Samuel Njoro Thuku [2006] eKLR*; *Sanya Hassan v Soma Properties Ltd*.

26. Consequently, our case law seems quite clear that a party must produce actual receipts in order to meet the test of specifically proving special damages and that a pro forma invoice will not suffice. In this

case, the Plaintiff presented the following documents in her claim for specific damages:

INVOICES DATE	DETAILS	AMOUNT	KSH
12/3/2010-Invoice No.	M.P SHAH HOSPITAL	71,084	
13/07/2010- Invoice No.199664	M.P SHAH HOSPITAL	44,355.00	
10/11/2009- Invoice No.	M.P SHAH HOSPITAL	316,638.00	
22/09/2010- Invoice No.	M.P SHAH HOSPITAL	101,390.32	
26/10/2011- Invoice No.	M.P SHAH HOSPITAL	205,017.98	
31/08/2012- Invoice No.2012701876	M.P SHAH HOSPITAL	58,187.50	
Serial No.952938	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	700	
13/11/2009-Serial No.	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	53	
27/11/2009-Serial No.954514	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	1,400.00	
3/12/2009-Serial No.954649	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	720	
3/12/2009-Serial No.	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	1,400.00	
08/01/2010-Serial No.963945	SOCIAL SERVICE LEAGE M.P SHAH HOSPITAL	700	
13/01/2010-Serial	SOCIAL SERVICE LEAGE	2,465.00	

No.961509	M.P SHAH HOSPITAL			
13/01/2010-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.964243	M.P SHAH HOSPITAL			
1/3/2010-Serial	SOCIAL	SERVICE	LEAGE	900
No.	M.P SHAH HOSPITAL			
1/3/2010-Serial	SOCIAL	SERVICE	LEAGE	1,100.00
No.	M.P SHAH HOSPITAL			
2/3/2010-Serial	SOCIAL	SERVICE	LEAGE	550
No. 970787	M.P SHAH HOSPITAL			
10/3/2010-Receipt	ADMISSION			1,000.00
No. 54				
16/03/2010-Serial	SOCIAL	SERVICE	LEAGE	398
No.977085	M.P SHAH HOSPITAL			
23/03/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00
No.971852	M.P SHAH HOSPITAL			
8/4/2011-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.1049674	M.P SHAH HOSPITAL			
8/4/2011-Serial	SOCIAL	SERVICE	LEAGE	1,350.00
No.1049675	M.P SHAH HOSPITAL			
16/04/2010-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.	M.P SHAH HOSPITAL			
23/04/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00
No.	M.P SHAH HOSPITAL			
17/05/2010-Serial	SOCIAL	SERVICE	LEAGE	1,862.00
No.985686	M.P SHAH HOSPITAL			
21/05/2010-Serial	SOCIAL	SERVICE	LEAGE	4,929.00
No.985827	M.P SHAH HOSPITAL			
21/05/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00

No.981966	M.P SHAH HOSPITAL			
25/06/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00
No.991600	M.P SHAH HOSPITAL			
25/06/2010-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.991599	M.P SHAH HOSPITAL			
15/09/2010-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.1013054	M.P SHAH HOSPITAL			
15/09/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00
No.1013053	M.P SHAH HOSPITAL			
5/11/2010-Serial	SOCIAL	SERVICE	LEAGE	1,400.00
No.1025129	M.P SHAH HOSPITAL			
5/11/2010-Serial	SOCIAL	SERVICE	LEAGE	1,200.00
No.1025127	M.P SHAH HOSPITAL			
Serial No.1025128	SOCIAL	SERVICE	LEAGE	0
	M.P SHAH HOSPITAL			
24/08/2012-	SPECIAL	CONSULTATION		2,000.00
Invoice	No. CHARGES			
2012126886				
23/08/2012-	X-RAY	LE FEMUR(THIGH)		1,700.00
Invoice	No.			
2012126643				
2/11/2009-Receipt	TRANSPORT			5,000.00
No. 202				
9/11/2009-Receipt	TRANSPORT			2,500.00
No. 222				
13/11/2009-	TRANSPORT			2,500.00
Receipt No. 243				
27/11/2009-	TRANSPORT			2,500.00

Receipt No. 0043		
3/12/2009-Receipt	TRANSPORT	2,500.00
No. 546		
13/10/2010-	TRANSPORT	2,500.00
Receipt No. 8940		
8/1/2010-Receipt	TRANSPORT	2,500.00
No. 19		
1/3/2010-Receipt	TRANSPORT	2,500.00
No. 175		
2/3/2010-Receipt	TRANSPORT	2,500.00
No. 415172		
12/032010-Receipt	TRANSPORT	2,500.00
No. 2460		
16/03/2010-	TRANSPORT	2,500.00
Receipt No. 8944		
23/03/2010-	TRANSPORT	2,500.00
Receipt No. 3213		
TOTAL (KSH)		868,000

27. I have carefully perused these documents. As is readily obvious, many of them are pro forma invoices not receipts as our case law requires. I am therefore unable to award the amounts represented by those invoices as special damages. The receipts presented only amount to Kshs. 67,627.00. This is the only amount proved by evidence and it is the only amount I will award.

28. The Plaintiff also specifically claimed Kshs. 650,000/= for future medical treatment. She presented a report by Dr. Neeraj Krishnan which demonstrates both the need for the treatment – removal of the metal implant in her right femur and a total knee replacement. The Doctor quoted a figure of Kshs. 150,000/= for the first operation and Kshs. 500,000/= for the second surgery. These Medical Report has not been contested and neither are the figures suggested therein. I will, therefore, award that figure as specifically pleaded and proved.

29. On general damages, the Plaintiff claims that Kshs. 20 Million would be the adequate amount to compensate the Plaintiff for the pain, suffering and loss of amenities that she suffered as a result of the accident. I should note that the parties do not disagree on the injuries – but they sharply disagree on the quantum.

30. The Plaintiff suggests that an enhanced figure should be given because the Plaintiff suffered injuries which will affect future activities very gravely. The Plaintiff relied on *Bethwel Mutai v China Road Bridge Corporation (Mombasa HCCC No. 200 of 2007)* where Justice Azangalala awarded Kshs.

800,000 to a plaintiff who suffered a fracture of the right femur in two different places. Similarly, she relied on ***Jackson Wahome Ngatia v Agridutt (K) Ltd (Nairobi HCCC No. 531 of 2004)*** WHERE THE Court awarded Kshs. 4.5 Million for fractures of C4 and C5 bones in the neck, paralysis of the upper and lower limbs, loss of urine and stool control, loss of sensation from C4 downwards and loss of sexual function. I can outrightly state that this case is not comparable in terms of the injuries suffered by the Plaintiff.

31. The more comparative case cited by the Plaintiff include ***Joseph Poko Ochieng v Kenya Bus Service (Mombasa HCCC No. 180 of 1986)*** where Kshs 1.1 Million was awarded – but in this case, the Plaintiff was in ICU for 3 days and had multiple fractures in both femurs – unlike here where the fracture is only in one femur and there was no need for admission into ICU.

32. In ***Timothy Wafula v Sietco Development Africa Ltd (Nakuru HCCA No. 429 of 2003)*** and ***Joseph Ndumia Murage v David Kamande Ndungu (Nakuru HCCC No. 102 of 1996)***, both cases involved fractures of ribs and chest injuries and the Courts awarded Kshs. 800,000/= and Kshs. 500,000/= respectively.

33. The Plaintiff's argument is that the authorities they have cited deal with different aspects of injuries some which the Plaintiff here suffered. If we take into consideration all her injuries including the fact that she was on crutches for a period of time and continues to experience pain in the right side of the chest and in the right thigh and persistent pain in the right knee, the Court should take the global effect of the accident on her and award Kshs. 20 Million. The Plaintiff cited *Paulo Covintoto v Vito Antonio Di Filippo* in this regard. There, the Court had this to say:

It is of course correct to consider the injuries as such seriatim and to assess the severity of each separately, but the assessment of general damages must be a single assessment arrived at by considering the total effect of all the injuries upon the person injured. As a practical result of this, it may be said in general that the most reliable guide to a standard of general damages in cases of multiple injuries will be other cases of multiple injuries of similar severity, although no doubt it will be difficult to find cases where the multiple injuries are closely comparable in their nature.

34. On his part, the Defendant urges that compensation in the region of Kshs. 150,000/= would be a fair estimate of quantum. He relied on ***Francis Mwangi Muchine v Francis Kimani Mbugua (HCCC No. 2637 of 1994)*** where the Plaintiff sustained a fracture to the tibia and fibula and fracture of the left humerus as well as soft tissue injuries and was awarded Kshs. 100,000/= for pain, suffering and loss of amenities. This case was, however, not produced by the Defendant and I could not trace it. I have, therefore, not relied on it.

35. The Defendant also relied on ***Joshua Mwaniki Nduati v Samuel Muchiri Njuguna [2005] eKLR***. The Defendant claimed that, the claimant in this case sustained a fracture of the right femur and was awarded Kshs. 250,000/=. However, a perusal of the case reveals that the plaintiff in that case actually sustained a fracture of the right acetabulum (pelvis). This is, therefore, not a comparable case.

36. On my part, taking into consideration the nature of the injuries in this case and the global impact on life quality it has had on the Plaintiff while taking into consideration the guiding principle that in assessing damages for pain, suffering and loss of amenities is to both take into consideration the prevailing conditions in Kenya while ensuring that uniformity must be sought in the award of damages (see, for example, ***Bhogal v Burnbridge and Another [1957] EA 285***, I have come to the conclusion that an award of Kshs.4,000,000/= (Four Million) is sufficient for general damages. As stated, I have taken into consideration that the Plaintiff's quality of life has been vastly affected and that she has persistent pain in her right side of the chest, right thigh and right knee. I have also considered that she will suffer more pain as she undergoes the future surgeries which are recommended by her doctors.

37. In coming to this assessment, in addition to the two more comparable cases cited by the Plaintiff, I have also relied on ***Hellen Atieno Oduor v S.S. Mehta & Sons and Another*** – a decision given in 2015 where the claimant suffered a fracture of the right tibia and fibula, multiple fractures of the right ribs on

the right side, chest injuries, abdominal trauma and fracture of the right scapula. The Court awarded Kshs. 1.5 Million as compensation for pain, suffering and loss of amenities.

38. The upshot, then, is the following:

- a. Judgment on liability is entered at a ratio of 70%:30% in favour of the Plaintiff; To clarify, the Defendant's liability is apportioned at 70%.**
- b. The Plaintiff is entitled to Special Damages of Kshs. 67,627/= for hospital and transport expenses.**
- c. The Plaintiff is entitled to Special Damages of Kshs. 650,000/= for future medical expenses.**
- d. The Plaintiff is awarded Kshs. 4,000,000/= (Four Million) as General Damages for pain, suffering and loss of amenities.**
- e. The Plaintiff is entitled to interests on (b) above from the date of filing of the suit and on (d) from the date of this judgment.**
- f. The Plaintiff is entitled to the costs of this suit prorated to the liability determination.**

39. Taking into consideration the apportionment of liability, then, the Plaintiff shall be entitled to receive a total of Kshs. 3,302,338.90 from the Defendant as both Special and General Damages plus the interests and costs outlined in paragraph 38 (e) and (f) above.

40. Orders accordingly.

Dated and delivered at Kiambu this 21st day of December, 2017.

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JOEL NGUGI

JUDGE