



REPUBLIC OF KENYA



**King'aru & another v Philip & another (Civil Case 197 of 2018)
[2024] KEHC 2121 (KLR) (Civ) (5 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2121 (KLR)

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

CIVIL

CIVIL CASE 197 OF 2018

AN ONGERI, J

MARCH 5, 2024

BETWEEN

LEAH WANGARI KING'ARU 1ST PLAINTIFF

JOY NYAGUTHII KIIGE 2ND PLAINTIFF

AND

BETT KIPROTICH PHILIP 1ST DEFENDANT

FREDRICK MUTETI 2ND DEFENDANT

JUDGMENT

1. The plaintiffs in this case, Leah Wangari King'aru And Joy Nyaguthii Kiige (hereafter referred to as the 1st and 2nd plaintiffs respectively) filed this suit against Bett Kiprotich Philip and Fredrick Mututi (hereafter referred to as the 1st and 2nd defendants respectively) seeking general damages for pain and suffering, special damages and costs and interest for injuries the plaintiffs sustained on 17/3/2017 along University Way when they were hit by motor vehicle registration no. KBT xxx owned by the 1st defendant while under the control of the 2nd defendant.
2. The plaintiffs' evidence in summary was that on the material day at 6.30p.m the two plaintiffs were crossing the road.
3. They had already crossed the first part of the road and while standing on the partition between vehicles moving towards Globe Cinema Roundabout and others moving towards Uhuru Highway.
4. The 1st defendant's motor vehicle lost control and climbed the partition where the plaintiffs were occasioning them serious injuries.



5. The 1st plaintiff sustained a deep cut on the left posterior thigh and soft tissue injuries on the shoulders. She has 15cm remnant scars which are of immense cosmetic significance. Her doctors report stated that she would require a necessary keloidal scar excision followed by radio and steroid therapy at a cost of ksh.200,000.
6. The 2nd plaintiff suffered severe head injury, multiple contusions and permanent paralysis of the body and loss of speech.
7. At the time of the accident, the 2nd plaintiff was a university student undertaking a degree in economics at the University of Nairobi. She is not able to do any basics things for herself and will require nursing care for the rest of her life.
8. PW 4 Dr. Susan Karanja, a neurosurgeon who examined the 2nd plaintiff in November 2021, about four years after the accident stated that no significant improvement was expected as far as cognitive functions of the 2nd plaintiff were concerned.
9. PW 4 assessed the 2nd plaintiff's permanent disability at 80% and said the 2nd plaintiff would need a full-time care giver for the rest of her natural life.
10. PW 4 noted the following after examining the 2nd plaintiff,
 - i. Right sided cranial nerve 7 palsy upper motor neuron with facial asymmetry.
 - ii. Educued visual actuity in both eyes.
 - iii. Right lower limb shortening which requires special show to correct the shortening.
 - iv. Wheelchair bounce but can mobilize with a walking frame with support to get off the wheel chair.
 - v. Loss of hearing in the right ear.
 - vi. Loss of five motor movement in both hands with wasting of the intrinsic hand muscles and hypothenar muscles.
 - vii. Slowed dysarthric speed.
 - viii. Staggering while walking with support
 - ix. Post pointing positive on both left and right side.
11. The defendants called two witnesses, the investigating officer, DW 1 and the 2nd defendant (DW 2).
12. The 2nd defendant said he was driving motor vehicle registration no. KBT xxx along University way near Uhuru Highway when the two plaintiffs suddenly emerged on the road occasioning the accident.
13. DW 2 said he took the 2nd plaintiff to Guru Nanak Hospital where he paid ksh.30,000 for scans and admission of first aid.
14. DW 2 said he was doing 50 km/hr at the time the accident occurred.
15. The parties filed written submissions as follows; the plaintiffs submitted that the occurrence of the accident on 17/3/2017 and the fact that the Plaintiffs sustained severe injuries as a result of the accident is undisputed. The 2nd Defendant being the driver of motor vehicle registration no. KBT xxx was under a duty to ensure the safety of pedestrians more so considering he was driving along University way, a road congested with students and other pedestrians alike.



16. In the circumstances and in the face of the evidence adduced they have proved their case on a balance of probabilities and established liability against the Defendants for the occurrence of the subject accident and for the injuries they sustained and damages suffered.
17. On quantum the plaintiffs submitted that based on the nature of injuries suffered by the 1st Plaintiff, damages should be awarded in commensurate to the injuries suffered. The plaintiff proposed an award of Kshs. 700,000/- factoring in inflation and the future expenses of removing the 15cm keloidal scar in her posterior thigh.
18. On special damages the 1st plaintiff claimed as follows;
 - a. Police Abstract Kshs 500/-
 - b. Medical Report Kshs 5,000/-
 - c. Copy of Records Kshs 1,000/-
 - d. Hospital Treatment Kshs 170,623.33/-
 - e. Lost Spectacles Kshs 50,000/-
 - f. Loss of Mobile Phone Kshs 25,000/-
 - g. Loss of Shoes Kshs 5,000/-
19. As regard to the 2nd plaintiff it was submitted that the treatment notes as well as the doctor's report capture well the degree of injuries sustained by the 2nd plaintiff. Permanent disability was assessed by Dr Susan Karanja at 80 %. Further PW4 stated that no significant improvement is expected as far as cognitive function go and also pointed out on the need of a full-time caregiver for the rest of the 2nd plaintiff's natural life. The 2nd Plaintiff sustained severe head injury with fracture, traumatic brain injury, multiple contusions and permanent paralysis of the body.
20. On General Damages for the 2nd Plaintiff, reliance is placed on the case of [*Anthony Mbwabi Khayimba vs Laxamanbhai Construction Ltd*](#) [2018] eKLR at Nairobi where the Plaintiff having sustained similar injuries leading to incapacitation just like the 2nd Plaintiff herein was awarded General Damages of Kshs 10,000,000. However, considering inflation and the economic times of the plaintiff proposed the court to grant Kshs 15,000,000 under this head.
21. On future medical expenses the plaintiff submitted for a nursing Care/Aid the basic minimum monthly wage for a care giver as per the [*Regulation of Wages \(General\) \(Amendment\) Order*](#) 2022 Legal Notice No. 125 is Kshs. 15,200 per month and the life expectancy is 70 years. Thus Kshs. 8,208,000 was proposed under this head.
22. On the loss of prospects of employment it was submitted that the 2nd plaintiff was a university student at the time of the accident studying an economics major and was due to finish university in 2019. PW2 informed court that the entrant salary was Kshs 60,000/- per month. The 2nd Plaintiff sustained incapacitating injuries and owing to the 80% disability assessment by PW4 she will never be able to engage effectively in any economic venture and her ability to compete effectively in any economic venture and labour market had severely been curtailed. An award of Kshs. 25,200,000 was proposed under this head.
23. On future medical expenses it was submitted that the 2nd Plaintiffs doctor vide her Medical report recommended physiotherapy with focus on neuro-rehabilitation for the rest of her life. While no



estimate was given for the same, the same calls for the court's discretion in awarding a fair sum to foot the future medical sessions. The plaintiff proposed Ksh 5,000,000 should suffice under this head.

24. On special damages the 2nd plaintiff claimed the following;
 - a. Police Abstract Ksh 500/-
 - b. Medical Report Ksh 5,000/-
 - c. Copy of Records Ksh 1,000/-
 - d. Hospital Treatment Ksh 3,375,413.45/-
25. It is the duty of the plaintiffs to prove their case to the required standard in civil cases which is on a balance of probabilities.
26. The issues for determination in this case are as follows;
 - i. Whether the plaintiffs proved their case to the required standard.
 - ii. Whether the defendants are liable to pay the plaintiffs the remedies they are seeking against them.
 - iii. Who pays the costs of this suit?
27. On the issue as to whether the plaintiff have proved their case, the plaintiffs said they were hit by motor vehicle registration no. KBT xxx while they were standing at the partition between the road waiting to cross the road.
28. They said the driver of the motor vehicle lost control and climbed the partition where he hit them occasioning them serious injuries.
29. The 2nd defendant (DW 2) who was driving motor vehicle registration no. KBT xxx said the two plaintiffs suddenly emerged on the road and DW 2 hit them. DW 2 said he was doing 50 km/hr at the time of the accident.
30. I find that the 2nd defendant (DW 2) was entirely to blame for the accident. If indeed he was doing 50 km/hr as he alleged, he should have been able to control the vehicle to avoid hitting the plaintiffs who were crossing the road.
31. I hold the defendants 100% liable in negligence.
32. I have considered the plaintiff's submissions on quantum of damages. The defendants did not file any submissions despite several adjournments to enable them to do so.
33. The 1st plaintiff sustained a deep cut on the left posterior thigh and soft tissue injuries on the shoulders. She has 15cm remnant scars which are of immense cosmetic significance. Her doctors report stated that she would require a necessary keloidal scar excision followed by radio and steroid therapy at a cost of ksh.200,000.
34. The 1st plaintiff is awarded damages as follows;
 - (i) General damages 700,000.
 - (ii) Special damages 99,722.Total: Ksh799,722/=
35. The 2nd plaintiff suffered the following injuries;



- i. Right sided cranial nerve 7 palsy upper motor neuron with facial asymmetry.
 - ii. Educued visual actuity in both eyes.
 - iii. Right lower limb shortening which requires special show to correct the shortening.
 - iv. Wheelchair bounce but can mobilize with a walking frame with support to get off the wheel chair.
 - v. Loss of hearing in the right ear.
 - vi. Loss of five moor movement in both hands with wasting of the intrinsic hand muscles and hypothenar muscles.
 - vii. Slowed dysarthric speed.
 - viii. Staggering while walking with support
 - ix. Post pointing positive on both left and right side.
36. I find that it is not in dispute that the 2nd plaintiff will never be able to support herself or get employment due to the seriousness of the injuries she sustained which were assessed at 80% permanent disability.
37. The 2nd plaintiff was an economic major student at the UON aged 20 years. She would have retired at 60 years and would have earned Ksh.60,000 per month. I have taken into account the vagaries of life and I adopt a multiplicand of Ksh.50,000 and a multiplier of 35 years.
38. The 2nd plaintiff is awarded general damages as follows;
- i. General damages for pain & suffering 6,000,000.
 - ii. Future medical expenses 5,000,000.
 - iii. Loss of earning capacity $50,000 \times 12 \times 35 = 21,000,000$.
 - iv. Nursing care/Aid 8,208,000
 - v. Special damages 3,375,413
- Total: 43,583,413=
39. Judgment be and is hereby entered in favor of the plaintiffs against the Defendants jointly and severally in the sum of Ksh:44,383,135/= together with costs of the suit and interest at court rates from the date of this judgment until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 5TH DAY OF MARCH, 2024.

.....
A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

