



**Wamae v Ng'ang'a (Civil Appeal E080 of 2021)
[2023] KEHC 2173 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E080 OF 2021**

JM CHIGITI, J

MARCH 1, 2023

BETWEEN

DANIEL MBUGUA WAMAE APPELLANT

AND

CATHERINE WAIRIMU NG'ANG'A RESPONDENT

(Being an Appeal from the whole Judgment of the Honorable Court Delivered on 29th April, 2021 at the Senior Magistrate's Court at Thika by Honorable Oscar Wanyaga -SRM)

JUDGMENT

Brief background;

1. On the November 29, 2017 the Appellant was riding on motor cycle Registration Number KMC 364Y as a pillion passenger when he was involved in an accident with Motor Vehicle Reg No KAM 844U along Thika Garissa Road.
2. He filed a suit against the Respondent claiming general and special damages for the injuries sustained as a result of the accident.
3. According to the Appellant the accident was caused by the Respondent who was driving motor vehicle Registration Number KAM 844U.

Analysis & Determination

4. I have considered the case and evidence by both parties and I find that 2 issues form for determination and these are;
 - a. Who should be held liable for the accident?



- b. The question of damages.
5. On the issue of liability, when the matter came up for hearing, the Plaintiff testified that on November 29, 2017 when he was on a motor bike motor registration No KMC 364Y vehicle registration KAM 844 U was driven negligently causing the accident.
 6. At the time of the accident he stated that he had a helmet on and a reflector jacket. He also testified that he saw the vehicle approach before hitting the motor bike. He said that the motor bike rider tried to turn the bike to no avail. He confirmed that the defendant took him to hospital.
 7. PW2 produced the police abstract. He confirmed that an accident occurred on November 19, 2017 involving motor vehicle with registration KAM 844U and a motor cycle registration No KMCA 354 Y at 16.00 hrs at Gatitu Junction-along Thika Garissa Road.
 8. The court has noted that the Defendant did not call any witnesses. The Defence remains as a mere statement on record.
 9. Section 107 (1) of the *Evidence Act*, provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 10. Section 109 of the *Evidence Act*, stipulates that

“the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”
 11. From the above evidence, I am satisfied that the Respondent proved that the Appellant drove motor vehicle Registration Number KAM 844U negligently and in such a manner as to cause the accident as pleaded in Paragraph 4 of the Plaintiff.
 12. I do not find any justification whatsoever why I should interfere with the finding on the issue of liability.
 13. The 2nd issue that I shall then determine is the question of damages. The Respondent sustained the injuries as set out in paragraph 6 of the Plaintiff.
 14. The doctor who testified as PW1 confirmed that the Respondent sustained the said injuries as a result of the accident. He produced a medical report as proof of the injuries as “Exhibit 1A”.
 15. From the medical report I have satisfied myself that the Respondent proved that she sustained the injuries as pleaded at Paragraph 6 of the Plaintiff.
 16. The parties filed submissions and relied on authorities in a bid to prove general damages. I have perused the same and I am satisfied that the trial magistrate awarded general damages that are proportional to the injuries sustained by the Appellant.
 17. The Respondent is also dissatisfied with the fact that the appellant was awarded special damages of Kshs 10,150/-. The Respondent had pleaded the same amount as paragraph 7 and prayed for the same in the Plaintiff.
 18. Special Damages must be both pleaded and proved, before they can be awarded by the Court. Suffice it to quote from the decision of the 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 AgJA - 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 degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

19. The Respondent proved that she spent Kshs 3,000/- through PW1. Receipts were produced to prove the 550/- for the motor vehicle search as pleaded, and the same is allowed and the attendance receipt as “Exhibit C” to prove that he charged Kshs 6, 000/- for court attendance.
20. I find that the Respondent proved the special damages as a result of which I find no justification to interfere with the trial courts finding on special damages.

Order

21. The appeal lacks merit and the same is dismissed with costs.

DATED AND DELIVERED AT KIAMBU THIS 1ST DAY OF MARCH, 2023.

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J. CHIGITI (SC)

JUDGE

