



REPUBLIC OF KENYA



**Mutiso v Kinyanjui & another (Civil Case 23 of 2018)
[2024] KEHC 14215 (KLR) (Civ) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14215 (KLR)

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

CIVIL

CIVIL CASE 23 OF 2018

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

LILIAN MWIKALI MUTISO PLAINTIFF

AND

FRANCIS MUKURIA KINYANJUI 1ST DEFENDANT

ELIJAH KURIA MBUNGU 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case Lilian Mwikali Mutiso (hereafter referred to as the plaintiff only) filed this suit against the two defendants Francis Mukuria Kinyanjui and Elijah Kuria Mbungu (hereafter referred to as the 1st and 2nd respectively) seeking the following;
 - a. special damages of Kshs. 30,056,727=
 - b. General damages for;
 - i. Pain and suffering
 - ii. Loss of amenities
 - iii. Loss of income
 - iv. Future medical expenses
 - c. Cost of the suit
 - d. Interest on (a) (b) and (c) at court rates
 - e. Any other reliefs that the court may deem fit to grant.



2. The cause of action arose on 25/9/2016 while the plaintiff was travelling as a lawful passenger in motor vehicle registration KCG 784M Isuzu bus which was owned by the 2nd defendant and which at the time of the accident was being driven by the 1st defendant.
3. In the plaint filed on 16/1/2018 amended on 14/1/2020, the plaintiff avers that on or about noon 25/9/2016 the plaintiff was a lawful passenger in motor vehicle registration No. KCG 784M when the 1st defendant so negligently and carelessly drove, managed and/or controlled the 2nd defendant's said motor vehicle causing it to lose control and roll several times along Langata road near Langata police station whereby the plaintiff suffered several injuries. The said accident was caused by the sole negligence and careless driving of the 1st defendant for which the 2nd defendant is vicariously liable.
4. The defendants filed a statement of defence dated 22/4/2024 where they denied the allegations of the plaintiff.
5. The hearing of the suit proceeded on 22/4/2024. The plaintiff testified as PW 3. She called a police officer (PW 1) who produced the police abstract form and a doctor (PW 2) who produced the medical report dated 16/2/2017.
6. The plaintiff adopted her two witness statements dated 16/1/2018 and a second witness statement which is undated filed in court on 16/1/2020. She stated that on 25/9/2016 at around noon she boarded the aforementioned motor vehicle at Masai Mall bus stop heading to Nairobi central business district. Along Langata road the 1st defendant negligently and carelessly drove the motor vehicle causing it to lose control and roll over several times.
7. As a consequence of the above accident, she suffered severe injuries as follows;
 - a. Polytrauma- pelvic fracture/ right above knee traumatic amputation
 - b. Rhabdomyolysis
 - c. Acute kidney injury
 - d. Sepsis
 - e. Multiple tissue abrasions
 - f. Pain and suffering for the 100 days he was in hospital
 - g. Hemorrhage shock
 - h. Rugged, deep, 35cm long right inguinal wound with exposed but intact femoral neurovascular bundle
 - i. Displaced fractures of the right superior pubic ramus and sacral alae with soft tissue change.
 - j. Grade IV liver and kidney injuries.
 - k. Collapse inferior vena cava
 - l. Abdominal injuries
 - m. Muscular branches and palpable pubic tubercle fracture
 - n. Perennial laceration with no rectal breach
 - o. Left leg laceration



8. The plaintiff stated that due to the severity of her injuries her left leg was amputated and requires prothesis. As a result she has suffered pain, loss and damages from which she claims from the defendant jointly or severally.
9. The plaintiff also produced the bundle of documents dated 16/1/2018 and 16/1/2020 as her exhibits.
10. The plaintiff said in cross-examination that due to the injuries she sustained, she is now disabled.
11. The defendants did not call any witnesses, the parties filed written submissions as follows;
12. The plaintiff submitted that the 1st and 2nd defendants were solely liable for the accident that occurred on 26/9/2016. PW3 Police Corporal Dickens stated that the accident was self-involving and it involved a motor vehicle KCG 784M an Isuzu Minibus driven by the 1st defendant. PW3 also indicated that several passengers including the plaintiff were seriously injured and one died on the spot. The driver was tried and convicted in TR/8655/2016 in *Republic v Francis M. Kinyanjui & 2 Others*.
13. The plaintiff argued that the defendant did not controvert the evidence of the plaintiff. The 2nd defendant is liable for the actions of the 1st defendant through the principle of vicarious liability. The plaintiff relied on the case of Rentco East Africa Limited v Dominic Mutua Ngozi [2021] eKLR which cited Vincent Okello v. Attorney General [1995] III KALR 129 in the matter it was submitted that vicarious liability imposes liability on Employers for the wrongful acts of their employees as such an employer will be held liable for Torts committed while an employee is conducting their duties.
14. The plaintiff further submitted that she produced a motor vehicle search that showed the 2nd defendant was the beneficial and insured owner of the motor vehicle KCG 784M. Thus, the plaintiff case that the defendants were 100% liable for the accident herein.
15. On special damages the plaintiff submitted that she has produced all the receipts in support of the Kshs. 30,056,727 sought for special damages as a result of the costs incurred for medical expenses.
16. On general damages the plaintiff submitted that she suffered a lot of pain and suffering especially during the accident and for the 100 days she was in hospital. The plaintiff has been rendered a person with disability, this was supported by Dr. Nathan Wafula Khamala who produced a medical report indicating that the plaintiff underwent an amputation. The plaintiff will be required to wear a prothesis all her life and should be compensated as she will not be able to lead a full life. The plaintiff is therefore seeking an award of Kshs. 6,000,000 and in support cited Mutunga v St Catherine Schools Limited & another [2024] eKLR where the court awarded Kshs. 6,000,000 as general damages.
17. The defendants submitted that the plaintiff did not prove his case beyond reasonable standards. The defendant urged the court to hold that the plaintiff contributory 20% to the accident.
18. The defendant argued that the plaintiff documents do not indicate that she had belted at the time the accident occurred. The plaintiff further ignored the drivers warning upon directing all the passengers to do so.
19. On quantum the defendants proposed that sum of Kshs. 100,000 as compensation for pain and suffering and in support cited *Joseph Njeru Luke & Others v. Stella M Kioko* [2020] eKLR where the respondent sustained pelvic structure and soft tissues injuries with no assessment of permanent disability but a possibility of pain in future and was awarded Kshs. 750,000 in 2020.
20. It is the duty of the plaintiff to prove her case to the required standard which is on a balance of probabilities.
21. The issues for determination in this case are as follows;



- i. Whether the plaintiff proved her case to the required standard.
 - ii. Whether the defendants are liable to pay the plaintiff the damages she is seeking against.
22. On the issue of liability, I find it is not in dispute that the plaintiff was a lawful passenger in motor vehicle registration no. KCG 784M Isuzu minibus when the accident occurred.
 23. The driver of the motor vehicle was charged with the offence of causing death by dangerous driving and he was fined.
 24. The plaintiff's evidence is not controverted by the defendants who did not adduce evidence.
 25. I find that the plaintiff has proved her case to the required standard in civil cases.
 26. The plaintiff did not contribute to the accident. I hold the 2nd defendant 100% liable in negligence and the 1st defendant vicariously liable as the owner of the motor vehicle registration no. KCG 784M.
 27. On the issue as to whether the defendants are liable to pay the plaintiff the damages she is seeking, the answer is in the affirmative.
 28. The general damages are assessed as follows;
 - General damages for pain & suffering 2,000,000
 - Loss of amenities 2,000,000
 - Special damages 30,056,727
 - Future medical expenses 10,000,000
 - Total 44,056,727
 29. Judgment be and is hereby entered in favour of the plaintiff against the defendants jointly and severally in the sum of ksh.44,056,727 together with costs and interest at court rates.
 30. The interest in respect of special damages from the date of the amended plaint and in respect of the general damages from this date until payment in full.

Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

