



**Ombati v Kariuki & another (Civil Case E486 of 2022)
[2025] KEMC 5 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEMC 5 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E486 OF 2022
PA NDEGE, SPM
FEBRUARY 6, 2025**

BETWEEN

EGLAY IMBUKA OMBATI PLAINTIFF

AND

SIMON KANYI KARIUKI 1ST DEFENDANT

BUNGOMA LINE SACCO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on or about 04th December 2021 along Nakuru – Eldoret Road. In the plaint on record, the plaintiff avers he was a passenger aboard the motor vehicle registration no. Kxx 1xxN along the aforesaid road, when the defendants, their agents, drivers, managers and/or employees so negligently drove, controlled or otherwise managed the said motor vehicle which was overtaking and collided head on with an oncoming lorry motor vehicle registration no. Kxx 4xx U ZG xx59, thereby causing the accident herein as a result of which he sustained serious body injuries, loss, loss of amenity and damages, which the defendants are therefore vicariously and/or directly held liable for omission and/or actions thereof.
2. The Plaintiff herein was a passenger in the motor vehicle alongside the plaintiff in CC EO488 OF 2022 (Oliver Ongidi) whose judgment is also being delivered today. The evidence, facts (substantive and procedural) and analysis in the judgment are therefore applicable to the judgment herein mutatis mutandis, and I therefore do not need to replicate them herein. In the instant suit, the Plaintiff prays for general damages, special damages of Kshs. 9,600/=, costs of the suit, and interests.
3. Return of Service on Record shows that the defendants were served with the suit papers but failed to enter appearance or file defence. As a result, judgment in default of appearance was entered against them. In my considered view therefore the claim in prayer (b) in the plaint are in the nature of a



liquidated demand. And as the defendants failed to enter appearance within the required time, and also failed to file defence, I hold and do therefore enter judgment for the plaintiff for a total of Kshs.9,600/= being the special damages pleaded and hence prayed for, with interest and costs. The same being liquidated needed not to be subjected to this formal proof.

4. The suit is thus undefended and proceeded to formal proof hearing for purposes of assessing the general damages payable as per payer no. (a) in the Plaintiff. In *Nyambati Nyaswabu Erick v Toyota Kenya Ltd & 2 Others* (2019) eKLR, Justice D.S Majanja held as doth:

General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.

5. For similar reasons as in the judgment in CC E488 OF 2022, I find contrasting evidence of whether the plaintiff herein sustained the fracture of the left fibula. Firstly, the discharge summary which could have contained the most immediate injuries for which the plaintiff was treated was not produced as exhibit herein. This therefore leaves us with the Medical Examination (P3) Report produced herein as PEXH. NO. 6 as the most reliable evidence herein to prove the immediate injuries that the plaintiff herein sustained as a result of the accident herein. the evidence therein confirms that the plaintiff sustained a fracture to the left tibia only.

6. I thus therefore conclude herein that the plaintiff herein has been able to prove to the required standard that he sustained the following injuries as a consequence of the accident herein: -

- a. Cut wound on the right supraorbital region,
- b. Lacerations on the occipital scalp,
- c. Blunt injury to the chest,
- d. Blunt injury to the back,
- e. Lacerations on the right leg,
- f. Fracture to the left tibia.

7. Learned counsel for the plaintiff relied on the authority of *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* (2013) eKLR and submitted for an award of Kshs. 1,500,000/=. For similar reasons as those given in CC E488 OF 2022, I do feel that an award of Kshs. 1,120,000/= would adequately compensate the plaintiff as general damages for the injuries pleaded and proved.

8. Accordingly, I do hereby enter judgement in favour of the plaintiff as follows:

- a. General damages KES 1, 120, 000/-
 - b. Special damages KES 9, 600/-
- Total KES 1,129,600/=

9. The Plaintiff shall further have costs in this suit and interests

DATED, SIGNED AND DELIVERED VIRTUALLY/ PHYSICALLY IN OPEN COURT AT NAKURU THIS 06TH DAY OF FEBRUARY,2025

ALOYCE-PETER-NDEGE



SENIOR PRINCIPAL MAGISTRATE

In the presence of:

Court Assistant: Janet

Counsel for the Plaintiff- Keston h/b Omusumdi.

Plaintiff: Absent

