



Ngugi v Bosibori (Civil Suit 651 of 2017) [2025] KEMC 76 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEMC 76 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT 651 OF 2017
PA NDEGE, SPM
MARCH 6, 2025**

BETWEEN

RICHARD MBURU NGUGI PLAINTIFF

AND

JANE BOSIBORI DEFENDANT

JUDGMENT

1. On or about 22/12/2016 along Lanet-Dundori road while the plaintiff was cycling as a pedal cyclist near 81KA Gate, the def on m/v reg. no. KBT 742J, the defendant, his authorised driver so negligently and carelessly drove, controlled and/or managed m/v reg.no. KBY 816Z causing it to hit the aforesaid plaintiff as a result whereof an accident occurred and the plaintiff sustained severe bodily injuries.
2. The defendant has already agreed to be 80% liable for the accident and the resultant injuries and loss. The plaintiff in his Plaint dated 25/05/2017, also pleaded special damages and loss of Kshs. 312,036.00 being the medical expenses, Kshs.7000/= for Medical Report, Kshs. 550/= for a motor vehicle search, and Kshs. 200 for police abstract.¹
3. When the matter came up before me on 19/12/2023, the plaintiff was represented by Mr. Matoke, while the Defence was represented by Mr. Odoyo. On that day, the parties herein entered an oral consent that was adopted to apply in this matter. Of most importance was the consent judgment on liability herein wherein the plaintiff agreed to a partial liability of 20%.
4. In the submissions filed herein, parties appear to agree that the plaintiff herein sustained the fractures to the right clavicle and soft tissue injuries of the face as pleaded, even though the evidence adduced herein establishes and or proves several other fractures and serious injuries. Since parties are bound by their pleadings and cases, I do not therefore need to evaluate the evidence herein with respect to the injuries. I will therefore go straight to the quantum.

¹ Refer to paragraph 6 of the Plaint



5. Whereas there were authorities cited by both counsels herein, I find the injuries herein not comparable to the ones sustained by the victims in any of the authorities cited. General damages are however damages at large whose purpose is to compensate the injured to the extent that such injury can be assuaged by a money award. It has repeatedly been stated that money cannot renew a physical frame that has been injured and crushed hence the courts can only award sums which must be viewed as giving reasonable compensation. Awards ought to be reasonable and must be assessed with moderation bearing in mind that large and inordinate awards may injure the body politic. Furthermore, it is desirable that so far as possible comparable injuries should be compensated by comparable awards putting into consideration the current prevailing economic circumstances including inflation (see *Tayab v Kinanu*[1983] KLR 114 and *West (h) & Son Ltd v Shepherd*[1964] AC 326, 345). Damages must therefore be within limits set by decided cases and also within the limits that the Kenyan economy can afford (see *Nyota Tissue Products v Lawrence Kuboka & 4 Others*[2020] eKLR)
6. There is however no one best formula of assessing damages in injury claims. Such assessment is an act of art rather than science. In HCCC No.752/1993 *Mutinda Matheka Vs Gulam Yusuf* that was cited by Warsame, Ag. J (as he then was) in *Jenipher Milay O. Okuku v Kenya Bus Services Ltd*(Kisumu HC Misc. Civil Appl.172/2001), *Wambilyangah J.*, held that the court will essentially consider the nature of the injuries suffered, the period of recuperation etc.²
7. I am also aware of the other guiding principles in awarding general damages such as: - damages should be within the limits set out by decided cases, within my pecuniary jurisdiction, within the limits that the Kenyan economy can afford and must be commensurate to the kind of injury, and extent of pain and suffering. Guided by the above principles, I find that Kshs. 540,000/= shall adequately compensate the plaintiff herein. I do therefore award the same subject to his 20% contribution in liability as consented to herein.
8. On Special Damages, I find proof from the Invoice or receipts admitted herein that Kshs. 7,000 was incurred being the cost of the Medical Report, and the inpatient bill from Mediheal Hospital proves the medical expenses of Kshs. 319,236/=. The plaintiff however pleaded for Kshs. 312,036.00 as special damages under the head of medical expenses and he shall therefore be entitled to the amount pleaded. I surprisingly do not find the invoice from the National Transport and Safety Authority (NTSA) herein and as such the claim of Kshs. 550/= has not been proved to the required standard and is therefore dismissed alongside the other claim for a police abstract. The plaintiff is therefore also awarded special damages of Kshs. 319,036/= which is also subject to his 20% contribution as consented to herein.

Conclusion and Disposal Orders

9. Judgment is hereby therefore entered for the plaintiff against the defendants herein as follows:
 - i. General damages for pain and suffering of Kshs. 432,000/=
 - ii. Special damages of Kshs. 255,228/80
 - iii. Costs of the suit and interest at court rates.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 06TH DAY OF MARCH 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

² See *Simon Taveta v Mercy Mutitu Njeru* [2014] Eklr, as cited in *James Okongo v Elmat Sagwe Ogega*[2021] eKLR



In the presence of;

Plaintiff's counsel: Wambeyi

Defence counsel: Kairu

Plaintiff: N/A

Defendant: N/A

Kairu: Praying for 30 days stay

Wambeyi: The same can be granted

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

CT: 30 days stay granted.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

