



**Sitonye v Greatrifft Express Shuttle Services Limited (Civil Case  
E064 of 2020) [2025] KEMC 77 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEMC 77 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL CASE E064 OF 2020  
PA NDEGE, SPM  
APRIL 29, 2025**

**BETWEEN**

**PURITY WAFULA SITONYE ..... PLAINTIFF**

**AND**

**GREATRIFT EXPRESS SHUTTLE SERVICES LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff in this case, Purity Wafula Sitonye, is praying for judgment against the defendant, Greatrifft express shuttle services, for special damages of Ksh.17,350 and general damages to be assessed by the court emanating from an accident that occurred on or about 29.11.19, as a consequence of which she sustained injuries and damages for which she holds the defendant vicariously liable. She brought the suit vide a plaint dated 2.10.20 and filed on 22.10.20.
2. The plaintiff's case herein is that he was a lawful passenger travelling aboard motor vehicle registration number KCB 87V when along Nakuru- Nairobi Highway or thereabouts , the defendants servant , agents , representatives and/or driver so recklessly , negligently and/or carelessly drove , controlled and/ or managed Motor Vehicle Registration KCB 878V that he permitted the same to lose control and knocked motor vehicle registration No KCE 249B thereby causing an accident as a result of the plaintiff sustained serious injuries and has suffered loss and damage, as outlined in paragraph 4 of the plaint.
3. The plaintiff particularized her injuries at paragraph 5 of the plaint as follows:
  - a. Mild head injury
  - b. Deep cut wounds on the scalp and face
  - c. Cut wounds on the left shoulder
  - d. Blunt injuries to the chest with hematoma formation



- e. Blunt injuries to the lower back
  - f. Multiple cut wound on the left forearm  
Particulars of special damages of the plaintiff
  - g. Medical expenses..... Kshs.13,800/=
  - h. Medical Report..... Kshs. 3000/=
  - i. Copy of Motor Vehicle Records.....Ksh.550/=
  - Total..... Kshs. 17,350/=
4. The plaintiff particularized her claim of negligence on the defendant's driver, servant and/or controller of motor vehicle registration No KCB 878V at paragraph 4 of her plaint as follows:
- a. Driving too fast at a speed which was excessive in the circumstances
  - b. Failing to exercise or maintain any proper effective control of motor vehicle registration No KCB 878V.
  - c. Failing to keep any or proper lookout or to have any or sufficient regard for the plaintiff herein and others.
  - d. Driving a defective motor vehicle
  - e. Failing to take any or special care.
  - f. Failing to stop, to slow down, to swerve, or in any other way to manage of control the said vehicle to prevent the accident
  - g. Failing to take any adequate measures to prevent motor vehicle registration No KCB 878V from causing the accident
5. The defendant entered their statement of defence pursuant to the ruling delivered on 10.12.21, filed by the firm Kimondo Gachoka & Co Advocates on 17.12.2, wherein it mainly disavowed the alleged negligence and ownership of the motor vehicle registration No KCB 878V. Furthermore, the defendant attributed the accident to the negligence of the plaintiff and the driver of the motor vehicle registration KCE 249B SCANIA TRAILER and particularized the same in its statement of defence.
- Particular negligence of the plaintiff
- a. Failing to take any adequate precaution for her own safety.
  - b. Failing to heed the instructions on safety precautions when travelling
  - c. Failing to heed the traffic rules and regulations when travelling.
  - d. Failing to buckle up the seat belt.
- Particulars of Negligence of the driver of KCE 249B/ZE 8803
- a. Failing to heed the rules if the highway
  - b. Failing to stop, slow down, to break or in any manner control the vehicle registration No KCE 249B Scania Trailer.
  - c. Failing to blow the horn or otherwise cautioning the driver of the bus thus causing the accident.



- d. Failing to remain on his lane while driving
  - e. Driving without due attention of the road and its users particularly to motor vehicle registration No KCB 878V
  - f. Driving carelessly, recklessly, negligently and dangerously thereby causing the accident
  - g. Driving under the influence of alcohol
  - h. Causing the accident
6. The plaintiff testified while the defendant failed to present any witnesses or evidence in its case. The plaintiff submitted several documentary evidences which includes A copy of the plaintiffs Identification card, Treatment notes from Nakuru level 5 hospital, Police Abstract, P3 Form, Dr. Titus Nzina Medical report and receipt, copy of motor vehicle records and a receipt, Receipts for treatment expenses, Treatment notes from St. Phillips medical canter, Treatment notes from Milele dental care limited and a copy the demand letter. At the close of the hearing and submissions, the accident and injuries have not been challenged. The remaining issues for determination are mainly as follows: -
- a. Whether the defendant is vicariously liable for the accident?
  - b. Whether the plaintiff is entitled to the reliefs sought?

**Basically, it is a determination on liability and quantum.**

7. On liability, the plaintiff raised the issue of vicarious liability on the defendant, pointing out that the driver was acting for the defendant and was driving in the course of his duties. Furthermore, the plaintiff proved on record that the defendant is the registered owner of motor vehicle KCB 878V relying on the NTSA motor vehicle copy of records. The doctrine of vicarious liability was expounded in the case of Morgan v Launchbury [1972] which stated that, to establish agency relationship it was necessary to show that the driver was using the motor vehicle at the owners request express or implied or in his instruction and was doing so in the performance of the task or duty thereby delegated to him by the owner. Further, In the words of Salmond and Heuston on the law of Torts 19<sup>th</sup> edition, [1982], vicarious liability is legal responsibility imposed on an employer although he is himself free from blame, for a tort committed by his employee in the course of his employment.
8. By virtue of the driver driving the defendants motor vehicle registered KCB 878V, it can be implied that the driver was acting for the defendant. Moreover, there is no suggestion that he was acting outside the scope of his employment by driving the motor vehicle from Nairobi to Kitale. These facts establish the necessary ingredients for vicarious liability.
9. Having established the defendant’s liability, the next issue is whether the plaintiff is entitled to the reliefs sought and is so the appropriate quantum of damages. The plaintiff prayed for both special and general damages arising from the injuries sustained in the accident. On special damages, the plaintiff produced the following: -
- a. Medical Report ..... Kshs.3000/=
  - b. Copy of Motor Vehicle records..... Kshs. 550/=
  - c. Medical Expenses (medical receipts).....Kshs.13,800/=
  - d. Total.....Kshs. 17,350/=



It is trite law that special damages must be specifically pleaded and strictly proved. The plaintiff has met this threshold, and the court therefore awards her Kshs. 17, 350 as special damages.

10. As for General damages, the court does the best in can in reaching an award reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries should as far as possible be compensated by comparable awards but it should be recalled that no two cases are exactly alike [ See Stanley Maore v Geoffery Mwenda,2004 eKLR]. The court is guided by previously decided cases with similar injuries. In Ukavi *v Erasmus (civil appeal E 018 of 2023)*, the court on appeal granted the respondent general damages of Kshs. 180,000/=, where the respondent had suffered mild head injury, Blunt trauma to the chest and limbs, multiple bruises, cut wounds, blood loss, soft tissue injury and physiological and physical pain, the doctors had stated that the respondent suffered grievous harm and recovery would be gradual.
11. Again, In Francis Omari Ogaro v JAO (minor suing through next friend and father God), [2021] KEHC 2358 (KLR), on appeal the court awarded the respondent a sum of Kshs. 180,000/=. The respondent in this case had sustained the following injuries: multiple cut wounds on the right lower limb, bruises on the right lower limb, bruises on both elbows, bruises on the right iliac region, bruises on the frontal region, bruises on the temporal region, laceration on the frontal region, cut wounds on the left iliac region, cut wounds on the frontal region , cut wounds on the temporal region and blunt trauma to the abdomen.
12. The plaintiff in the case herein, sustained injuries classified to a degree of grievous harm in the medical report on record. Taking precedent into account, the nature of the injuries, and the rise in the costs of living, this Honourable court finds that an award of Kshs.360,000/= in general damages will suffice.
13. In conclusion, Judgment is hereby entered in favour of the plaintiff, against the defendant as follows: -
  - a. Special damages.....Kshs. 17,350/=
  - b. General damages.....Kshs. 360,00/=
  - Total:..... Kshs. 377,350/=
14. Each party to bear its own costs to this suit and interests at courts rates.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 29TH DAY OF APRIL 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff Counsel:

Defence Counsel:

