



**Nderitu v Wakiinama Ltd & another (Civil Suit 1239 of 2019)
[2025] KEMC 101 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEMC 101 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT 1239 OF 2019
PA NDEGE, SPM
MAY 9, 2025**

BETWEEN

ROWENA WANJIKU NDERITU PLAINTIFF

AND

WAKIINAMA LTD 1ST DEFENDANT

DAVID KIMANI 2ND DEFENDANT

JUDGMENT

1. On or about 24/10/2019, the plaintiff herein was a fare paying passenger in motor vehicle registration number KCP 509T and while along Nakuru – Ravine road near Lake Oil Petro Station, the Defendant’s authorised driver, servant and/or agent carelessly and/or negligently drove and/or controlled motor vehicle registration number KCB 135J, and as a result of which an accident occurred. The plaintiff sustained soft tissue injuries on the anterior chest wall and the left leg¹. She particularised the injuries and special damages in paragraph 8 of her plaint dated 30/11/2019. She is blamed the defendant herein for the accident and the resultant injuries and damages.
2. The defendants filed their Statement of Defence dated 11/05/2020 on 04/06/2020 wherein they denied the plaintiff’s claim against them. They alternatively pleaded sole or substantial contribution on the part of the plaintiff and/or the driver of motor vehicle KCP 509T, whose particulars they pleaded at Paragraphs 6, 7 and 8 of their Statement of Defence.
3. A consent judgment was entered on liability where the defendant was to bear 85% liability. This matter then came up for hearing on assessment of damages on 27/11/2023. The plaintiff testified and produced the documents that she filed alongside the plaint herein. The defence case on the other hand closed without calling any witness. Parties then filed, and exchanged, their written submissions on

¹ Refer to the Medical Examination Report dated 26.11.2019 and Dr. Obed Omuyoma’s dated 12/11/2019, which were produced as Plaintiff’s exhibits numbers 4 and 8, respectively.



quantum. This matter is therefore pending for the assessment of the general damages payable for pain and suffering.

Evidence on Quantum

4. As per the Consent judgment, the plaintiff's injuries from the documents admitted herein; and further from the submissions adduced in respect thereof, the plaintiff did sustain the injuries pleaded due to the accident herein.

Determination on Quantum

5. Learned counsel for the plaintiff, M/s E. M. Juma & Ombui Advocates, cited the decision of Justice Ngaah Jairus, in *SWiss Contact Ltd & Peter Munguti Kieti Vrs Esther Another* [2019] e KLR² where the judge awarded Kshs. 200,000/= in 2019 for such superficial or soft tissue injuries, which included a blunt injury to the forehead and back; and swelling on the right buttock region, submitted and proposed an award of similar amount herein, mainly because of the inflation rate in Kenya. The learned counsel for the defence, M/S Githiru & Co, Advocates, on the other hand, proposed an award of Kshs. 50,000/=.
6. There is however no one best formula of assessing damages in injures 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 Vrs Kenya Bus Services Ltd (Kisumu HC MISC. Civil Appl. 172/2001)*, it was held that the court will essentially take into account the nature of the injuries suffered, the period of recuperation etc.
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. Justice Ngugi in *Ndungu Dennis Vrs Ann Wangari Ndirangu*, [2018] eKLR, stated that the policy goal of Courts is to try to compensate comparable injuries as far as possible by comparable awards.
8. Guided by the above principles, I find that the injuries herein are soft tissue injuries and bear a closer relation to those cited in the authority submitted by learned counsel for the plaintiff herein. The soft tissue injuries in *Swiss Contact Ltd & Peter Munguti Kieti Vrs Esther Another*, supra, might slightly not exactly appear to be comparable to the one sustained by the plaintiff herein. However, that variation has been factored and or taken care of by the rise in cost of living and inflation since the date of the award.
9. Considering the nature of the injuries, the nature of the pain expected, I do feel that a sum of Kshs. 200,000/= would adequately compensate the plaintiff for the pain and suffering she underwent herein. I do therefore award her the same.
10. As to special damages, it is trite, and as correctly submitted by the learned counsel for the defence, that the plaintiff is only entitled to special damages pleaded and proved by way of evidence (usually receipts). The plaintiff pleaded the following special damages:
 - a. Medical Report receipt: Kshs. 7,000/=
 - b. Filing of P3 Form: Kshs. 3,000/=
 - c. Police abstract: Kshs. 200/=

² High Court at Nyeri Civil Appeal No. 19 of 2017



d. Medical expenses: Kshs. 100/=

e. Official search: Kshs. 550/=

Total: Kshs. 10,850/=

11. I have gone through the exhibits produced by the plaintiff herein. I do find that only Kshs. 550/- cost of official search, Kshs. 7,000/- costs for the medical report and Kshs. 100/= medical expenses, have been proved vide PEXH NOs. 7, 9 and 10, respectively. I do therefore award special damages to that extent only, i.e. Kshs7,650/=.
12. Contrary to the learned counsel for the defences' submissions, a demand notice was issued before action. PEXH. NO. 2 is a demand letter to the defendants herein dated 20/11/2019. I find it sufficient and do hereby award the plaintiff the cost of this suit.

Conclusion and Disposal Orders

13. Judgment is therefore hereby entered against the defendant herein, and in favour of the plaintiff herein for Kshs. 207,650/00- being general and special damages, less 15% contribution as per the consent judgment on liability entered into herein, thereby giving a net of Kshs. 176,502.50. The plaintiff to also get the costs of the suit and interest at court rates.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 09TH DAY OF MAY, 2024

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Obura

Defence counsel:Mwashi h/b Githiru

Plaintiff:

Defendant:

Mwashi: Praying for 30 days stay and a copy of the judgment

Obura: No objection

CT: 30 days stay granted. The defence to be supplied with a copy of the judgment upon payment of the necessary costs.

