



REPUBLIC OF KENYA



**KENYA LAW**

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**GKA (Suing as the Father and as the Next Friend of AKA) v Sunguti & another  
(Civil Suit E853 of 2021) [2025] KEMC 133 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEMC 133 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL SUIT E853 OF 2021  
PA NDEGE, SPM  
JUNE 5, 2025**

**BETWEEN**

**GKA (SUING AS THE FATHER AND AS THE NEXT FRIEND OF  
AKA) ..... PLAINTIFF**

**AND**

**CALEB WANJALA SUNGUTI ..... 1<sup>ST</sup> DEFENDANT**

**ASANGO IVYN ATIENO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. On or about 24/07/2020, AKA, then a minor, was lawfully walking on a pedestrian pathway on the left side of Eldoret- Nakuru Highway when the 2<sup>nd</sup> Defendant negligently and recklessly drove, managed and/or controlled m/v reg. no. KCA 341T and caused or permitted it to hit the minor, as a result whereof the minor sustained severe injuries.
2. The defendant has already agreed to be 70% liable for the accident and the resultant injuries and loss. The minor sued through his father and next friend George Kipkirui Aruse, vide a Complaint dated 23/08/2021, and also pleaded special damages of Kshs. 29,660.00 being the costs of medical report of Kshs. 5,000/-, medication and other medical expenses of Kshs. 24,110/- and Kshs. 550/= for copy of records from NTSA.<sup>1</sup>
3. When the matter came up before me on 14/11/2023, the plaintiff was represented by Ms. Chepngetich, while the Defence was represented by Ms. Mwashu. On that day, the parties herein entered the oral consent on liability wherein the plaintiff agreed to a partial liability of 30%. This matter then proceeded for hearing for purposes of assessment of damages.

<sup>1</sup> Refer to paragraph 7 of the Complaint



4. In the hearing, the plaintiff was the only witness. He confirmed that his son was injured in the accident herein and as per his statement which he adopted as his evidence-in-chief. He further produced the documents which he had filed herein as PEXH. Nos 2 – 13. No much issue came from cross-examination concerning the injuries herein.
5. In the submissions filed herein, parties appear to agree that the victim herein sustained the moderate head injury with a fractured skull and a deep cut wound on the scalp leading to soft tissue injuries as pleaded. I will therefore go straight to the quantum.
6. Whereas there were authorities cited by both counsels herein, I find the injuries herein not comparable to the ones sustained by the victims in the authority cited by the learned counsel for the defence. I, on the other hand find the authorities cited by the learned counsel for the plaintiff more relevant to the injuries herein.
7. 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 Vrs Kinanu* [1983] Klr 114 And *West (h) & Son Ltd Vrs 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 Vrs Lawrence Kuboka & 4 Others* [2020] eKLR)
8. 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 vrs 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.<sup>2</sup>
9. 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. 600,000/= proposed by the learned counsel for the plaintiff shall adequately compensate the plaintiff herein. I do therefore award the same subject to his 30% contribution in liability as consented to herein.
10. On Special Damages, whereas I have only been able to find proof of Kshs. 16.110/- being treatment costs vide PEXH. No. 11, the learned counsel for the defence appears to have conceded to Kshs. 21,660/- which I do therefore hereby award as special damages and which is also subject to the plaintiff's 30% contribution as consented to herein.

### **Conclusion and Disposal Orders**

11. Judgment is hereby therefore entered for the plaintiff against the defendants herein as follows:
  - i. General damages for pain and suffering of Kshs. 420,000/=

<sup>2</sup> See *Simon Taveta Vrs Mercy Mutitu Njeru* [2014] Eklr, As Cited In *James Okongo Vrs Elmat Sagwe Ogega* [2021] eKLR



- ii. Special damages of Kshs. 15,162/=
- iii. Costs of the suit and interest at court rates.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 05<sup>TH</sup> DAY OF JUNE, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff's counsel: Temba

Defence counsel: Mwashhi

Plaintiff: n/a

Defendant:n/a

