



REPUBLIC OF KENYA



KENYA LAW
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**Mutonyo v Irungu & another (Civil Case E358 of 2021)
[2025] KEMC 146 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEMC 146 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E358 OF 2021
PA NDEGE, J
JUNE 5, 2025**

BETWEEN

MICHAEL MAINA MUTONYO AKA MICHAEL MAINA PLAINTIFF

AND

SUSAN WANJIRU IRUNGU 1ST DEFENDANT

GEORGE GITAU MUCHAI 2ND DEFENDANT

JUDGMENT

1. The suit herein was initiated by the plaintiff, against the defendants, for compensation, arising from a road traffic accident, which allegedly happened on 7th November 2020, along the Nakuru – Nairobi Highway, involving the plaintiff and motor vehicle KCU – 969B Toyota Landcruiser allegedly owned or controlled by the defendants at the material time. The plaintiff was allegedly a pedestrian along the said highway when at and or near Mwariki/ Kiondoo Area, the accident herein happened when he was violently hit with the aforesaid vehicle as a result of which he sustained serious bodily injuries. The plaintiff attributes attributed the accident to negligence on the part of the defendants.
2. A formal hearing was conducted, on 29th April 2025, when the plaintiff testified. He mainly adopted his statement and produced the documents filed alongside his plaint herein. The defendants despite being served did not attend the hearing and the same was therefore closed without their evidence. It follows that the defendants’ defence remained mere allegation. There has, indeed been many decided cases in this vein. On such case is, North End Trading Company Limited (Carrying on the Business Under the Registered Name of) Kenya Refuse Handlers Limited Vs. City Council Of Nairobi (2019) eKLR where it was stated thus: -
 18. In *Edward Muriga Through Stanley Muriga Vs. Nathaniel D. Schulter Civil Appeal No.23 of 1997*, it was held that where a defendant does not adduce evidence the plaintiff’s evidence is to be believed, as allegations by the defence is not evidence.



19. In the case of Motex Knitwear Limited Vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No.834 of 2002, Lesiit, J. citing the case of Autar Singh Bahra And Another Vs. Raju Govindji, HCCC No.548 of 1998 appreciated that: -
- ‘Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the 1st plaintiff’s case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.’
3. Similarly, the Court of Appeal in the case Edward Mariga through Stanley Mobisa Mariga Vs. Nathaniel David Shulter & Another [1979] eKLR said: -
- The respondents filed a defence in which they denied the appellant’s claim and averred that the accident was caused by the appellant’s own negligence in that he suddenly ran across the road and in the process was hit by the motor vehicle. The respondents did not give evidence and so the only explanation as to how the accident happened was the version put forward by the appellant and his brother.
4. The plaintiff however had the onus of proving his case against the defendants whether or not the defendants adduced evidence. This is because plaintiff’s case not being a purely liquidated claim ought to have been proved. Further this is because this was a defended claim and there was no interlocutory judgment entered against the defendants since the defendants had filed his memorandum of appearance and defence.
5. On liability, I have gone through the uncontroverted evidence contained in the plaintiff’s statement and I do find that the same proves negligence on the part of the defendants herein at 100%. The medical record relied on by the plaintiff, to guide the court, was the medico-legal report by Dr. W. Kiamba, dated 08th March 2021. The evidence proves that the plaintiff sustained the injuries pleaded, i.e. compound fracture of the right tibia and fibula and the multiple soft tissue injuries. Learned counsel for the plaintiff has relied on three authorities i.e. Vincent Mbogholi Vrs Harrison T. Chilyalya [2017] e KLR where the victim sustained a fracture of the right tibia and multiple soft tissue injuries and was awarded Kshs. 500,000/- in 2017; Rent Works East Africa Limited Vrs SSM (Minor suing through SMH as next friend) [2022] KEHC 9969 (KLR) where the claimant suffered degloving injury on the face and was awarded Kshs. 700,000 in 2022 and Joseph Musee Mua Vrs Julius Mbogo Mugi & 3 Others [2013] e KLR where the claimant suffered fracture of the left tibia and fibula, 2 broken upper jaw teeth and bruises and was awarded Kshs. 1,300,000 in 2013. Learned counsel has therefore proposed a sum of Kshs. 1,500,000/=.
6. I have however surveyed the following decisions, where the claimants had more suffered similar or comparable injuries. In George Raini Atungu Vrs Moffat Onsare Aunga [2021] eKLR (Ougo, J), Kshs. 650,000.00 was awarded for a fracture of the right tibia and fibula bones, a fracture of the left radius and ulna, and contusions to the chest and the pelvis. Nahson Nyabaro Nyandega Vrs Peter Nyakweba Ombogo [2021] eKLR (Maina, J), it was a compound fracture of the right tibia bone; cut wound on the right leg; and bruises on the face, and the court awarded Kshs. 650,000.00. In Atunga Vrs Mugambi [2022] KEHC 9854 (KLR) (Ougo, J), the injuries were fractures of the tibia and fibula bones; dislocation of the right hip joint; multiple lacerations on the lower limb; bruises, with multiple cut wounds, on the upper limbs; Dislocation of the right shoulder; chest trauma; and bruises on the frontal part of the head, and Kshs. 550,000.00 was awarded.



7. There is also Sammy Mugo Kinyanjui & Another Vrs Kairo Thuo [2017] eKLR (Kimondo, J), where the claimant had suffered fractures of the tibia and fibula bones of both legs, and an award of Kshs. 600,000.00 was made. In Pauline Gesare Onami Nrs Samuel Changamure & Another [2017] eKLR (HA Omondi, J), the injuries were fractures of the tibia and fibula bones of both legs, with lacerations on the neck area, blunt trauma on the chest and a deep cut wound on both legs and shaft, and an award of Kshs. 600,000.00 was made. Kshs. 800,000.00 was awarded, in David Mutembei Vrs Maurice Ochieng Odoyo [2019] eKLR (Musyoka, J), for a fracture of the right femur and a proximal fracture of the left tibia. In Damaris Wamucii Kagechu Vrs Joseph Kirui & Another [2019] eKLR (Msagha, J), Kshs. 1,500,000.00 was awarded, for bilateral compound fractures of the tibia and fibula bones of both legs.
8. Upon review of the decisions mentioned above, it should be abundantly clear that the damages proposed by the learned counsel are so inordinately high. I shall, accordingly award Kshs. 950,000.00, upon taking into account the seriousness of the injuries, the fluctuation of the local currency and the dates on the authorities reviewed.
9. As to special damages, I find that the plaintiff has only been able to prove Kshs. 20,000/- being the costs of the medico-legal report vide PEXH. No. 8; Kshs. 100/- being the treatment or medical expense vide PEXH. No. 8 and Kshs. 550/- being the costs of search on motor vehicle records via PEXH. No. 9. He is therefore entitled to Kshs. 20, 660/- as special damages.
10. I therefore enter judgment in favour of the plaintiff and against the defendants for the sum of Kshs. 970,660/-, costs and interest.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT NAKURU, THIS 05TH DAY OF JUNE. 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Kurere h/b Njuguna

Defence Counsel: N/A

Plaintiff: N/A

2nd Defendant: N/A

3rd Defendant: N/A

Kurere: Praying for a copy of the Jdg.

CT: Certified copy of the jd be supplied to the counsel upon payment of any requisite fee.

