



REPUBLIC OF KENYA

IN THE NAKURU LAW COURTS

CIVIL CASE 676 OF 2019

PA NDEGE, SPM

LEAH JEBIWOTT BETT.....PLAINTIFF

VERSUS

ALEX KAMANGU MUIGA.....1ST

DEFENDANT

SARAVIN NYAMBURA.....2ND

DEFENDANT

MOSES GATEMBE.....3RD

DEFENDANT

JUDGEMENT

1. The Plaintiff in this case, Leah Biwott Bett, is praying for judgment against the Defendants for general damages and Special damages of Kshs. 16,710/- emanating from a road

traffic accident that occurred on or about the 29th day of July 2018, as a consequence of which she sustained severe injuries. She brought this suit vide a Complaint dated 11th June, 2019.

2. It is common ground herein that the Plaintiff was a lawful passenger of Motor Vehicle Registration Number KBL 647 TOYOTA MATATU along Kamukunji - Lowe Solai Road when the accident herein occurred. It's the Plaintiff's case that the accident was solely caused by the Defendant's driver/ employee/ agent who so carelessly and/ or negligently drove, managed and/or controlled the aforesaid motor vehicle that it lost control and hit the motor cycle registration number KMDF 666J before veering off the road and overturning, reasons whereof she sustained the severe injuries outlined below: -

- a. Soft tissue injuries at the back
 - b. Soft tissue injuries of the sagittal region
3. The plaintiff particularized her claim of Defendants' negligence in Paragraph 8 of her Complaint. The Defendants have been sued in their capacity as the lawful registered and or beneficial owner(s) and or user(s) of the Motor Vehicle. They entered appearance and filed a joint defense statement in which they

aver that the Plaintiff and/or the rider of the motor cycle negligently contributed to the accident. They however did not call any witness in support of their case.

4. The plaintiff testified as PW1 and called a Police Constable Number 88793 from Molo Police Station, PW2, as her witness. At the close of the hearing and submissions, the accident and injuries have not been challenged. The Plaintiff and the Police Constable are the only witnesses who testified and produced various exhibits as the Defendants never adduced any evidence at all either in support of their defense and or to controvert Plaintiff's evidence. That being the case, liability and quantum are basically the issues of determination from the evidence tendered herein.

Determination on liability and quantum.

5. On liability, the plaintiff testified as PW1, adopted her statement dated 20/3/2025 and produced various exhibits. In her statement, she states that the vehicle herein lost control while trying to avoid the oncoming motor cycle and upon joining a marram road. That it veered off the road in the

process and overturned. That is the only direct evidence we have herein.

6. In a bid to determine and or apportion liability herein, I have gone through the submissions filed before this Honorable Court by the parties regarding this matter. I do agree that in an action for negligence, the burden of proof falls on the party alleging to establish each element of the negligence, hence it is for the Plaintiff herein to adduce evidence of facts on which she bases her claim. It must be established that there was a duty of care which was breached resulting to loss and damage to the Plaintiff. The Plaintiff herein therefore has a duty to prove her case on a balance of probabilities that the Defendant was so negligent so as to occasion the accident that led to the Plaintiff's injuries.

7. As aforestated, there was no dispute that there was an accident. There was no dispute that the accident happened while the defendants' driver was avoiding an oncoming vehicle, a motor cycle. He lost control, or veered off the road in the process. The issue was whether the action that the driver took, while avoiding that oncoming vehicle, could be said to be

negligent. It could be, depending on the evidence placed on record, and the onus was on the plaintiff to adduce the said evidence. The question that still lingers in my mind is 'was the action taken by the defendants negligent?'

8. In the evidence by the plaintiff herein, I do not find that she has been able to prove that the defendants drove at a speed which was too excessive in the circumstances, or that they failed to exercise or maintain any or sufficient or adequate control of the motor vehicle, or that they failed to give due regard to other lawful road users and especially the motor cycle herein or failing to stop, swerve etc. There is thus just no evidence to point a blame on the defendants.

9. I thus do find that liability has not been proved to the required standard and do hereby dismiss the plaintiff's claim with costs to the defendants. Had she succeeded, however, I would have awarded her Kshs. 200,000/- as general damages mainly relying on the authorities submitted by the learned counsel for the plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS...25th

.... DAY OF...September...2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Cheruiyot

Defence Counsel: Cherotich h/b Mwira

Plaintiff: n/a

1st Defendant: n/a

2nd Defendant: n/a

3rd Defendant: n/a