



REPUBLIC OF KENYA



**Ndungu v Ziara Diaries Limited (Civil Suit E559 of 2023)  
[2025] KEMC 218 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEMC 218 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL SUIT E559 OF 2023  
PA NDEGE, SPM  
SEPTEMBER 18, 2025**

**BETWEEN**

**FAUSTIN NDUNGU KARIUKI AKA PHOSTINE NDUNGU ..... PLAINTIFF**

**AND**

**ZIARA DIARIES LIMITED ..... DEFENDANT**

**JUDGMENT**

1. On or about 12/01/2023, the Plaintiff was a lawful pedestrian within Mau Narok Shopping Centre at Mau- Narok Secondary School Entrance area when the lawful/ authorised driver/ rider of motor cycle registration number KMGA – 814 J DAYUN) (hereinafter called ‘The said motor cycle and/or motor cycle herein), in his or her lawful course of duty, employment and or engagement so carelessly, negligently and /or recklessly rode, managed and/or controlled the same and thereby permitting it and/or casing the same to violently hit, collide with, smash, run-over and or ram into the Plaintiff herein as a result of which he sustained serious bodily injuries.
2. The defendant has already agreed to be 60% liable for the accident and the resultant injuries and loss. The Plaintiff sued vide a Plaint dated 20/09/2023, and also pleaded special damages of Kshs. 45,540/- being the costs of medical legal report of Kshs. 16,000/-, medication of Kshs. 28,990/- and Kshs. 550/= for copy of records from NTSA.<sup>1</sup>
3. When the matter came up before me on 06/05/2025, the plaintiff was represented by Mr. Njuguna, while the Defence was represented by Mr. Kisila. On that day, the parties herein entered the consent on liability wherein the plaintiff agreed to a partial liability of 40%. Parties also agreed to adopt the documents filed by them as exhibits herein so as to aid the court in making a determination on quantum.

<sup>1</sup> Refer to paragraph 5 of the Plaint



4. In the submissions filed herein, parties appear to agree that the victim herein sustained the injuries pleaded, i.e. displaced distal fractures of the right tibia and fibula and soft tissue injuries of the right leg. I will therefore go straight to the quantum.
5. Whereas there were authorities cited by both counsels herein, I find the injuries herein not comparable to any of them. 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 v Kinanu*[1983] KLR 114 and *West (h) & Son Ltd v 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 v Lawrence Kuboka & 4 Others* [2020] eKLR)
6. 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 v Gulam Yusuf* that was cited by Warsame, Ag. J (as he then was) in *Jenipher Milay O. Okuku v 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.  
  
See *Simon Taveta v Mery Mutitu Njeru* [2014] eKLR, as cited in *Jame Okongo v Sagwe Ogega* [2021] eKLR
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. Guided by the above principles, I find that Kshs. 820,000/= shall adequately compensate the plaintiff herein. I do therefore award the same subject to his 40% contribution in liability as consented to herein.
8. On Special Damages, I have only been able to find proof of Kshs. 16000/- being medico-legal report vide PEXH. No. 9; Kshs. 8990, being medical or treatment expenses vide the same exhibit; and Kshs. 550/- being vehicle inquiry fee vide PEXH. NO.10. I do therefore hereby award the same at Ksh.25,540/- as special damages and which is also subject to the plaintiff's 40% contribution as consented to herein.
9. As to the loss of income/ earnings, the parties herein are in consensus that an amount of Kshs. 43,890.00 is deserved based on the minimum wage for unskilled labourers and the period of temporary incapacity herein. I thus do hereby also award the same subject to the plaintiff's 40% contribution as consented to herein.

### **Conclusion and Disposal Orders**

10. Judgment is hereby therefore entered for the plaintiff against the defendants herein as follows:
  - i. General damages for pain and suffering of Kshs. 492,000/=
  - ii. Special damages of Kshs. 15,324/=
  - iii. Loss of Income/ Earnings of Kshs, 26,334/-



iv. Costs of the suit and interest at court rates.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 18<sup>TH</sup> DAY OF  
SEPTEMBER, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff's counsel: Njuguna

Defence counsel: Mwangi

Plaintiff: n/a

Defendant: n/a

Mwangi: Seeking 30 days stay of execution

Njuguna: No objection

CT: 30 days stay granted .

