



**Ichami v Bakemark Limited (Civil Suit E369 of 2022)  
[2024] KEMC 54 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEMC 54 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL SUIT E369 OF 2022  
PA NDEGE, SPM  
MAY 30, 2024**

**BETWEEN**

**AYUB ICHAMI ..... PLAINTIFF**

**AND**

**BAKEMARK LIMITED ..... DEFENDANT**

**JUDGMENT**

1. This is a case based on road traffic accident that occurred on 29<sup>th</sup> September, 2021 along the Gilgil-Nakuru road at Mbaruk area within Nakuru County involving motor vehicle registration number KDB 382E in which the plaintiff herein was a lawful passenger in at the time. The case was brought vide a plaint dated 13/4/2022 but filed on 20/4/2022. In the plaint, the plaintiff averred that the accident happened when, on the material date, the defendant's authorized driver carelessly and negligently drove the aforementioned motor vehicle causing it to have a collision with motor vehicle registration number KCU 495A as a result of which the plaintiff suffered serious bodily injuries.
2. On 2<sup>nd</sup> June 2022, the defendant entered appearance and filed a statement of Defence dated 27<sup>th</sup> May 2022. In the said statement of defence, the occurrence of the accident was denied. But in the alternative, it was averred that if the accident occurred, then its occurrence was contributed to by the negligence and want of care by the plaintiff.
3. The parties agreed on liability and consent judgment on liability was entered by consent by the parties on 13<sup>th</sup> February 2024 in the ratio of 90:10 in favour of the plaintiff against the defendant herein. What remained, as parties could not reach consensus, is the quantum of damages payable.
4. The plaintiff was the only witness herein. He testified and also produced several documents, the relevant ones being the medical evidence. The defence's medical report was also admitted as evidence herein without calling the maker.



5. It is trite that in awarding damages, the court considers the nature and the extent of injuries in relation to awards in similar cases. In *Denshire Muteti Wambua vs Kenya Power and Lightning Company (2013) e KLR*, it was stated that the general method of approach in assessment of damages, is that comparable injuries should as far as possible be compensated by comparable awards, keeping in mind the correct levels of awards in similar cases. Also, in *H. West and Son Ltd vs Shepherd (1964) AC 326*, the court held: - ‘...., but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.’
6. The plaintiff’s counsel in their written submissions submitted for an award of ksh.450,000/= while the defendant’s in their written submissions prayed for ksh.150,000/=. In *Michael Okello vs Priscilla Atieno (2019) e KLR*, the court substituted the award of ksh.500,000 to Ksh.250,000. Most injuries were soft tissue injuries and mostly blunt injuries which are similar to the one in this case.
7. The plaintiff in his submissions relied on the authority of *Naivasha H.C.C.A No 64 of 2018, Robinson Njoroge vs Daniel Ombasa (2021) e KLR* where the high court on appeal upheld the award of ksh.300,000 for similar injuries which included a deep cut wound on the forehead. This judgement was delivered on 12<sup>th</sup> July, 2021, almost three years ago. The defendant in his submissions relied on the in *Justine Nyamweya Ochoki & Another v Jumaa Karisa Kipingwa (2020) eKLR*, where the respondent suffered a blunt object injury to the chest and blunt object injury to the left wrist and was awarded Ksh.300, 000/=. On appeal Nyakundi J. set aside that amount and awarded Ksh.150,000/=.
8. The report by Dr. Steven Onyango dated 18/11/2021 contained injuries reported at the time of the accident. Treatment received show that the plaintiff was taken to St. Marys’ Hospital Gilgil, he was admitted for 4 days in hospital, injected with tetanus toxoid, given antibiotics, wounds were cleaned and dressed, before he was discharged home on oral antibiotic. In addition, the medical report prepared by Dr. Onyango enumerates the injuries suffered by the Plaintiff as:
  - i. Soft tissue injuries of the left anterior chest.
  - ii. Multiple bruises on the back.
  - iii. Bruises and laceration on the angle of the joint with reduced range of walking.
  - iv. Numbness on the left lower limb.
9. The defendants medical report dated 7/3/2023 show that injuries sustained are as follows:
  - i. Abrasional wound right foot.
  - ii. Blunt trauma to the chest, back and left leg.
  - iii. The plaintiff injuries are consistent with those due to blunt trauma as may have occurred during said accident. He sustained soft tissue injuries- made full recovery. No further complication.
10. In *Shah & another vs Shah & other (2003) 1 EA* the court further stated that if there is a conflict of expert opinion, acceptance of the expert evidence of scientific conclusion will be extremely persuasive in assisting the court to reach his own opinion. The plaintiff produced the medical reports, the medical treatment notes from Gilgil Hospital, diagrams of X-rays and request form for X-ray. Since it has been supported by the several exhibits, I shall rely on the evidence produced by the plaintiff. Thus, the evidence tendered by the plaintiff is more corroborative than the medical report admitted on behalf of the defendant. I do therefore agree with the plaintiff’s counsel and do award Kshs. 400,000/= as



general damages for pain and suffering. I have considered the effect of inflation and the rise in the cost of living since the Kshs. 300,000/= award was made in 2021 in the case of Robinson Njoroge vrs Daniel Ombasa, supra, that was relied on by the learned counsel for the plaintiff.

11. It is trite law that special damages ought to be specifically pleaded. The Court of Appeal in Jogoo Kimakia Bus services ltd v Electrocom International Ltd (1992) KLR 777 stated that special damages are precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.
12. The plaintiff produced the following PExb 7b, a receipt of Kshs 6,000 being the cost of medical report, PExb 8b of Ksh 550, being the cost of the motor vehicle search and a receipt attached to the demand letter, Pexb. 9 for Kshs 140. All the aforementioned sum up to Ksh 6690. I thus find that the plaintiff has been able to prove all the special damages pleaded.
13. I do therefore hereby find that the plaintiff is entitled to Kshs. 406690.00 less 10% contributions leaving a net of ksh.366,021/=, costs and interest.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS...30th... DAY OF MAY ,2024**

**A.P NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Imbwaga for the Plaintiff

Kipchumba for the Defendant.

**A.P NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

**30/05/2024**

Kipchumba: Praying for 30 days stay of execution

Imbwaga: No objection. The judgment be uploaded unto the CTS for our clients to follow.

**A.P NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

**30/05/24**

CT: 30 days stay of execution granted.

**A.P NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

**30/05/24**

