



REPUBLIC OF KENYA



**Miriti v Maina & another (Civil Case E013 of 2023)
[2024] KEMC 112 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 112 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CIVIL CASE E013 OF 2023
AT SITATI, SPM
JUNE 28, 2024**

BETWEEN

SILAS MBAYA MIRITI PLAINTIFF

AND

JOHN KIARA MAINA 1ST DEFENDANT

DUNCAN GATHOGO KARURI 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 6th June, 2023 verified by an affidavit of similar date, the plaintiff prayed for :-
 - a. General damages for pain, suffering and loss of amenities.
 - b. Special damages as provided above.
 - c. Costs of the suit and interest at court rates.
2. Accompanying the plaint were: Witness statement of the plaintiff dated 6th June, 2024. List and bundle of documents Plaintiff's ID Card Police Abstract P3 Form Treatment notes Medical report Receipt for medical report Hospital attendance card from the Meru Teaching and Referral Demand letter
3. The firm of Nkunja & Company Advocates represented the plaintiff.
4. The suit was opposed by a statement of defence dated 26th June, 2023 wherein the defendant denied liability, pleaded contributory negligence and prayed for the dismissal of the suit with costs. Accompanying the defence were the written statement of the 2 defendants. The firm of Kiruki & Kayuka Advocates represented the defendants.
5. At the hearing of the case, the parties recorded the following consent that the court adopted as its ORDERS:



1. The parties consent on liability on favour of the plaintiff as against the defendant in the ratio of 80:20.
2. The parties shall submit on quantum.
3. The plaintiff's written statement dated 6/6/23 is adopted as evidence in court.
4. The plaintiff's list and bundle of documents dated 06/06/23 are admitted as exhibits in the case.
5. Parties shall exchange written submissions on quantum and costs within 14 days of today for the plaintiff and 14 days thereafter for the defendant.
6. The Defendant's list and bundle of documents dated 8/2/2024 is adopted as evidence in the defence.
7. The defendant's written witness statement of John Kiara Maina is admitted as his testimony.
8. Judgement on 28/06/2024.

The Defendants' Submissions

6. It was contended that medical report by Dr. Kioga was inconclusive on the precise injuries suffered by the plaintiff but that on the other medical documents the plaintiff had proved the following injuries: Sided neck pains and tenderness, Sided chest pains and tenderness, Elbow joint injury, Bilateral wrist injury.
7. On the Court of Appeal authority of *David Bagine V Martin Bundi (1997)* eKLR it was submitted that special damages must be specifically proved and for the present case, not all the claimed special damages had been proved.
8. Further reference was made to the authority of *Leonard Nyongesa V Derrick Ngula Righa (2013)* eKLR for the argument that if a receipt had no stamp duty it should not be admitted.
9. On the general damages, the authorities of *FM (A Minor suing through Mother and Next Friend MWM) –V- JNM & Another (2020)* eKLR and *DG (A Minor suing through her next friend MOR) –v- Richard Otieno Onyisi (2021)* eKLR for the argument that comparable injuries should attract comparable awards. The defendant urged the court to apply the authority of *Justine Nyamweya Ochoko & another –v- Jumaa Karisa Kipingwa (2020)* eKLR where the High Court awarded Kshs 150,000/- as general damages for pain and suffering where the plaintiff had suffered blunt object injury to the lower lip, blunt object injury to the chest, blunt object injury to the left wrist and soft tissue injuries.
10. Also relied on were the following authorities: *FK (A Minor Suing Through her mother and Next Friend MKA) v Freight World Logistics Limited & another (Civil Appeal E010 of 2021)* [2023] KEHC 22400 (KLR) (22 September 2023) (Judgment) where the Appellant had sustained blunt injury to the anterior chest wall leading to soft tissue injuries, blunt injury to the left elbow joint leading to soft tissue injuries, blunt injuries to the left ankle joint leading to soft tissue injuries. The Court upheld the trial court award of Kshs 90,000/= for general damages for pain and suffering. *Daniel Gatana Ndungu & another v Harrison Angore Katana [2020]* eKLR, the court revised and award of KShs. 350,000/= to 140,000/= for a respondent who had suffered: cut on the head, blunt injury to the right knee, multiple bruises on the upper limbs and bruises on the right knee. In the case of *FM (Suing through the Mother and Next of Friend MWM) V JNM & Another [2020]* eKLR the court awarded K.Shs. 100,000 for soft tissue injuries to a Respondent who had sustained blunt object injury to the head, neck, limbs, thorax and abdomen which the judge had characterized as soft tissue injuries.



11. The defendant submitted that the plaintiff was only entitled to the following reliefs in the case: Special damages KSHS 550/= General damages Kshs 150,000/= Sub-total Kshs 150, 550/- Less 20% contributory negligence Kshs 30, 110 Net Award Kshs 120, 440 Each party to bear its own costs.

The Plaintiff's Submissions

12. The plaintiff submitted that he had made out case for the grant of all the reliefs prayed for. Reliance was placed on the following authorities to the submission that Kshs 400, 000/= as general damages and Kshs 20, 550/- would be fair compensation taking into account inflation and passage of time: Lake Naivasha Growers –v- Muigai Thuka (2020)eKLR where general damages was awarded at Kshs 250, 000 for soft tissue injuries Michael Okello –v- Priscilla Atieno (2021)eKLR where general damages was awarded at Kshs 250, 000 for soft tissue injuries.

Issue for Determination

13. The only issue to be decided is the quantum of damages awardable for this case. Liability was already resolved.
14. On special damages, the court is satisfied that Kshs 20, 550/= was proved and this is awarded with its interest at 14% from date of filing the suit till payment in full. This decision has been made after considering that the issue of lack of revenue stamp was raised after the horse had already bolted for it was a question that should have been raised at the pre-trial stage to give the plaintiff ample time to deal with the issue as was discussed in the authority of Wycliffe Lubanga Kefa v Dennis Ochola & another [2020] eKLR (W.M. Musyoka J.) held that:

14. The only matter for me to consider is whether the trial court was justified to hold that the said receipts were not admissible as evidence in view of the provisions of section 19(1) of the *Stamp Duty Act*, Cap 480, Laws of Kenya. That provision is about receiving the documents in evidence where stamp duty was not paid. The courts have consistently said that where a party seeks to rely on unstamped receipts, the trial court should give time to that party to correct the anomaly. See *Bagahat Ram vs. Rattan Chand (2)* [1930] AIR Lah 854, *Sunderji Nanji Limited vs. Mohamedali Kassam Bhaloo* [1958] EA 762 and *Mwanahamisi Omar Mzee also known as Fatuma Mohamed Ali vs. Chengo Kahindi Biryā & another* [2018] eKLR. Should the stamp duty be paid thereafter, the court ought to receive the document as evidence, but in default it should decline to admit the document.

15. In *Mumias SPMCC No. 1113 of 2006*, the trial court, when confronted with the receipts sought to be produced before stamp duty was paid, did not inform the appellant that he ought to pay the stamp duty nor give him time to pay, as suggested in *Bagahat Ram vs. Rattan Chand (supra)*, *Sunderji Nanji Limited vs. Mohamedali Kassam Bhaloo (supra)* and *Mwanahamisi Omar Mzee also known as Fatuma Mohamed Ali vs. Chengo Kahindi Biryā & another (supra)*. Instead, the trial court received and admitted the documents in evidence, despite the lack of revenue or stamp duty stamps, and marked the same as exhibits, numbers 2 to 7. The question then is whether, having received the said receipts as evidence and marked them as exhibits, the trial court could later on, in its judgment, say that they were not admissible. The holding in the judgment, that the receipts were not admissible, was a contradiction, for



the court had already admitted them in evidence and marked them as exhibits. Having accepted the documents at the oral hearing, the court was not justified in rejecting them at the judgment. It has been suggested in a number of other cases that such evidence could be accepted so long as no one was complaining, and further that, in any event, it should be the issuer of the receipt who ought to affix the stamp and not the buyer.”

15. On general damages taking into account the type and extent of the injuries suffered by the plaintiff, the court having considered the rival authorities enters judgement at Kshs 270, 000/= as general damages for pain, suffering and loss of amenities taking into account inflation and passage of time. Less 20% contributory negligence.
16. Costs to the plaintiff. Interest at 14% from date of judgement till payment in full.

DATED, READ AND SIGNED AT GITHONGO LAW COURT THIS 28H DAY OF JUNE, 2024

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Miss Oteko Adv For Defendants

Miss Kiema Adv For The Plaintiff

Miss Oteko: Pray for 30 days stays of execution

Court: 30 Days of Stay of execution of allowed.

