



REPUBLIC OF KENYA



KENYA LAW
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**Ochomba v Mwangi & 2 others (Civil Suit E611 of 2023)
[2024] KEMC 154 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 154 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E611 OF 2023
PA NDEGE, SPM
JUNE 20, 2024**

BETWEEN

JOSHUA OCHOMBA PLAINTIFF

AND

SAMUEL WAHOME MWANGI 1ST DEFENDANT

TIUS NYAGA NJAGI 2ND DEFENDANT

DANCUN MWANGI KARIUKI 3RD DEFENDANT

JUDGMENT

1. This is a case based on road traffic accident that occurred on or about 18th July, 2023 along the Nairobi - Nakuru Highway at Railways Bridge area involving motor vehicle registration numbers KCM 702 F, Toyota Hiace Matatu, being driven by the plaintiff and KBA 697 G Isuzu NKR, being driven by either one of the defendants' and or any other designated driver thereof. In the plaint, the plaintiff averred that the accident happened when, on the material date, the defendants' lawful/ designated/ authorized driver in his or her lawful course of duty, employment and or engagement so carelessly, negligently and/ or recklessly drove, managed and/or controlled their aforesaid vehicle and thereby permitted it and/or caused the same to violently hit, collide with, plough and or ram into the matatu that the plaintiff was driving as a result of which the plaintiff sustained serious bodily injuries.
2. The defendants despite being served, failed to enter appearance and file defence and interlocutory judgment has already been entered against them. As correctly submitted by the learned counsel for the Plaintiff, the defendants have thus already been found 100% liable for the accident and the special damages pleaded. What is remaining is the assessment of general damages awardable herein. The assessment proceeded by way of formal proof.
3. The plaintiff was the only witness in the assessment. He testified and also produced several documents, the relevant ones being the medical evidence found in the Outpatient Clinic Card dated 20/04/2023,



Prescription Sheet, Medical Examination [P3 Form] Report dated 24/07/2023 and Dr. Obed Omuyoma's medical report dated 09/08/2023 [all respectively produced herein as PEXH. NOS 3A, 3B, 4 and 6]. They all prove that the plaintiff sustained the injuries pleaded, and as a result of the road traffic accident herein.

4. 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.'
5. The plaintiff's counsel in their written submissions submitted for an award of ksh.250,000/=. He cited several authorities to back his proposal. I have considered all the authorities cited and I do agree that Kshs. 250,000/- proposed shall sufficiently compensate the plaintiff for the multiple soft-tissue injuries sustained herein. I thus do hereby award the same, together with the Kshs.20,550/- special damages that was however not subject of the assessment herein. Judgment is accordingly hereby entered in favour of the plaintiff and against the defendants for the sum of Kshs. 270,550/=, costs and interest.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF JUNE, 2024

A.P NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: N/A

