



**Cherusei v Wakinama Limited & another (Civil Suit 1244 of 2019)
[2024] KEMC 153 (KLR) (3 September 2024) (Judgment)**

Neutral citation: [2024] KEMC 153 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT 1244 OF 2019
PA NDEGE, SPM
SEPTEMBER 3, 2024**

BETWEEN

KIPKERUI CHERUSEI PLAINTIFF

AND

WAKINAMA LIMITED 1ST DEFENDANT

DAVID KIMANI 2ND DEFENDANT

JUDGMENT

1. On or about 24.10.2019, the plaintiff herein, Kipkerui Cherusei, was involved in a road traffic accident while a fare paying passenger in motor vehicle registration number KCP 509T. At all material times herein, the 1st Defendant, Wakinama LTD, was the registered owner of motor vehicle registration number KCB 135J. It's the plaintiff's case that he was a fare paying passenger in motor vehicle registration number KCP 509T, when the Defendant's authorised driver and/or agent/ servant so negligently and/or carelessly drove and or controlled motor vehicle number KCB 135J that it caused the accident herein in which the plaintiff sustained the following injuries and damages: -

Particulars Of Injuries Sustained

- a. Deep cut wound on the lower hip leading to soft tissues injuries
- b. Severe soft tissue injuries of the left hand
- c. Soft tissue injuries of the forehead.

Special Damages

- i. Medical report Kshs. 7,000/=
- ii. Filling of P3 form Kshs. 3,000/=



- iii. Medical expenses Kshs. 515/=
 - iv. Official search Kshs. 550/=
 - v. Police abstract Kshs. 200/=
- Total Kshs. 11, 265/=
2. The defendant has already agreed to be 85% liable for the accident and the resultant injuries and loss. The matter thus proceeded for the hearing merely for the purpose of assessing the damages payable herein, if any. The hearing took place on 04/06/2024. On that day, the plaintiff testified as the sole witness herein (PW1). He basically adapted his statement filed herein, and dated 24.10.2019, as PEXH. NO. 1. He also produced the documents which he filed herein as PEXH. NO. 2 to 10, respectively, as per the order of their filing. They are numbered in that order as follows: -
- a. Demand notice dated 20/11/2019
 - b. Treatment notes from Provincial General Hospital dated 24.10.2019
 - c. Medical examination (P3) report
 - d. Police abstract
 - e. Motor vehicle copy of records dated 04/11/2019
 - f. NTSA Invoice dated 04/11/2019 for Kshs. 550/= being vehicle inquiry fee
 - g. Dr. Obed Omuyoma's medico-legal report dated 12/11/2019
 - h. Dr Obed Omuyoma's receipt for Kshs. 7,000/= being cost of the medical report
 - i. 2 official receipts totalling to Kshs. 515/= from Rift Valley PGH for treatment expenses
3. In his evidence in court, the plaintiff confirmed that he was injured as pleaded. That the injuries were as a result of the road traffic accident herein. That he was treated for the injuries and that he incurred the expenses pleaded as a result of the treatments. That he is now fully healed and has resumed his normal duties as usual. He however denied spending any money for the P3 form and the police abstract as claimed in his pleadings. Of most importance herein, however, was the consent judgment on liability herein wherein the plaintiff agreed to a partial liability of 15%.
4. Parties thereafter closed their respective cases and the submissions were confirmed filed and exchanged on 23/07/2024, and this judgment was fixed for the 03/09/2024. In the submissions, parties were in agreement that the plaintiff herein sustained the serious injuries as pleaded. I do not therefore need to evaluate the evidence herein with respect to the injury. I will therefore go straight to the quantum.

Submissions on Quantum

5. learned counsel for the plaintiff herein, E. M. Juma & Ombui, relied on the impressive authority of Swiss Contact Ltd & Peter Munguti Kieti Vrs Esther Mumbi Muthee [2019] eKLR, and proposed an award of Kshs 200,000/= as general damages for pain and suffering. Counsel for the Defendant, Githiru And Company, on the other hand submitted for a lower award of Kshs. 50,000/=. Be that as it may, I do agree with the learned counsel for the defendant that damages must be reasonable and be within limits set by decided cases and also within the limits that the Kenyan economy can afford.



Determination

6. I do find the injuries suffered by the plaintiff herein to be comparable to the injuries suffered by the victims in the case submitted by the plaintiff's counsel herein. There is however no one best formula of assessing damages in injures claims. Such assessment is an act of art rather than science. In HCCC NO. 752/1993 Mutinda Matheka Vs Gulam Yusuf that was cited by Warsame, Ag. J (as he then was) in Jenipher Milay O. Okuku Vrs Kenya Bus Services Ltd (kisumu Hc Misc. Civil APPL. 172/2001), Wambilyangah J., held that the court will essentially take into account the nature of the injuries suffered, the period of recuperation etc.
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.
8. Guided by the above principles, I find that Kshs. 200,000/= proposed by the learned counsel for the plaintiff and reliance being made to the decision in Swiss Contact Ltd & Peter Munguti Kieti Vrs Esther Mumbi Muthee [2019], supra, shall adequately compensate the plaintiff herein. I do therefore award the same subject to his 15% contribution in liability as consented to herein.
9. On Special Damages, I do find that only Kshs. 7,000/- medical report, Kshs. 550/- cost of the official search and Kshs. 515/- medical expenses have been proved vide PEXH. NOS. 9, 7 and 10, respectively. I do therefore assess the special damages herein at Kshs. 8,065/- and as submitted by the learned counsel for the plaintiff. I do not see any anomaly in the receipts and invoice produced herein as exhibits to prove the expenses. The receipt from Dr. Omuyoma, PEXH. NO. 9, had the requisite stamp duty fixed on it. All the awards herein are subject to the 15% consent judgment on liability entered to herein.
10. On the issue of costs, I also do find that the necessary demand letter or notice of institution of suit was duly issue to the defendants herein. The demand letter, as aforestated, was produces as PEXH. NO. 2. I this see no ground to deny the plaintiff costs of the suit.

Conclusion and Disposal Orders

11. Judgment is hereby entered for the plaintiff against the defendants herein as follows:
 - a. General damages: Kshs. 200,000/=
 - b. Special Damages: Kshs. 8,065/=
 - Gross Total Kshs 208,065/=
 - Less 15% contributions Kshs. 31,209.75
 - Net Total Kshs. 176,855.25
 - c. Costs of the suit and interest at court rates.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 03RD DAY OF SEPTEMBER, 2024

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel Obura



Defendants' Counsel: Mwashu h/b Githiru

Plaintiff:

2nd Defendant:

