



**Ezekiel v Ng'ang'a & another (Civil Suit 2606 of 2020)
[2023] KEMC 88 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 88 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 2606 OF 2020
JP ADUKE, SRM
MARCH 29, 2023**

BETWEEN

NYAKUNDI EZEKIEL PLAINTIFF

AND

STEPHEN KIARIE NG'ANG'A & ANOTHER DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 08th January 2020 along Southern Bypass in Nairobi. In the plaint on record, the plaintiff avers he was a lawful motorcycle rider riding motorcycle registration number KMFA 241N when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KAE 675F negligently drove the said motor vehicle and caused it to lose control and violently collide with KMFA 241N causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendants and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendants.
3. The particulars of injuries sustained by the Plaintiff are as captured in para 5 the Plaint while the particulars of alleged negligence are captured in para 5 of the Plaint. The Plaintiff prays for general damages for pain and suffering, special damages, costs of the suit and interest.
4. Return of Service on Record shows that the defendants were served with the suit papers. The suit is defended. At the hearing, the plaintiff and the defendants recorded a consent on judgment on liability in favour of the Plaintiff in the ratio of 80:20. By consent, parties also elected to rely on the medical reports on record without calling the authors of the said documents to testify. The above terms of consent were recorded as a judgement of this court. Parties filed and exchanged written submissions.
5. The issues for determination before this court is one:



1. Quantum

6. The Plaintiff prays for General Damages, Special Damages, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for KES 179,650/- as captured in para 9 of the Plaintiff. I have seen receipts on record attesting to KES 550+1,500+/- only. It is settled principle that special damages must be pleaded and proved. I find that KES 2,050/- has been pleaded and proved and award the same. There's a plethora of case law holding that invoices and quotations are not proof of payment, and that only receipts meet this threshold on a balance of probabilities.
7. With respect to general damages, I have considered all the submissions on record and the authorities annexed thereto. I have also considered all the exhibits on record. In particular, I have relied on the reasoning of the court in Eldoret HCC 107 of 2018 Samuel Martin Njoroge Kamunyu vs Mildred Barasa and HB (minor suing through mother and next friend DKM) versus Jasper Nchonga and another [2021] where the court awarded general damages for comparable injuries. The plaintiff in this instance suffered soft tissue injuries and a fracture when the accident happened. Taking into account that no amount of damages can restore the Plaintiff to what he was prior to the said accident, the rate of inflation and cost of living, I hereby award KES 400,000/- as general damages.
8. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 400,000/-
 2. Special damages KES 2,050/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.
9. The Plaintiff shall have costs in this suit and interests as above at court rates from the date of this judgement until payment in full.

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29TH MARCH 2023
AT 12.30PM**

Aduke Jeal Praxades Atieno

Senior Resident Magistrate

In the presence of :

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff-

.....N/A.....

(Name, Signature, Date)

3. For the Defence:

.....N/A.....

(Name, Signature, Date)

