



**Gitau v Kinuthia & another (Civil Suit E3441 of 2020)
[2023] KEMC 67 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 67 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

CIVIL SUIT E3441 OF 2020

JP ADUKE, SRM

MARCH 29, 2023

BETWEEN

PETER GIKERA GITAU PLAINTIFF

AND

JOSEPH KINUTHIA & ANOTHER DEFENDANT

JUDGMENT

1. The plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on May 27, 2020 along Landhies Road in Nairobi. In the plaint on record, the plaintiff avers at para 4 that he was a lawful passenger aboard motor vehicle registration number KCV 648H when the defendant and his servant/agent/authorized driver of motor vehicle registration number KCV 648H negligently drove the said motor vehicle and caused it to hit another vehicle causing an accident causing the plaintiff to suffer soft tissue injuries.
2. The plaintiff blames the defendant 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 captured in para 8 of the Plaint while the particulars of alleged negligence are captured in para 6 of the Plaint. The plaintiff prays for general damages, 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 defendants entered appearance and filed a defence. The suit proceeded defended. At the hearing thereof, the plaintiff called one witness who testified on oath, relied on his statements on record as evidence in chief and produced documents in support of the claim before me. The defence closed its case without calling any witnesses. All the evidence adduced in court was tested in cross-examination by Plaintiff Counsel and defence counsel respectively. Parties exchanged and filed written submissions.
5. The issues for determination before this court are two:



1. Liability
2. Quantum
6. With respect to liability, I have seen the abstract from police records confirming the particulars of the accident and the involved parties. I have also seen the motor vehicle copy of records confirming joint ownership of the blamed motor vehicle by the 2nd defendant as at June 10, 2020. For the avoidance of doubt, I find that liability is apportioned at a ratio of 100.00 in favor of the plaintiff.
7. 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 3,550/- as captured in para 9 of the Plaintiff. I have seen receipts on record attesting to kes 550+3,000/-. It is settled principle that special damages must be pleaded and proved. I find that kes 3,550/- has been pleaded and proved and award the same.
8. 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 (bruises) 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 80,000/- as general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages kes 80,000/-
 2. Special damages kes 3,550/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.
10. 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 12.09PM**

ADUKE JEAL PRAXADES ATIENO

SRM

