



**Kariuki v Nkirote (Civil Suit 6945A of 2019)  
[2023] KEMC 90 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 90 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
CIVIL SUIT 6945A OF 2019  
JP ADUKE, SRM  
MARCH 15, 2023**

**BETWEEN**

**EDWARD KIBUI KARIUKI ..... PLAINTIFF**

**AND**

**MERCY KANANA NKIROTE ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 26<sup>th</sup> June 2018 along Naivasha Road in Nairobi. In the plaint available on record, the plaintiff avers she was a lawful pedestrian at a bus stop living her best life when the Defendant either acting as servant/agent/authorized driver of motor vehicle registration number KCN 787A negligently drove the said motor vehicle that it hit the Plaintiff causing the Plaintiff to suffer 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 4 of the Plaint while the particulars of alleged negligence are also captured in para 3 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 thereof, parties filed a consent on liability in favour of the Plaintiff in the ratio of 85:15, and all medical reports filed be admitted into evidence without calling the makers of the documents. The court hereby endorses these terms as a judgment of this court. Parties filed and exchanged submissions. The issues for determination before this court is one:
  1. Quantum



5. The Plaintiff prays for General Damages, Special Damages, Costs of the Suit and Interest. With respect to Special Damages, the Plaintiff prays for KES 85,250/- as captured in the Plaintiff. I have seen receipts on record attesting to KES 550+81,700/- only. I find that KES 82, 250/- has been pleaded and proved and award the same.
6. 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 Civil Appeal Number 126 of 2018 *Benuel Bosire vs Lydia Kemunto Mokora*[2019]eKLR and *Patrisiab Adbiammo Omolo vs Emily Mandala*[2020] eKLR where the courts awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered a fracture of the upper leg, left fibula head and soft tissue injuries when the accident happened. Taking into account that no amount of damages can restore the Plaintiff to what she was prior to the said accident, the rate of inflation and cost of living, I hereby award KES 400,000/- as general damages for pain and suffering.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
  1. General damages KES 400,000/-
  2. Special damages KES 82,250/-
  3. Costs of the suit.
  4. Interest on 1 and 3 above at court rates.
8. The Plaintiff shall have costs in this suit and interests as above from the date of this judgement until payment in full.

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 15<sup>TH</sup> MARCH 2023  
IN THE ABSENCE OF THE PARTIES.**

**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)

