



**Kalama v Njagi & another (Civil Suit 9074 of 2019)
[2023] KEMC 91 (KLR) (21 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 91 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 9074 OF 2019
JP ADUKE, SRM
MARCH 21, 2023**

BETWEEN

DAVID MWAGONA KALAMA PLAINTIFF

AND

AMOS NJAGI 1ST DEFENDANT

JOSEPH MWANGI CHEGE 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 02nd January 2019 along Jogoo Road in Nairobi. In the plaint on record, the plaintiff avers he was a lawful passenger alighting from motor vehicle registration number KCC 600R near posta stage when the Defendants either acting as servant/agent/authorized driver of motor vehicle registration number KCC 600R negligently and carelessly drove off before the Plaintiff could safely alight causing the Plaintiff to fall down and 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 captured in para 4a of the Plaint while the particulars of alleged negligence are captured in para 4 of the Plaint. The Plaintiff prays for general damages for pain and suffering and loss of amenities of life, special damages, costs of the suit and interest.
4. Return of Service on Record shows that the defendants were served with the suit papers. Neither of the defendants entered appearance. As a result, judgment in default of appearance was entered against the 1st and 2nd Defendants on 11th June 2021. The suit is undefended and proceeded to formal proof hearing. PW1, the plaintiff, adopted and relied on his pleadings and statements on record as his



evidence in chief and produced Plaintiff Exhibits as per the List of Documents on record. Parties filed submissions. The issue for determination before this court is one:

1. Quontum
5. 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 292,671/- as captured in para 8 of the Plaintiff. I have seen receipts on record attesting to KES 550 +2500/-. I have not seen a receipt in respect of KES 289,621. It is settled law that an invoice is not proof of payment. There's a plethora of legal authorities in this regard. I have also not seen a certified copy/original letter of acknowledgement of debt on letterhead from Kenyatta National Hospital in this regard. It is settled principle that special damages must be pleaded and proved. I find that KES 3,050/- 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 *Samuel Kimani & Another vs Edward Otieno & Another [2017]* eKLR where the court awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered a fracture of the left femur 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 600,000/- as general damages for pain and suffering and loss of amenities of life.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 600,000/-
 2. Special damages KES 3,050/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.

The Plaintiff shall have costs in this suit and interest as outlined above from the date of this judgement until payment in full.

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21ST MARCH 2023
AT 2PM IN THE ABSENCE OF THE PARTIES.**

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

