



**Kimaile v Njuguna & another (Civil Suit E6100 of 2020)  
[2023] KEMC 70 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 70 (KLR)

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

**CIVIL SUIT E6100 OF 2020**

**JP ADUKE, SRM**

**MARCH 28, 2023**

**BETWEEN**

**BENSON KIMANTHI KIMAILE ..... PLAINTIFF**

**AND**

**PIUS MBUGUA NJUGUNA ..... 1<sup>ST</sup> DEFENDANT**

**KEVIN MWAMBUCHI ANAUWANI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 28<sup>th</sup> June 2018 Mumias South Road in Buruburu Nairobi. In the plaint on record, the plaintiff avers he was a lawful motorcycle rider riding motorcycle registration number KMDM 977G when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCG 848M negligently drove the said motor vehicle and caused it to lose control and violently collide with KMDM 977G 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 captured in para 6 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, 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 called two witnesses who testified while the defence called one witness who testified. Each witness adopted their statements on file as their evidence in chief and the evidence was tested on cross-examination. Parties filed and exchanged 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 ownership of the blamed motor vehicle by the Defendant. 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 3,250/- as captured in para 6 of the Plaintiff. I have seen receipts on record attesting to KES 550+2,500/- and KES 200/-. It is settled principle that special damages must be pleaded and proved. I find that KES 3,250/- 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 Samwel 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 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 100,000/- as general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
  1. General damages KES 100,000/-
  2. Special damages KES 3,250/-
  3. Costs of the suit.
  4. Interest on 1 and 3 above at court rates.

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 28<sup>TH</sup> MARCH 2023  
AT 12.00PM**

**ADUKE JEAL PRAXADES ATIENO**

**SRM**

