



**Mutugi v Splendid Merchants Limited & another (Civil Suit
E8981 of 2021) [2023] KEMC 65 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 65 (KLR)

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

CIVIL SUIT E8981 OF 2021

JP ADUKE, SRM

MARCH 30, 2023

BETWEEN

GRACE WAITHIRA MUTUGI ALIAS WAITHERA PLAINTIFF

AND

SPLENDID MERCHANTS LIMITED & ANOTHER DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on 20th May 2020 along Muranga Road. In the plaint on record, the plaintiff avers at para 4 that she was a lawful passenger aboard motor vehicle registration number KCM 224A when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCM 224A negligently drove the said motor vehicle and caused it to hit the rail beside the road causing an accident causing the Plaintiff to suffer soft tissue 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 5 of the Plaint while the particulars of alleged negligence by the Defendants are captured in para 4 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 neither entered appearance nor filed a defence. As a result, judgment in default of appearance was entered on 15th February 2022. The suit proceeded undefended. At the hearing thereof, the plaintiff called one witness who testified on oath, relied on her statements on record as evidence in chief and produced documents in support of the claim before me. Parties filed written submissions.
5. The issue 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 3,500/- as captured in para 5 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 proved and award the same.
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 *Samwel Martin Njoroge Kamunyu v Mildred Barasa* and *HB (minor suing through mother and next friend DKM) v 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 broken/lost tooth 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 100,000/- as general damages.
8. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 100,000/-
 2. Special damages KES 3,550/-
 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 30TH MARCH 2023 AT 11.30AM.

ADUKE JEAL PRAXADES ATIENO

SRM

In the presence of:

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-N/A.....

(Name, Signature, Date)

For the Defence:N/A.....

(Name, Signature, Date)

