



**Nyakego v Kariuki & another (Civil Suit E3321 of 2020)
[2023] KEMC 89 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 89 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E3321 OF 2020
JP ADUKE, SRM
MARCH 28, 2023**

BETWEEN

ISAAH ONCHONGA NYAKEGO PLAINTIFF

AND

WILSON KARIUKI & ANOTHER DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 0th March 2020 along Waiyaki Way in Nairobi. In the plaint on record, the plaintiff avers he was a lawful motorcycle rider riding motorcycle registration number KMDR 413C when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBC 241G negligently drove the said motor vehicle and caused it to lose control and violently collide with KMDR 413C 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 as captured in 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 closed its case without calling any witnesses. Each witness adopted their statements on file as their evidence in chief and the evidence was tested on cross-examination. By consent, parties elected to rely on the medical reports on record without calling the authors of the said documents to testify. 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 22,593/- as captured in the Plaintiff. I have seen receipts on record attesting to KES 550+3,000/- only. 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 *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 fracture of the right leg 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 300,000/- as general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 300,000/-
 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.

ADUKE JEAL PRAXADES ATIENO

SRM

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH MARCH 2023
AT 12.00PM**

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)

