



REPUBLIC OF KENYA



KENYA LAW
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**Nabaala v Mwangi (Civil Suit E8562 of 2021)
[2023] KEMC 134 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 134 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E8562 OF 2021**

JP ADUKE, SRM

MAY 18, 2023

BETWEEN

GLADYS SIKILAL NABAALA PLAINTIFF

AND

JOHN MUTUGI MWANGI DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant after she sustained injuries following a road traffic accident on 16th January 2021 along Heshima Road in Nairobi. In the plaint available on record, the plaintiff avers she was a lawful pedestrian walking towards Bahati Estate while living her best life when the Defendant either acting as servant/agent/authorized driver of motor vehicle registration number KCE XXXX negligently drove the said motor vehicle that it hit the Plaintiff from behind causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendant and his agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendant.
3. The particulars of injuries sustained by the Plaintiff are captured in para 4b of the Plaint while the particulars of alleged negligence are captured in para 4a 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 suit is defended. At the hearing thereof, parties recorded a consent on liability in favour of the Plaintiff in the ratio of 80:20. The court hereby endorses these terms as a judgment of this court on liability. Parties filed and exchanged submissions. The issues 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 3,000/- as captured in the Plaintiff's Complaint. I have seen receipts on record attesting to KES 3,000/-. It is settled principle that special damages must be pleaded and proved. I find that KES 3,000/- 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 v Lydia Kemunto Mokora*[2019]eKLR and *Patrisiah Adhiambo Omolo v 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 left leg 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.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 400,000/-
 2. Special damages KES 3,000/-
 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 outlined above from the date of this judgement until payment in full.

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT 12.35PM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

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)

