



**Nyaga v Kinyanjui (Civil Suit E9664 of 2021)
[2023] KEMC 136 (KLR) (16 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 136 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E9664 OF 2021**

JP ADUKE, SRM

MAY 16, 2023

BETWEEN

SAMUEL KARIUKI NYAGA PLAINTIFF

AND

MICHAEL WANYORO KINYANJUI DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on 19th April 2021 along Thika SuperHighway at Juja Weighbridge in Nairobi. In the plaint on record, the plaintiff avers he was a lawful passenger aboard motor vehicle registration number KAS158M when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KAS158M negligently drove the said motor vehicle and lost control thereby causing an accident causing the Plaintiff to suffer soft tissue injuries.
2. The Plaintiff blames the Defendant 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 Defendant.
3. The particulars of injuries sustained by the Plaintiff are captured in para 8 of the Plaint while the particulars of alleged negligence are captured in para 5 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 defendants entered appearance and filed a defence. The suit proceeded defended. At the hearing thereof, the plaintiff called three witnesses who testified on oath, relied on the statements on record as evidence in chief and produced documents in support of the claim before me. Their evidence was tested on cross examination by Defence Counsel. The Defence closed its case without calling any witnesses.
5. The issues for determination before this court are two:



1. Liability
2. Quontum
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. 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 KES3,550/- as captured in para 13 of the Plaintiff. I have seen receipts on record attesting to KES550+3000. It is settled principle that special damages must be pleaded and proved. I find that KES3,550/- 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 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 3,550/-
 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

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH MAY 2023 AT 2PM

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)

