



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngari v Nelson & another (Civil Suit 2204 of 2020)  
[2023] KEMC 135 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 135 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
CIVIL SUIT 2204 OF 2020  
JP ADUKE, SRM  
MAY 18, 2023  
APPLICATION ALLOWED**

**BETWEEN**

**DAVID MURIMI NGARI ..... PLAINTIFF**

**AND**

**CHESON IMBIAKHA NELSON & ANOTHER ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 07<sup>th</sup> March 2020 along Waiyaki Way near Safaricom Centre in Nairobi. In the plaint available on record, the plaintiff avers he was a lawful driver of motor cycle registration number KMDQ 776U when the 1<sup>st</sup> Defendant either acting as servant/agent/authorized driver of motor vehicle registration number KCW 672W Mazda Demio negligently drove the said motor vehicle that it hit KMDQ 776U 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 8 of the Plaint while the particulars of alleged negligence are also captured in para 6 of the Plaint. The Plaintiff prays for general damages, special damages, costs of the suit and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. The suit is defended At the hearing thereof, the plaintiff called three witnesses who testified on oath, adopted their witness statements on record as their evidence in chief and whose evidence was tested on cross-examination by Defence Counsel. The Defence closed its case without calling any witnesses. Parties filed and exchanged submissions. The issues for determination before this court are two:



1. Liability;

With respect to Liability, I have seen a copy of the Abstract from Police Records confirming further details in respect of the accident victim and the said motor vehicle registration number KCW 672W. I have seen a copy of the Motor Vehicle Search Records confirming that the 2<sup>nd</sup> defendant is the current registered owner of the said motor vehicle as at April 2020. I have also relied on the testimony of PW3 and PW2 on record. This confirmation and chronology of events settles the issue of liability in my view. For the avoidance of doubt, I find that liability is apportioned at a ratio of 100% in favor of the Plaintiff against the defendants.

2. Quantum

The Plaintiff prays for General Damages, Special Damages, future medical expenses, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for Kshs 3,550/- as captured in the Plaintiff. I have seen receipts on record attesting to Kshs 3,550/-. It is settled principle that special damages must be pleaded and proved. I find that Kshs 3,550/- has been pleaded and proved and award the same.

5. 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 right ankle and 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 Kshs 350,000/- as general damages.

6. In conclusion, I enter judgement in favour of the plaintiff as follows:

1. General damages Kshs 350,000/-
2. Special damages Kshs 3,550/-
3. Costs of the suit.
4. Interest on 1 and 3 above at court rates.

7. The Plaintiff shall have costs in this suit and interests as outlined above 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 18<sup>TH</sup> MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT 12.30PM.**

In the presence of :

1. Court Assistant: Benjamin Kombe.

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

(Name, Signature, Date)

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

(Name, Signature, Date)

