



Osiyo v Njuguna (Civil Suit E8879 of 2021) [2023] KEMC 120 (KLR) (8 May 2023) (Judgment)

Neutral citation: [2023] KEMC 120 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL SUIT E8879 OF 2021**

JP ADUKE, SRM

MAY 8, 2023

BETWEEN

DAVID OCHIENG OSIYO PLAINTIFF

AND

JEREMIAH NYAGA NJUGUNA DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 26th August 2020 along Haile Selasie Avenue in Nairobi. In the plaint on record, the plaintiff avers he was a lawful cyclist cycling while living his best life when the Defendants either acting as servant/agent/authorized driver of motor vehicle registration number KBV 519P negligently and carelessly drove the said motor vehicle and while speeding abruptly and without due care caused it to lose control and knock down the Plaintiff causing the Plaintiff to suffer 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 4 of 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 and loss of amenities of life, 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 defendant did not enter appearance. As a result, judgment in default of appearance was entered against the Defendant on 15th March 2022. The suit is undefended and proceeded to formal proof hearing. PW1, the plaintiff, adopted and relied on his pleadings and statements on record as his evidence in chief. Parties filed submissions. The issue 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 116,726/- as captured in para 7 of the Plaintiff. I have only seen receipts on record attesting to KES 550 +3000/-. 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.
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 Samuel Kimani & Another vs Edward Otieno & Another [2017] eKLR where the court awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered a fracture of the left femur and soft tissue wounds when the accident happened. The plaintiff has not pleaded future medical costs, which are of the nature of special damages. Parties are bound by their pleadings. 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 700,000/- as all-inclusive general damages.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 700,000/-
 2. Special damages KES 3,550/-
 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 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 08TH MAY 2023

In the presence of :

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff-

(Name, Signature, Date)

3. For the Defence:

(Name, Signature, Date)

