



REPUBLIC OF KENYA



**KENYA LAW**  
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**Owino v Peterson & another (Civil Suit 2750 of 2019)  
[2023] KEMC 119 (KLR) (17 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 119 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)  
CIVIL SUIT 2750 OF 2019  
JP ADUKE, SRM  
MAY 17, 2023**

**BETWEEN**

**JAMES OMONDI OWINO ..... PLAINTIFF**

**AND**

**MACHARIA NYINGI PETERSON & ANOTHER ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 17<sup>th</sup> October 2015 along Rabai Road in Nairobi. In the plaint available on record, the plaintiff avers he was a lawful passenger aboard motor vehicle registration number KBW 377E when the Defendant either acting as servant/agent/authorized driver of motor vehicle registration number KBW 377E negligently drove the said motor vehicle that it collided with another vehicle 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 Defendants.
3. The particulars of injuries sustained by the Plaintiff are captured in para 6 of the Plaint while the particulars of alleged negligence are also captured in para 6 of the Plaint. The Plaintiff prays for general damages for pain and suffering and loss of amenities of life/earning capacity, special damages, costs of the suit, future medical expenses and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. Neither of the defendants entered appearance. As a result, judgment in default of appearance was entered by Hon. E. Wanjala on 05<sup>th</sup> May 2021 against the 1<sup>st</sup> Defendant and the suit against the 2<sup>nd</sup> Defendant was marked as withdrawn by Hon E. Wanjala on 26<sup>th</sup> May 2021. 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. Quantum
5. 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 KES 22,650/- as captured in the Plaintiff's statement. I have seen receipts on record attesting to KES 2,000/- and KES 550/- only. I have seen a receipt dated 22<sup>nd</sup> May 2017 from Kenyatta National Hospital on account of Unutilised Patient Deposit. This accident occurred in 2015. It is not clear whether or not the unutilized patient deposit is related to the alleged accident herein. In any event, since the same is unutilized, then the plaintiff is able to recover that cash from the hospital. Awarding the same as part of special damages herein without proof that the same was neither refunded to the Plaintiff nor utilized, would in my view amount to unjust enrichment. It is settled principle that special damages must be pleaded and proved. I find that KES 2,550/- has been pleaded and proved and award the same.
6. With respect to loss of earning capacity, it is settled law that a claim for loss of earnings/amenities of life/loss of earning capacity is of the nature of special damages. This means the same must be pleaded and strictly proved on a balance of probability. From the documents available on record, I have not seen any documentary proof of the income the plaintiff used to make prior to the said road traffic accident. In the absence of documentary proof, the plaintiff elected not to call any witnesses to testify on this alleged fact. On a balance of probabilities, I find myself persuaded and bound by the holding of the court of appeal in *Cecilia W. Mwangi & Another v Ruth W. Mwangi* CA Civil Appeal Number 251 of 1997 eKLR on how to treat loss of earnings/amenities of life/loss of earning capacity as a special damage claim. Consequently, I make no award in this regard.
7. With respect to future medical expenses, I am persuaded on a balance of probabilities, by the medical opinion on file dated 30<sup>th</sup> August 2017. I have seen a medical report on file estimating the probable resultant disability at 30%. I award KES 200,000/- on account of future medical expenses.
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 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 thigh 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 500,000/- as all-inclusive general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
  1. General damages KES 500,000/-
  2. Special damages KES 2,550/-
  3. Future medical expenses KES 200,000/-
  4. Costs of the suit.
  5. Interest on 1 and 4 above at court rates.
10. The Plaintiff shall have costs in this suit and interests as 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 17<sup>TH</sup> MAY 2023 IN THE PRESENCE/ABSENCE OF THE PARTIES AT 12 NOON.**

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)

