



SA (Minor suing through mother and next friend MAO) v Gitu (Civil Suit 785B of 2019) [2023] KEMC 129 (KLR) (16 May 2023) (Judgment)

Neutral citation: [2023] KEMC 129 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 785B OF 2019
JP ADUKE, SRM
MAY 16, 2023**

BETWEEN

SA (MINOR SUING THROUGH MOTHER AND NEXT FRIEND MAO) PLAINTIFF

AND

TITUS KIBUNGA GITU DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after she sustained injuries following a road traffic accident on 01st January 2019 along Outer Ring Road near Harmony Kariobangi in Nairobi. In the plaint on record, the plaintiff avers she was a lawful pedestrian living her best life when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCA 320Q negligently and carelessly drove the said motor vehicle and caused it to collide with the Plaintiff 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 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, 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 four witnesses who testified and adopted statements on record as their evidence in chief. This evidence was tested on cross-examination by the Defence Counsel. The defendant called one witness who testified.
5. The issues for determination before this court are two:



1. Liability;
 2. Quantum
6. 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 KCA 320Q. I have also seen a copy of the Motor Vehicle Search Records confirming that the defendant is the registered owner of the said motor vehicle in question. This confirmation and chronology settles the issue of liability in my view. For the avoidance of doubt, and noting that the plaintiff herein is a minor with no road sense hence cannot be legally held culpable of contributory negligence under the law of tort, I find the defendant liable at 100%.
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 KES 124,212/- as captured in para 4 of the Plaintiff. I have seen receipts on record attesting to KES 550+2,500. It is settled principle that special damages must be pleaded and proved. I find that KES 3,050/- has been pleaded and proved and award the same. I note that the plaintiff claims KES 121,162/- on account of a medical debt. I note that the documents provided in this regard are INO of Snider Odongo while the Plaintiff herein is a different person. It is not clear from the documents available on record, whether Snider Odongo and the Plaintiff herein refer to one and the same person. I have also not seen any deed-poll on record. In the absence of this confirmation or nexus, I decline to make any award on account of medical debt cost.
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 vs Mildred Barasa and HB (minor suing through mother and next friend DKM) versus Jasper Nchonga and another [2021] and Joseph Nguku & Another vs Gerald [2020]Eklr and Telkom Orange Kenya Limited vs ISO (minor suing through mother and next friend JN)[2018] EKLR where the courts awarded general damages for comparable injuries. The plaintiff in this instance suffered head injury and fracture of the upper arm 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 550,000/- as all-inclusive general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
1. General damages KES 550,000/-
 2. Special damages KES 3,050/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.

The Plaintiff shall have costs in this suit and interests as outlined 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 :



1.Court Assistant: Benjamin Kombe.

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

(Name, Signature, Date)

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

(Name, Signature, Date)

