



REPUBLIC OF KENYA



**Wanjohi v Ouma & another (Civil Suit E3601 of 2022)
[2023] KEMC 131 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 131 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E3601 OF 2022
JP ADUKE, SRM
MAY 11, 2023**

BETWEEN

BERNARD MACHARIA WANJOHI PLAINTIFF

AND

OLACHO OUMA 1ST DEFENDANT

JUSTUS OLACHO NAMBANDO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 31st May 2022 along Lungalunga Road in Nairobi. In the plaint on record, the plaintiff avers he was a passenger aboard motorcycle registration number KMFG XXXX when the 1st Defendant and driver of motor vehicle registration number KCA XXXX negligently and carelessly drove the said motor vehicle and caused it to lose control and hit the Plaintiff's motorcycle 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 and the alleged instances of negligence by the defendant are as captured in 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 parties recorded a consent on liability which was endorsed by this court in favour of the Plaintiff in the ratio of 70:30 on 7th November 2022
5. The issue for determination before this court is one:
 1. Quontum



6. 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 5,550/-. I have seen receipts on record attesting to KES 5,550/-. It is settled principle that special damages must be pleaded and proved. I find that KES 5,550/- has been pleaded and proved and award the same.
7. 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 *Johnstone Koech v Maalim Ibrahim Abdi* HCCA 51 of 2017 (Narok) 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.
8. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 100,000/-
 2. Special damages KES 5,550/-
 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 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 11TH MAY 2023 IN THE ABSENCE/PRESENCE OF PARTIES AT 12.10 PM.

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-

(Name, Signature, Date)

For the Defence:

(Name, Signature, Date)

