



Lambara v Karuga (Civil Suit E7626 of 2020) [2023] KEMC 184 (KLR) (25 July 2023) (Judgment)

Neutral citation: [2023] KEMC 184 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**

CIVIL SUIT E7626 OF 2020

JP ADUKE, SRM

JULY 25, 2023

BETWEEN

DANIEL NKUPEI LAMBARA PLAINTIFF

AND

ISAAC KIMANI KARUGA DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on 04th January 2020 along Langata Road in Nairobi. In the plaint on record, the plaintiff avers he was a lawful passenger aboard motor vehicle registration number GKB102T when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBT 137T negligently drove the said motor vehicle and caused it to lose control and collide with GKB 102T causing an accident causing the Plaintiff to suffer soft tissue 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 also 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.
4. Return of Service on Record shows that the defendants were served with the suit papers. The defendants neither entered appearance nor filed a response. As a result, judgement in default was entered against the defendant. The suit is undefended. At the hearing thereof, the plaintiff called one witness who testified on oath, and produced documents in support of the claim before me.
5. The issue for determination before this court is one:
 1. Quontum



6. With respect to Liability, I note that judgment in default was entered against the defendant on 09th December 2021. This settles the issue of liability. For the avoidance of doubt, I find that liability is apportioned at a ratio of 100.00 in favor of the Plaintiff.
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 3,550/- as captured in para 4 of the Plaintiff. I have seen receipts on record attesting to KES 3,000 + 550/-. 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.
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 *Samuel Martin Njoroge Kamunyu vs Mildred Barasa* 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 150,000/- as general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 150,000/-
 2. Special damages KES 3,550/-
 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 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 25TH JULY 2023

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)

