



REPUBLIC OF KENYA



KENYA LAW
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**Nzioka v Kamau & 2 others (Civil Suit E9770 of 2021)
[2023] KEMC 216 (KLR) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEMC 216 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E9770 OF 2021**

JP ADUKE, SRM

JULY 19, 2023

BETWEEN

JACINTA MBINYA NZIOKA PLAINTIFF

AND

ANTHONY MATHENGE KAMAU & 2 OTHERS DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after she sustained injuries following a road traffic accident on 30th November 2018 along Wanye Stage in Nairobi. In the plaint on record, the plaintiff avers she was a lawful passenger along Wanye stage in Nairobi when the Defendants either acting as servant/agent/authorized driver of motor vehicle registration number KCF 586U negligently and recklessly drove the said motor vehicle and caused it to cause an accident and the Plaintiff sustained 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 are captured in para 6 of the Plaint while the particulars of alleged negligence are captured in para 6 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.
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 against the Defendants on 07th June 2022. The suit is undefended and proceeded to formal proof hearing. PW1, the plaintiff, adopted and relied on pleadings and statements on record as 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, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for KES 3,050/- as captured in para 8 of the Plaintiff. I have seen receipts on record attesting to KES 550 + KES 2,500 as at the date of writing this judgment. It is settled principle that special damages must be pleaded and proved. I find that KES 3,050/- has been pleaded and proved and I 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 *Abmed Mzee Famau t/a Najaa Coach Ltd & Anor v Veronica Ngii Muia* [2017] eKLR and *Van Den Berg (K) Ltd v Charles Osewe Osodo* [2022] eKLR where the court awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered soft tissue injuries and partial back injury when the accident happened. Taking into account that it is not clear from the pleadings whether or not the Plaintiff was a passenger aboard which motor vehicle or whether or not the plaintiff was a pedestrian at Wanyie Stage (lack of nexus), and also 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/prevaling global economic recession, I hereby award KES 300,000/- as all-inclusive general damages.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 300,000/-
 2. Special damages 3,050/-.
 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 as outlined above from the date of this judgement until payment in full. 45 days Stay of Execution to issue.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 19TH JULY 2023.

In the presence of :-

1. Court Assistant: Benjamin Kombe.
2. Counsel for the Plaintiff-
3. For the Defence:

