



REPUBLIC OF KENYA



KENYA LAW
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**Ndiema v Kiriago & another (Civil Suit 6573 of 2019)
[2023] KEMC 213 (KLR) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEMC 213 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 6573 OF 2019
JP ADUKE, SRM
JULY 17, 2023**

BETWEEN

JOHN NDIEMA PLAINTIFF

AND

BENJAMIN OKECHI KIRIAGO 1ST DEFENDANT

PHILIP GODFREY MAKHANU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 28th April 2019 along Railway Entrance Terminus in Nairobi. In the plaint on record, the plaintiff avers he was a lawful pedestrian living his best life when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCE 429N negligently and carelessly drove the said motor vehicle and caused an accident occasioning 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 are captured in para 5 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 defence entered appearance, filed a defence and the suit proceeded to full hearing. The suit is defended. Parties files and exchanged written submissions.
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 KCE 429N. I have seen a copy of the Motor Vehicle Search Records confirming that the 2nd defendant is the registered owner of the said motor vehicle. I have also relied on the testimony of PW1 on record. This confirmation and chronology settles the issue of liability in my view. For the avoidance of doubt, I find that liability is apportioned at a ratio of 95:05 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 11,666/- as captured in para 6 of the Plaintiff. I have seen receipts on record attesting to KES 11,666/-. It is settled principle that special damages must be pleaded and proved. I find that KES 11,666/- 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 *Kenya Wildlife Service v Godfrey Kirimi Mwiti* [2018] eKLR where the court awarded general damages for comparable injuries. The plaintiff in this instance suffered soft tissue injuries and fracture 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 250,000/- as general damages.
9. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. All inclusive general damages KES 250,000/-
 2. Special damages KES 11,666/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.
11. The Plaintiff shall have costs in this suit and interests at court rates as outlined above from the date of this judgement until payment in full. ROA

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 17TH DAY OF JULY 2023

In the presence of:-

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff-

Name, Signature, Date)

3. For the Defence:

(Name, Signature, Date)

