



**Onsumu (Suing as the Legal Representative of the Estate of the
Late James Mbugua Njoroge) v Nyabera & another (Civil Suit
E11830 of 2021) [2023] KEMC 207 (KLR) (11 July 2023) (Judgment)**

Neutral citation: [2023] KEMC 207 (KLR)

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

CIVIL SUIT E11830 OF 2021

JP ADUKE, SRM

JULY 11, 2023

BETWEEN

**SALOME NYABOKE ONSUMU (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE JAMES MBUGUA NJOROGE) PLAINTIFF**

AND

JUDITH BIYAKI NYABERA & ANOTHER DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants as the legal representative to the estate of the late James Mbugua Njoroge after he sustained fatal injuries due to a road accident which occurred on the 17th December 2018. In the plaint on record, the plaintiff avers that the deceased was a driver of motorcycle registration number KMDS 112Z along Thika Road in Nairobi, when the defendant so negligently drove the motor vehicle registration number KCJ 627H causing motor vehicle registration number KCJ 627H to lose control and violently collide with the motorcycle above.

The plaintiff blames the defendants and his authorized agent for causing the accident. The plaintiff further avers that the accident was caused solely by the negligence of the defendants and their agents.

2. The particulars of the alleged negligence are captured in paragraph 9 of the Plaint. The plaintiff prays for general damages under the *Fatal Accidents Act* and the *Law Reform Act*, special damages of KES 1,770/-, costs of the suit and interest.

Return of service on records shows that the defendant was served with the suit papers. The defendant failed to enter appearance within the stipulated time. As a result default judgment was entered on 18th August 2022. The matter proceeded to formal proof hearing. At the hearing thereof, the plaintiff relied on the pleadings and statements on record as evidence in chief and prayed for reliefs as in the plaint. Parties filed written submissions.



The issue for determination before this court is one:

1. Quantum;

Quantum

3. 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 Kshs. 1,770/- as captured in paragraph 15a of the plaint. I have not seen receipts on record attesting to the same. It is a settled principle that special damages must be pleaded and proved. I find that Kshs. 1,770/- has been pleaded and not proved as at the date of writing this judgment and I decline to award the same.

With respect to general damages, I have considered all the submissions on record and the authorities cited. I have also considered all exhibits on record. In particular, I have relied on the reasoning of the court in *Wilson Nyamai Ndeto & Anor versus China Wu Yi Limited & Anor (2017) eKLR* where the court awarded damages and outlined the principles to consider in awarding damages under the *Law Reform Act* and the *Fatal Accidents Act*. In the present case, I have not seen any documents in support of the Plaintiff before me, either on the Judiciary CTS portal or on the physical file. I am aware that the judiciary CTS/ e-filing portal has been having challenges in the past two weeks. This means that among other things, I have not seen any receipts/death certificate/police abstract/certified copy of grant of letters of administration intestate et al.

4. The net effect of this, is that I am unable to award any damages in respect of awards under the *Law Reform Act* and the *Fatal Accidents Act* in the absence of confirmation that would issue from seeing the aforementioned documents on file/on the electronic Judiciary CTS portal.

In conclusion, I enter judgment in favor of the plaintiff as follows;

- a. General damages for pain and suffering NIL
- b. Special damages Kshs. NIL
- c. Loss of Expectation of Life NIL
- d. Loss of dependency NIL
- e. Costs of the suit NIL

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

**JUDGEMENT SIGNED AND DELIVERED IN THE PRESENCE/ABSENCE OF THE PARTIES
THIS 11TH JULY 2023 AT 12PM.**

In the presence of :

Court Assistant:

(Name, Signature, Date)

Counsel for the Plaintiff-

(Name, Signature, Date)

For the Defence:

(Name, Signature, Date)

