



**Mwikya v Waliaula (Civil Suit E7560 of 2020)  
[2023] KEMC 173 (KLR) (31 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 173 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

**CIVIL SUIT E7560 OF 2020**

**JP ADUKE, SRM**

**AUGUST 31, 2023**

**BETWEEN**

**PATRICK MUKAVI MWIKYA ..... PLAINTIFF**

**AND**

**BENARD WALIAULA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on 16<sup>th</sup> May 2020 along Langata Road in Nairobi. In the plaint on record, the plaintiff avers he was lawfully aboard motor vehicle registration number GKB 602C when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KAJ 048H negligently drove the said motor vehicle and caused it to lose control and violently cause an accident causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendant and his 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 and loss of amenities of life, special damages, costs of the suit and interest at court rates.
3. 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 favor of the Plaintiff in the ratio of 90:10.
4. 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 3,550/- 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.
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 Kenya Wildlife Service vs Godfrey Kiriimi Mwiti [2018] eKLR 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 180,000/- as all-inclusive general damages.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
  1. General damages KES 180,000/-
  2. Special damages KES 3,550/-
  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 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 31<sup>ST</sup> AUGUST 2023.**

**In the presence of :**

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

