



**Osundwa v Tercez Logistcs & others (Civil Suit 2368 of 2014)
[2023] KEMC 218 (KLR) (22 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 218 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 2368 OF 2014
JP ADUKE, SRM
AUGUST 22, 2023**

BETWEEN

HARRISON OSUNDWA PLAINTIFF

AND

TERCEZ LOGISTCS & OTHERS DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 30th December 2011 at Haile Selasie Avenue in Nairobi. In the plaint on record, the plaintiff avers he was a lawful pedestrian when the 3rd Defendant and his servant/agent/authorized driver of motor vehicle registration number KBG 450K negligently and carelessly drove the said motor vehicle and knocked down the Plaintiff causing 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 7 of the Plaint while the particulars of alleged negligence are captured in para 5 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 suit is defended. At the hearing, the plaintiff called two witnesses who testified on oath and adopted their witness statements on record as their evidence in chief while the defence elected not to call any witnesses to the stand. Parties filed and exchanged written submissions.
5. The issues for determination before this court are:



1. Liability;

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 KBG XXXX. I have seen a copy of the Motor Vehicle Copy of Records confirming that the 1ST defendant is the registered owner of the said motor vehicle as at December 2011. The accident happened in December 2011. I have also relied on the testimony of PW1 on record, who asserted that he was on the side of the road when the accident happened, and was not crossing the road. 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 100:0 in favor of the Plaintiff.

2. Quontum

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 2,500/- as captured in para 6 of the Plaintiff. I have seen receipts on record attesting to KES 2,500/-. It is settled principle that special damages must be pleaded and proved (see [John Kibicho v Emmanuel P Mkoitiko](#) [2017] eKLR). I find that KES 2,500/- has been pleaded and proved and award the same. In [Christine Mwigina Akonya v Samuel Kairu Chege](#) [2017] eKLR the court stated thus:

“Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before the compensation will be granted.....the courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide profoma invoices sent to the party by a third party. Our courts have held that an invoice is not proof of payment and that only a receipt meets the test...”

8. I have relied on the above reasoning of the court in arriving at my findings on special damages in the present case.
9. 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 HCCA 54 2016 [Ndungu Dennis v Ann Wangari & Another](#) and [Nyambati Nyaswabu Erick v Toyota Kenya Limited & others](#) [2019] Eklr where the court awarded general damages for comparable injuries. The plaintiff in this instance suffered soft tissue injuries, and trauma 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 200,000/- as general damages.
10. In conclusion, I enter judgement in favour of the plaintiff as follows:
1. General damages KES 200,000/-
 2. Special damages KES 2,500/-
 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 from the date of this judgement until payment in full.



12. File closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22ND AUGUST 2023.

In the presence of :

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

