



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO. 57 OF 2019

**JOSEPH KIMEU
MASANI.....PLAINTIFF**

VERSUS

**CHRISOSTOM MULI NDOLO.....1ST
DEFENDANT**

MARY KASYOKA MULI NDOLO.....2ND DEFENDANT

AND

**MAKINDU MOTORS LIMITED.....1ST THIRD
PARTY**

VASCALINE MBUTHYE.....2ND THIRD PARTY

JUDGMENT

THE CLAIM

Joseph Kimeu Masani (hereinafter referred to as the plaintiff) filed this suit on 5/3/2019 vide a plaint dated 20/2/2019. He sued Chrisostom Muli Ndolo and Mary Kasyoka Muthengi also known as Mary Kasyoka Muli Ndolo (hereinafter referred to as the 1st and 2nd defendants respectively) on account of a road traffic accident that allegedly occurred on 1/8/2018 at Kisayani area along Kibwezi-Kitui road. The plaintiff averred that on the material

day, he was a lawful rider of motor cycle registration number KMED 642 C when motor vehicle registration number KCG 010 R was carelessly and negligently driven that it hit motor cycle registration number KMED 642 C, thereby occasioning the plaintiff serious injuries. The 1st defendant was sued as the registered owner of motor vehicle registration number KCG 010 R whereas the 2nd defendant was sued as the beneficial owner thereof. The plaintiff pleaded several particulars of negligence against the defendants. I will not reproduce them here as there was a test suit on the issue of liability, in which judgment has already been delivered.

The plaintiff pleaded the particulars of injuries and those of loss and damage and prayed for judgment against the defendants for:

- i. General damages;
- ii. Special damages as pleaded;
- iii. Costs of this suit;
- iv. Interest on the above.

THE DEFENCE

The defendants entered appearance on 19/9/2019 and filed a joint statement of defence on the same day in which they denied the plaintiff's claim in *toto*. The defendants denied that they were the registered and beneficial owners of motor vehicle registration number KCG 010R, denied the occurrence of the accident and denied the particulars of negligence pleaded by the plaintiff. The defendants averred in the alternative and without prejudice that if the alleged accident occurred, which was denied, then the same was wholly caused and/or substantially contributed to by the plaintiff as the rider of motor cycle registration number KMED 642C. The defendants pleaded several particulars of negligence against the plaintiff and prayed that the suit be dismissed with costs. For reasons already given, I will not reproduce the particulars of negligence.

THE THIRD PARTIES

I will not delve into the issue of the third parties since they were found not culpable in the test suit. It is however surprising that the plaintiff herein joined himself as a 2nd third party herein and purported to file a defence yet he is the plaintiff. Counsel for the plaintiff

must have been confused since the plaintiff herein was joined as a third party in the other matters in the series. I will thus disregard the documents filed by the plaintiff as a 2nd third party.

TEST SUIT ON LIABILITY

Makindu SPMCC Civil case No. 56 of 2019 was selected as a test suit on the issue of liability. Judgment therein was delivered on 26/5/2025 and accordingly, the plaintiff herein was found 50% liable for the accident whereas the defendants herein were held 50% liable. The finding applies herein. Therefore, the main issue for determination is based on the quantum of damages.

CONSENT ON EVIDENCE

On 29/7/2025, the parties agreed to have the plaintiff's documents filed be produced in evidence without calling the makers and that the parties to file submissions on quantum. The consent was adopted as an order of the court.

MAIN ISSUES FOR DETERMINATION

In my opinion, the main questions or issues for determination are as follows:

- i. Whether the plaintiff sustained injuries, loss and damage as a result of the alleged accident;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

THE PLAINTIFF'S SUBMISSIONS

On quantum, the plaintiff proposed a sum of Ksh. 1,200,000/= in general damages and relied on the following authorities:

- 1) ***Francis Ndungu Wambui & 2 others v VK (a minor suing through the next friend and mother MCWK) [2019] eKLR.***

The plaintiff and respondent in the appeal sustained soft tissue injuries to the upper limbs, compound fracture of distal tibia fibula shaft and loss of consciousness for 30

minutes. The trial court awarded Ksh. 1,000,000/= in general damages in 2017. On appeal, the award was affirmed on 13/11/2019.

2) Odhiambo v Obiero [2024] KEHC 15700 (KLR).

The plaintiff and respondent in the appeal sustained swelling and tenderness on the head, tenderness of the neck, back injury, chest injury, cut wound on the right leg and fracture of the right tibia. The trial court awarded Ksh. 700,000/= on 7/12/2023. On appeal, the award was affirmed on 9/12/2024.

For special damages, the plaintiff urged the court to award a total of Ksh. 3,050/=.

THE DEFENDANTS' SUBMISSIONS

The defendants proposed a sum of Ksh. 200,000/= and relied on alleged authorities whose copies were not annexed. It is not the duty of the court to scavenge for authorities relied upon by the parties. Parties are supposed to annex copies of authorities relied upon.

ANALYSIS AND DETERMINATION

I have carefully considered the evidence on record and given due regard to the submissions made by the parties.

Quantum

The medical evidence on record indicates that the plaintiff sustained the following injuries:

- i. Fracture of the proximal right fibula;
- ii. Fracture of the right tibial plateau; and
- iii. Soft tissue injuries on the left elbow joint.

There is no contrary evidence. I find that there is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the finding on liability, the plaintiff is thus entitled to damages as against the defendants.

It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts. This Court has to bear in mind the principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd [1964] AC 326* where Lord Morris said:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional”.

I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington Area Health Authority, [1979] 1, ALL ER 332* which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School [2011] eKLR* where Wendoh, J stated that:

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;
- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;

- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

Being guided by the above principles, I proceed to assess and award the damages payable as follows:

General Damages for pain suffering and loss of amenities

I have considered the injuries sustained by the plaintiff. The plaintiff was treated as an outpatient. His injuries were classified as harm and grievous harm by two different doctors. The authorities relied upon by the plaintiff are comparable. I have, on my own, further considered the following authorities:

1) Julie Akoth Onyango v Daniel Otieno Owino & another [2020] eKLR.

The plaintiff and appellant in the appeal sustained a compound fracture of the tibia and fibula of the left leg, cuts on both legs, pain in the thighs and left hand. Ksh. 600,000/= was awarded in general damages on 19/6/2019. On appeal, the award was reduced to Ksh. 500,000/= on 29/5/2020.

2) Tirus Mburu Chege & another v JKN (minor suing through the next friend and mother DWN & another [2018] eKLR.

The minor plaintiff and respondent in the appeal sustained fractures of the tibia and fibula on both legs, blunt injury on the forehead, broken front tooth, nose bleeding and consistent loss of consciousness. The trial court awarded Ksh. 800,000/= on 20/5/2015. On appeal, the award was reduced to Ksh. 500,000/= on 3/10/2018.

Having the above principles in mind and having considered the injuries sustained by the plaintiff herein, as well as the vagaries of inflation, I find that an award of Ksh. 950,000/= in general damages would suffice. I award the same.

Special damages

The plaintiff pleaded special damages as follows:

- a) Medical expenses.....Ksh. 100/=

- b) Motor vehicle search.....Ksh. 550/=
- c) Medical report.....Ksh. 2,500/=

It is trite law that special damages must be specifically pleaded and strictly proved. In **Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd**, the court said: -

“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”

In **Ouma v Nairobi City Council [1976] KLR 304** after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L. J’s Judgment on page 532 and 533 in **Ratcliffe v Evans [1832] 2Q.B. 524** an English leading case on pleading and proof of damage:

“ The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

Only the claim for motor vehicle search was supported by a receipt. I therefore award **Ksh. 550/=** only as special damages.

DISPOSITION

In summary, I find that the plaintiff has proven his case on a balance of probabilities. Consequently, I make the following awards:

- 1) General damages for pain, suffering and loss of amenities.....Ksh. 950,000/=
- 2) Special damages.....Ksh. 550/=
- Total.....**Ksh. 950,550/=**
- Less 50%.....Ksh. 475,000/=
- Balance due to the plaintiff.....**Ksh. 475,000/=**

The plaintiff is also awarded interest on the damages as well as **HALF** the costs of the suit, in view of the finding on liability. The guiding principles in respect of interest are set out in section 26 of the Civil Procedure Act which provides that:

“(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR*, the court stated that:

*“First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd [1988] KLR 380*.*

Second, Under Section 26(1) of the Civil Procedure Act, the Court has discretion to award and fix the rate of interests to cover two stages namely:

- a. The period from the date the suit is filed to the date when the Court gives its judgment; and*
- b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”*

Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omunyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015))* stated in part, as follows:

“It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)

From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see *Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR)*.

Consequently, interest on general damages shall accrue at court rates from the date of judgment/decree until payment in full and on special damages, from the date of filing suit to the date of judgment/decree.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 9TH DAY OF
DECEMBER, 2025.**

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

