REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO E274 OF 2021

CATHERINE MWIKALI MULINGE ALIAS CATHERINE MWIKALI KIOKO……. ……..PLAINTIFF

VERSUS

BONIFACE MUTUKU NZEKI…….…… DEFENDANT

JUDGMENT

THE CLAIM

Catherine Mwikali Mulinge (hereinafter referred to as the plaintiff) filed this suit on 16/12/2021 vide a plaint dated 1/10/2021. The plaintiff sued Boniface Mutuku Nzeki (hereinafter referred to as the defendant) on account of a road traffic accident that allegedly occurred on 12/6/2021 at Kasaini area along Athi-Kamunyuni road. The plaintiff averred that he was a lawful passenger aboard motor vehicle registration number KCC 080U when the driver of the said motor vehicle drove so carelessly, recklessly and/or negligently and at a very high speed that he lost control, causing the motor vehicle to veer off its rightful lane and land in a ditch, thereby occasioning the plaintiff severe injuries, loss and damage.

The defendant was sued as the registered and/or beneficial owner of motor vehicle registration number KCC 080U at the material time. The plaintiff averred that the accident

was caused by the negligence and/or breach of duty of the defendants' driver. She pleaded particulars of negligence but owing to the consent on liability entered herein, I will not reproduce the particulars of negligence. The plaintiff further pleaded particulars of injuries sustained as well as those of special damages and prayed for judgment against the defendant for:

a) General damages for pain, suffering and loss of amenities;
b) Special damages for Ksh. 3,550/=;
c) Costs of the suit and interest.

THE DEFENDANT'S DEFENCE

The defendant entered appearance on 15/3/2022 and filed a statement of defence on the same day. The defendant denied the allegations contained in the plaint and in particular denied that it was the registered or beneficial owner of motor vehicle registration number KCC 080U, denied that the plaintiff was a passenger in the said motor vehicle, denied the occurrence of the accident and further denied the particulars of injuries and special damages pleaded by the plaintiff. In the alternative, the defendant averred that if the accident occurred, then the same was solely and/or substantially contributed to by the negligence of the plaintiff. The defendant pleaded several particulars of negligence against the plaintiff. The defendant prayed that the plaintiff's suit be dismissed with costs.

CONSENT ON LIABILITY AND EVIDENCE

On 4/8/2025 after the plaintiff had partly testified, the parties herein recorded a consent which was adopted as an order of the court in the following terms:

a) Judgment on liability be entered against the defendant at 100%;
b) The parties' claim supporting documents filed on record be and are hereby admitted in evidence without calling the makers thereof;
c) Parties to file submissions on quantum.

THE EVIDENCE

Following the consent, the following documents were admitted in evidence in favour of the plaintiff:

i. Police abstract on the accident;
ii. Treatment notes;
iii. Demand letter;
iv. Medical report;
v. Receipt for the medical report
vi. P3 form;
vii. Motor vehicle copy of records;
viii. Receipt for motor vehicle search;
ix. Decree and certificate of costs in civil case No. E193 of 2021.

No documents were produced on behalf of the defendant

MAIN ISSUES FOR DETERMINATION

In view of the consent, the main issues for determination are as follows:

i. Whether the plaintiff sustained injuries and suffered loss as a result of the 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 submitted a sum of Ksh. 250,000/= in general damages and relied on two authorities but only annexed a copy of the authority of ***Michael Okello v Priscilla Atieno [2021] eKLR***, in which an award of Ksh. 500,000/= for multiple soft tissue injuries was reduced to Ksh. 250,000/= on 27/4/2021.

THE DEFENDANT'S SUBMISSIONS

The defendant did not file any submissions despite being given sufficient time to do so.

ANALYSIS AND DETERMINATION

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

Quantum

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

i. Blunt injury to the scalp and severe headaches;
ii. Blunt injury to the left knee.

The same injuries were pleaded in the plaint. There is no contrary evidence with respect to the plaintiff's injuries. The injuries were classified as harm in the P3 form. My finding is that the plaintiff sustained soft tissue injuries and did not suffer any permanent disability. There is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the fact that the defendant has been held 100% liable for the accident, the plaintiff is thus entitled to damages as against the defendant.

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, although comparable injuries should receive similar awards.

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 & Islingtom 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.

Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

I have considered the injuries sustained by the plaintiff. The medical evidence produced by the plaintiff indicates that the plaintiff was treated as an outpatient. I have further considered the submissions made by the plaintiff on quantum as well as the authority relied upon. On my part, I have considered the following authorities:

1) ***Maimuna Kilungya v Motrex Transporters Ltd [2019] KEHC 6280 (KLR)***

The plaintiff and appellant in the appeal sustained a blunt neck injury, blunt injury to the left shoulder and bruises on the left ear. On appeal, an award of Ksh. 125,000/= in general damages was made on 26/6/2019.

2) ***Mulwa & another v Nzai [2024] KEHC 6898 (KLR).***

The plaintiff and respondent in the appeal herein sustained a small bruise on the right ankle, soft tissue injuries on the lower back and right limb. The trial court awarded Ksh. 400,000/= on 25/4/2023. On appeal, the award was reduced to Ksh. 250,000/= on 10/6/2024.

3) ***Ochola v Owuor [2024] KEHC 7689 (KLR).***

The plaintiff and respondent in the appeal sustained soft tissue injuries to the right shoulder joint, soft tissue injuries to the anterior chest wall, soft tissue injuries to the neck, back and both knees. The trial court awarded Ksh. 250,000/= on 12/5/2022. On appeal, the award was reduced to Ksh. 150,000/= on 25/6/2024.

4) ***Pascal v Ouko [2023] KEHC 24463 (KLR).***

The plaintiff and respondent in the appeal sustained chest contusion, blunt injuries to the back, scalp, neck, upper limbs and lower limbs and lacerations to the right knee. The trial court awarded Ksh. 200,000/= in general damages on 21/12/2021. On appeal, the award was reduced to Ksh. 150,000/= on 18/10/2023.

5) ***Adembesa & another v Gweno [2024] KEHC 5379 (KLR).***

The plaintiff and respondent in the appeal sustained soft tissue injuries to the head, chest and neck and bruises on both shoulders and both knees. The trial court awarded Ksh. 1,200,000/= in general damages on 18/10/2023. On appeal, the award was reduced to Ksh. 120,000/= on 17/5/2024.

Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. **180,000/=** in general damages would suffice. I award the same.

Special Damages

The plaintiff pleaded special damages as follows:

a) Medical report and expenses……Ksh. 3,000/=
b) Copy of records……Ksh. 550/=

Total……Ksh. 3,550/=

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."

The special damages were pleaded and proven as per the law. Consequently, I award **Ksh. 3,550/=** as special damages.

DISPOSITION

In summary, I hold that the plaintiff has proven her case on a balance of probabilities as against the defendant. Consequently, I make the following awards:

1) General damages for pain, suffering and loss of amenities.....Ksh. 180,000/=
2) Special damages.....Ksh. 3,550/=

   Total.....**Ksh. 183,550/=**

The plaintiff is also awarded interest on the damages as well as costs of the suit. 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 <u>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</u>……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 whereas interest on special damages shall accrue from the date of filing suit to the date of judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 11TH DAY OF DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.