



**REPUBLIC OF KENYA**

**IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU**

**CIVIL CASE NO. 152 OF 2019**

**FAITH** **NDUKU**  
**MWANZIA.....PLAINTIFF**

**VERSUS**

**CHRISOSTOM MULI NDOLO.....1<sup>ST</sup>**  
**DEFENDANT**

**MARY KASYOKA MULI NDOLO.....2<sup>ND</sup> DEFENDANT**

**AND**

**MAKINDU MOTORS LIMITED.....1<sup>ST</sup> THIRD**  
**PARTY**

**JOSEPH KIMEU MASANI.....2<sup>ND</sup> THIRD**  
**PARTY**

**VASCALINE MBUTHYE.....3<sup>RD</sup> THIRD**  
**PARTY**

**JUDGMENT**

**THE CLAIM**

Faith Nduku Mwanzia (hereinafter referred to as the plaintiff) filed this suit on 6/6/2019 vide a plaint dated 3/6/2019. She sued Chrisostom Muli Ndolo and Mary Kasyoka Muthengi also known as Mary Kasyoka Muli Ndolo (hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> 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, she was a lawful pillion passenger aboard 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 1<sup>st</sup> defendant was sued as the driver and beneficial owner of motor vehicle registration number KCG 010 R whereas the 2<sup>nd</sup> defendant was sued as the registered 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 2<sup>ND</sup> THIRD PARTY'S DEFENCE**

The 2<sup>nd</sup> third party filed a notice of appointment of Advocates on 13/8/2020 and filed a statement of defence on the same day. The Advocates for the plaintiff are the same ones representing the 2<sup>nd</sup> third party. The 2<sup>nd</sup> third party denied being liable for the accident and further denied the particulars of negligence attributed to him in the defendants' defence. The 2<sup>nd</sup> third party averred that the accident was caused by the fact that motor vehicle registration number KCG 010R was carelessly and negligently driven that it hit the motorcycle.

I will not delve into the issue of the 1<sup>st</sup> and 3<sup>rd</sup> third parties since they were found not culpable in the test suit.

**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 2<sup>nd</sup> third party 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 AND 2<sup>ND</sup> THIRD PARTY'S SUBMISSIONS**

On quantum, the plaintiff and 2<sup>nd</sup> third party proposed a sum of Ksh. 1,500,000/= in general damages and relied on the following authorities:

**1) *Nyambura & another v Simiyu [2024] KEHC 279 (KLR)***

The plaintiff and respondent in the appeal sustained head injury and loss of consciousness, blunt injury to the chest, blunt injury to the gravid abdomen with intra-uterine fetal death, blunt injury to the left ankle, bruises and blunt injury to the left foot. The trial court awarded Ksh. 800,000/= on 13/12/2022. On appeal, the award was affirmed on 24/1/2024.

**2) *Lilian Wanja v Cyprian Mugendi Igonga & 2 others [2016] eKLR***

The plaintiff and appellant in the appeal sustained swelling, tenderness and bruises on the face, swelling on the right side of the head, tenderness and swelling on the left side of the chest, the right wrist and elbows. She also suffered swollen left hip and a dislocation and fracture of the pelvis. The trial court awarded Ksh. 200,000/= on 14/2/2012. On appeal, the award was enhanced to Ksh. 500,000/= on 1/9/2016.

**3) *Reuben Wekesa Kituyi & another v Asmin Teresa Osundwa [2021] eKLR.***

The plaintiff and respondent in the appeal sustained a blunt injury on the left leg, left shoulder and abdomen; and that she was 36 weeks pregnant as at the time of the accident. Due to her injuries and the bleeding entailed thereby, she had a premature birth. The trial court awarded Ksh. 1,000,000/= on 13/6/2016. On appeal, the award was affirmed on 20/4/2021.

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. 80,000/= 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. Blunt abdominal injury causing antepartum haemorrhage and preterm labour; and
- ii. Soft tissue injuries on the lower limbs with cuts on the right leg.

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. Her injuries were classified as harm in the P3 form. The plaintiff sustained soft tissue injuries. The only serious injury is the preterm birth of her twins. The plaintiff was admitted in hospital for long due to the preterm birth of her twins. The only comparable authority is that of Reuben Wekesa, relied upon by the plaintiff. 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. **1,000,000/=** in general damages would suffice. I award the same.

#### **Special damages**

The plaintiff pleaded special damages as follows:

- a) Motor vehicle search.....Ksh. 550/=

b) 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."***

No receipts were produced to support the special damages pleaded. I make no award under this head.

#### **DISPOSITION**

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

1) General damages for pain, suffering and loss of amenities.....Ksh. 1,000,000/=

The defendants shall pay Ksh. 500,000/= whereas the 2<sup>nd</sup> third party shall pay a similar amount. The plaintiff is also awarded interest on the damages as well as costs of the suit. The costs shall be shared equally between the defendants on one hand and the 2<sup>nd</sup> third party on the other hand. 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/decreed until payment in full.

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

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**