



**REPUBLIC OF KENYA**  
**IN THE SMALL CLAIMS COURT AT VOI**  
**SC CC NO. E051 OF 2025.**

**PETERSON KARIUKI  
GAKUYA.....CLAIMANT**

**-VERSUS-**

**PETER KAMANDE NDUNG’U.....1<sup>ST</sup>  
RESPONDENT**

**MARYANN NDUTA KAMAU.....2<sup>ND</sup>  
RESPONDENT**

**JUDGEMENT.**

**INTRODUCTION.**

- 1)** The claimant avers that on or about the 12/2/2025 at around 0430hours the claimant was lawfully driving motor vehicle registration number KAC 922E that was being driven along Nairobi-Mombasa highway heading towards Nairobi and as it approached Canaan area the respondents’ authorized agent, servant and/or driver so negligently drove and/or managed motor vehicle registration number KDR 782D that he was careless overtaking and when it was not safe to do so and this led to it losing control and rammed into the claimant’s motor vehicle and as result the claimant sustained serious injuries.
  
- 2)** The claimant further avers that the police visited the scene and upon carrying out investigations blamed the respondents were to be blamed for the accident and the claimant now seeks compensation for the said injuries. The claimant particularized the injuries as a 10 cm deep cut wound to the left knee

- 3) The claimant blames the respondent for the accident and has pleaded particulars of negligence on the part of the respondent that according to him led to the occurrence of the accident.
- 4) The respondent despite initially denying the claim, recorded a consent on liability on 1/12/2025 and the same was apportioned in the ratio of 90:10 in favour of the claimant. The matter then proceeded by way of Section 30 of the Act.
- 5) I have considered the claim, the documents in support as well as submissions filed.

#### **ISSUE FOR DETERMINATION.**

- a) **Whether the Respondent is liable for the accident.**
- b) **What is the quantum of damages awardable if any.**
- c) **Who bears costs of the claim.**

#### **ANALYSIS AND DETERMINATION.**

- a) **Whether the respondent is liable for the accident.**
- 6) As already stated consent on liability was agreed upon in the ratio of 90:10 in favour of the claimant and the same be and is hereby adopted as the order and judgment of this court on the issue of liability.
  - a) **What is the quantum of damages awardable if any.**
- 7) The claimant produced as exhibits treatment notes, P3 and medical report from Kinoo Medical Clinic dated 21/7/2025. The medical/treatment documents confirm that he sustained soft tissue injuries and opined that the prognosis was fair.
- 8) It is trite law that comparable injuries should attract comparable awards see the case of **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR.**
- 9) I have considered the submissions by the claimant and the authorities referred to therein.
- 10) Courts have taken the position that there can be no uniformity in the assessment of damages and that such assessment falls within the trial court's discretion. In **Livingstone Rawyards Coal Co. [1880] 5 App Cas 25** the court stated that:

**“I do not think there is any difference of opinion as to its (sic) being a general rule that where any injury is to be**

**compensated by damages, in settling the sum of money to be given for reparation or damages, you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong”.**

**11)** In **Cornilliac v St Louis [1965] 7 W.L.R 491** the court highlighted the factors that should be considered in making an award of damages as follows: -

- a) The nature and extent of the injuries sustained**
- b) The nature and gravity of the resulting physical disability**
- c) The pain and suffering hence had to be endured**
- d) The loss of amenities suffered.**
- e) And the extent to which consequentially the claimant’s pecuniary prospects have been materially affected. (See also H. West & Son Ltd v Shephard [1964] AC 326).**

**12)** In the case [Victoria Mwikali Musyoka v Lucy Mueni Mwandikwa \[2021\] KEHC 9438 \(KLR\)](#) [\[2021\] KEHC 9438 \(KLR\)](#) the claimant sustained Deep cut wounds on the face, deep cut wounds on the chin and deep bruises on both knees and the court on appeal reduced an amount of Kshs.400,000/= to Kshs.150,000/=

**13)** I am further guided by the case of **Gusii Deluxe Limited & 2 Others v Janet Atieno [2012] eKLR** in which an award of Kshs. 500,000/- was upheld for deep cut wound frontal head exposing the skull bone, unconsciousness for about 8 hours with brain concussion, bang to the right -upper and lower jaw loosening the right - lower incisor teeth, injury to the right shoulder with bruises over it, deep cut wound in the right upper limbs just below right elbow, injury to the right big toe with bruises over it and blunt injury to the anterior part of the chest but save to add that the said injuries are more severe than those suffered by the claimant herein.

**14)** The above cases almost similar injuries as compared by those suffered by the claimant in this matter and considering that they bore comparable injuries to some extent although as I have noted they are more severe than those suffered herein, the fact that the claimant has suffered no disability and/or incapacity, the rate of inflation, passage of

time further considering the impact it has had to his life, I award the claimant **Kshs.230,000/=**.

**15)** On special damages, it is trite law that they have to be specifically pleaded and proved. The claimant has pleaded Kshs.3,550/= being costs incurred in obtaining the medical report and the motor vehicle copy of records. All those expenses have been proved by way of receipts and are allowed.

**a) Who bears costs of the claim?**

**16)** It is well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case. The claimant having been successful in the matter he is awarded costs of the claim.

**CONCLUSION AND DISPOSITION.**

**17)** The upshot of the foregoing I make the following final orders;

**a) The claim contained in the statement of claim dated 29<sup>th</sup> July 2025 is allowed in the following terms.**

<b>Liability</b>	<b>90:10</b>
<b>General damages</b>	<b>Kshs.230,000/=</b>
<b>Special damages</b>	<b>Kshs. 3,550/=</b>
<b>Sub total</b>	<b>Kshs.233,550/=</b>
<b>Less 10% contribution</b>	<b>Kshs.23,355/=</b>
<b>Net total</b>	<b>Kshs.210,195/=</b>

**b) The claimant is awarded costs and interests from the date of judgment until payment in full.**

**c) Let the file be closed forthwith.**

**18)** Orders accordingly.

**DATED, SIGNED AND DELIVERED AT VOI SMALL CLAIMS COURT  
THIS....8<sup>th</sup> .....DAY OF ...December...2025.**

**F.M. MULAMA  
ADJUDICATOR/RM**

**In the presence of:**

Court Assistant:- Vivian Wambui.

Mr.Kiwinga for the Claimant.

Mr. Karanja for the respondent.