



REPUBLIC OF KENYA

IN THE NAKURU LAW COURTS

CIVIL CASE 697 OF 2020

PA NDEGE, SPM

VERONICA KADESA GISIORI.....

PLAINTIFF

VERSUS

FRANCIS KIPROP TORONKWO.....1^T DEFENDANT

JOSEPH MACHARIA.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff in this case, **VERONICA KADESA GISIORI**, is praying for judgment against the Defendants for general and special damages of Kshs. 11,160/=, costs and interest. The claim arises out of a road traffic accident that occurred on or about the 22nd day of July 2020, as a consequence of which the plaintiff sustained serious body injuries.
2. The Plaintiff was travelling in motor vehicle registration number KAU 872R from Kiamunyi heading to London along the Eldama Ravine – Nakuru road

when at Gioto area or thereabouts, the accident herein occurred. It's the Plaintiff's case that the accident was solely caused by the Defendants' driver, agent, servant and or employee who negligently drove, controlled and or managed the said motor vehicle that it hit the rear of another motor vehicle that was in front. That thereafter, another motor vehicle hit the rear of the same motor vehicle that the plaintiff was travelling in. That as a result, the plaintiff sustained serious body injuries, soft tissue injuries of the upper and lower lips, chest, lower back and both legs.

3. The plaintiff particularized his claim of Defendant's negligence in Paragraph 4 of his Complaint dated the Amended Complaint. The 1st Defendants have been sued in his capacity as the registered owner of the motor vehicle, while the 2nd Defendant, Beneficial owner. The Defendants in their Amended Statement of Defense aver that the Plaintiff and/or driver and/or owners of motor vehicles registration numbers KAU 825L, KCR 172 U and 068 Q negligently contributed to the accident. The Defendants did not submit any submissions nor did they call any witness in support of their case.
4. The plaintiff testified as PW1 and called a PW2, **Number 66201 CPL JANE GITHINJI**, from Kaptembwo Police Station, PW2, as her witness. Plaintiff also relied on her documents filed alongside the complaint herein as her exhibits in support of his case.

5. At the close of the hearing and submissions, the accident and injuries have not been challenged. The Plaintiff and the Police Officer are the only witnesses who testified and produced various exhibits as the Defendants never adduced any evidence at all either in support of their defense and or to controvert Plaintiff's evidence. That being the case, liability and quantum are basically the issues of determination from the evidence tendered by the Plaintiff.

Determination on liability and quantum

6. On liability, the plaintiff testified as PW1, adopted her statement and produced various exhibits on which she blames the accident solely on the Defendants. According to the Plaintiff's oral and documentary evidence, which is well on record before this court, the accident was caused wholly and solely by the negligence of the Defendants as per the particulars of the negligence pleaded in Paragraph 4 of the Amended Plaint, as he failed to keep distance; which made him not to break, slow down, stop or swerve on time so as to avoid ramming onto the vehicle ahead. Plaintiff's evidence remains unchallenged as the defendants have not tendered any evidence to controvert the plaintiff's evidence or support their defense.

7. The Police Officer Number 66201 CPL. JANE GITHINJI testified as PW2 and stated that the accident was reported at station vide OB 60/22/7/20. The officer

was however not the Investigating Officer in this case. She nevertheless blamed the accident solely on the Driver of the motor vehicle herein. Her evidence carries less weight and probative value than that of the Plaintiff as she was not the Investigating Officer and hers is therefore a report-based hearsay. I rely on the case cited of **ALFRED MUTUAL NDUTU V PETER MUSAU WAMBUA [2019] e KLR** where the court held that evidence of a police officer who was not the investigating officer and never visited the scene of the accident could not be admitted as evidence of fact as his account was not something he had witnessed or concluded from investigations.

8. In a bid to determine and or apportion liability herein, I have gone through the submissions filed before this Honorable Court by the parties regarding this matter and in particular the Plaintiff's submission as the Defendants' have not filed any submissions in support of their case.
9. In an action for negligence, the burden of proof falls on the party alleging to establish each element of the negligence, hence it is for the Plaintiff herein to adduce evidence of facts on which he bases his claim. It must be established that there was a duty of care which was breached resulting to loss and damage to the Plaintiff. The Plaintiff herein therefore has a duty to prove her case on a balance of probabilities that the Defendants were so negligent so as to occasion the accident that led to the Plaintiff's injuries. The onus may shift to the

Defendants if the Defendant pleads that the Plaintiff was contributory to the accident.

10. The Plaintiff has discharged her duty of burden of proof through the oral and documentary evidence on record before this honorable court a position of which is unchallenged as the defendants have not adduced any evidence to controvert the plaintiffs evidence or and support their defense. I refer to the case of **LINUS NGANGA KIONGO & 3 OTHERS V TOWN COUNCIL OF KIKUYU [2012]** *e KLR* where the court held that if the defendant fails to call evidence in support of his case, the evidence adduced by the plaintiff against him remains uncontroverted and therefore unchallenged. This leads to the irresistible conclusion that the Defendants were 100% liable for the accident from the evidence adduced in court.

11. On quantum, both parties herein agree that the plaintiff was injured in the manner as pleaded in the plaintiff's submissions as this is not controverted. The medical report of Dr. Omuyoma on record before court filed by the plaintiff herein prove so.

12. I am aware of the guiding principles in awarding general damages such as: damages should be within the limits set out by decided cases, within my pecuniary jurisdiction, within the limits that the Kenyan economy can afford

and must be commensurate to the kind of injury, and extent of pain and suffering. I rely on the case of **WEST AND SONS V SHEPHERD [1964]** **eKLR**, where Lord Morris stated that in assessing damages in injuries cases, comparable injuries should be compensated by comparable awards.

13. In this light I point to the case of **NMOGOI V REUBEN [2025] KEHC 15306** **(KLR)**, cited in Plaintiff's submissions, which have injuries that are relevant to the injuries sustained herein. The courts awarded Kshs. 250,000/- for comparable injuries and I do therefore find that the proposed Kshs. 250,000/- would suffice as general damages for pain and suffering herein.

14. As to special damages, it is trite that the plaintiff is only entitled to special damages pleaded and proved by way of evidence usually through receipts. Plaintiff pleaded the following in paragraph 5 of the plaint;

- a. Medical legal report-Kshs. 10,000.00
- b. Medication-Kshs. 610.00
- c. KRA Search – Kshs. 550.00

15. The same have been proved by the plaintiff through **medical receipts** produced herein as **PEXH. Nos 4** and **5**; and the **NTSA Invoice** produced herein as **PEXH. NO. 7B**. I thus do find the plaintiff entitled to award of special damages pleaded and proved amounting to Kshs. 11,160/=.

16. Judgment is therefore hereby entered against the defendants herein jointly and or severally, and in favor of the plaintiff herein for **Kshs. 250,000/- being general damages for pain and suffering** and **Kshs. 11,160/- being special damages**. Plaintiff also gets the costs of this suit and an interest.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS...17TH ...DAY OF
...FEBRUARY..2026**

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: N/A

Defendants' Counsel: N/A

Plaintiff: N/A

1st Defendant: N/A

3rd Defendant: N/A