



**Dimba v Mwandiku & another (Civil Suit 1477 of 2020)
[2023] KEMC 133 (KLR) (16 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 133 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 1477 OF 2020
JP ADUKE, SRM
MAY 16, 2023

BETWEEN

JULIUS OPONDO DIMBA PLAINTIFF

AND

MBAYA MWANDIKU & ANOTHER DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 18th Sept 2019 along Waiyaki Way in Nairobi. In the plaint available on record, the plaintiff avers he was a lawful driver of motor cycle registration number KMEU 543R when the 1st Defendant either acting as servant/agent/authorized driver of motor vehicle registration number KCT 819L negligently drove the said motor vehicle that it collided with KMEU 543R causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendants and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendants.
3. The particulars of injuries sustained by the Plaintiff are captured in para 4 of the Plaintiff while the particulars of alleged negligence are also captured in para 4 of the Plaintiff. The Plaintiff prays for general damages for pain and suffering and loss of amenities of life/future earnings, special damages, costs of the suit and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. The suit is defended At the hearing thereof, parties recorded a consent on liability in favour of the Plaintiff in the ratio of 80:20. The court hereby endorses these terms as a judgment of this court. Parties filed and exchanged submissions. The issues for determination before this court is one:



Quontum

5. The Plaintiff prays for General Damages, Special Damages, future medical expenses, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for KES 48,200/- as captured in the Plaintiff. I have seen receipts on record attesting to KES 8,000/- only. It is settled principle that special damages must be pleaded and proved. I find that KES 8,000/- has been pleaded and proved and award the same.
6. With respect to loss of earnings, it is settled law that a claim for loss of earnings/amenities of life is of the nature of special damages. This means the same must be pleaded and strictly proved on a balance of probability. From the documents available on record, I have not seen any documentary proof of the income the plaintiff used to make prior to the said road traffic accident. In the absence of documentary proof, the plaintiff elected not to call any witnesses to testify on this alleged fact. On a balance of probabilities, I find myself persuaded and bound by the holding of the court of appeal in Cecilia W. Mwangi & Another v Ruth W. Mwangi CA Civil Appeal Number 251 of 1997eKLR and SJ v Francesco Di Nello & Another (2015) eKLR on how to treat loss of earnings as a special damage claim. Consequently, I make no award in this regard.
7. With respect to general damages, I have considered all the submissions on record and the authorities annexed thereto. I have also considered all the exhibits on record. In particular, I have relied on the reasoning of the court in Civil Appeal Number 126 of 2018 Benuel Bosire vs Lydia Kemunto Mokora[2019]eKLR and Patrisiah Adhiambo Omolo vs Emily Mandala[2020] eKLR where the courts awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered a fracture of the right leg when the accident happened. Taking into account that no amount of damages can restore the Plaintiff to what he was prior to the said accident, the rate of inflation and cost of living, I hereby award KES 400,000/- as general damages.
8. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. General damages KES 400,000/-
 2. Special damages KES 8,000/-
 3. Costs of the suit.
 4. Interest on 1 and 3 above at court rates.

The Plaintiff shall have costs in this suit and interests as outlined above from the date of this judgement until payment in full.

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT 2PM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-N/A.....

(Name, Signature, Date)

For the Defence:N/A.....



(Name, Signature, Date)



<https://new.kenyalaw.org/akn/ke/judgment/kemc/2023/133/eng@2023-05-16>