

KENYA / JUDGMENT

Njiri v Waithera [2026] KEMC 881 (KLR)

[2026] KEMC 881 (KLR)**COURT**

Magistrate's Court

CASE / FILE NUMBER

Civil Suit E2292 of 2025

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REPUBLIC OF KENYA IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI MILIMANI
COMMERCIAL LAW COURT CIVIL SUIT NO.E2292 OF 2025 REUBEN KAMAU NJIRI
.....PLAINTIFF -VERSUS – MICHAEL MUNENE WAITHERA
.....DEFENDANT

JUDGMENT**Introduction**

- 1) The Plaintiff, Reuben Kamau Njiri, instituted this suit against the Defendant, Micheal Munene Waithera, arising from a road traffic accident which occurred on 3rd February 2025 at about 8.30 a.m. along Kangundo Road in the Bantu area.
- 2) The Complaint was filed on 9th April 2025. The Plaintiff pleaded that the Defendant was the registered owner of motor vehicle registration number KDR 487A Daihatsu S. Wagon, which was negligently driven, causing it to lose control, leave its lane and collide with the Plaintiff's motor vehicle registration number KBN 446K Nissan Double Cabin.
- 3) 3. The Plaintiff pleaded that as a result of the accident he sustained pain and tenderness to the scalp and chest, swelling and tenderness of both knees and continuing pain in the affected areas. He claimed General Damages for pain, suffering and loss of amenities and Special Damages of Kshs. 6,990, together with costs and interest.
- 4) 4. The Defendant filed a Statement of Defence dated 5th May 2025, denying negligence and liability and attributing the accident to an unidentified motorcyclist and/or the Plaintiff. The Defendant's witness statement was dated 21st August 2025.
- 5) 5. The issue of liability has, however, been settled. By a Consent recorded in Court on 12th August 2026, liability was apportioned at 90:10 in favour of the Plaintiff. The Defendant is consequently liable for 90% and the Plaintiff for 10% of the liability.
- 6) 6. The only issue falling for determination is therefore the quantum of damages payable to the Plaintiff. Plaintiff's Submissions

- 7) The Plaintiff's written submissions are dated 13th October
2026. Counsel submitted that liability had already been settled at 90:10 in favour of the Plaintiff and that the Court was only required to determine the appropriate quantum.
- 8) Counsel submitted that the Plaintiff was aged 46 years at the time of the accident and sustained pain and tenderness to the scalp and chest, together with swelling and tenderness of both knees. It was submitted that the Plaintiff continued to experience pain in the affected areas.
- 9) On General Damages, the Plaintiff proposed an award of Kshs. 280,000. Reliance was principally placed on *Lake Naivasha Growers v Muigai Thuka*, HCCA No. 36 of 2017, decided on 19th October 2020, where the High Court awarded Kshs.250,000.00 for severe soft-tissue injuries to the left thigh and leg. 10) Counsel submitted that taking into account the nature of the injuries, the passage of time and inflation, an award of Kshs. 280,000.00 would be reasonable. 11) On Special Damages, the Plaintiff submitted that Kshs. 6,990.00 had been specifically pleaded and strictly proved. The Plaintiff therefore urged the Court to award Kshs.280,000.00 as general damages and Kshs. 6,990 as special damages, making a total of Kshs. 286,990, together with costs and interest. Defendant's Submissions 12) The Defendant's Written Submissions are dated 12th August 2026. Counsel acknowledged that liability had been settled by consent at 90:10 in favour of the Plaintiff, leaving the issue of quantum for determination. 13) The Defendant relied on the Plaintiff's treatment records, the medical report prepared by Dr.Muoki James dated 26th February 2025, and the subsequent Medical Examination by Dr. Ashwin Madhiwala on 1st August 2025. 14) Counsel submitted that the Plaintiff sustained relatively minor soft-tissue injuries, namely tenderness to the scalp and chest and swelling and tenderness of both knees. It was further submitted that the Plaintiff had substantially improved by the time of the examination on 1st August, 2025 and that there was no evidence of permanent disability. 15) The Defendant proposed Kshs.60,000.00 as General Damages. Reliance was placed on *Kipkeren Limited v Peterson Ondieki Tai* (2016), *Eva Karemi & 5 Others v Koskei Kieng & Another* (2020), *JK (Minor suing through father and next friend NKM) v Jasper Nchonga Magari & Another* (2021), *HB (Minor suing through father and next friend DMK) v Jasper Nchonga Magari & Another* (2021), *Buds and Blooms Ltd v Lawrence Emusugut Obwa* (2016) and *Eldoret Small Miles Ltd v Charles Owino* (2015). 16) The Defendant submitted that the authorities supported awards in the region of Kshs. 40,000.00 to Kshs.70,000.00 for comparable soft-tissue injuries. 17) On Special Damages, the Defendant submitted that such damages must be specifically pleaded and strictly proved. The Defendant proposed Kshs. 6,350.00 as the amount proved. 18) The Defendant therefore proposed a net award of Kshs. 59,715.00, comprising Kshs. 60,000.00 General Damages and Kshs.6,350.00 Special Damages, less the Plaintiff's 10% contribution.

Analysis and Determination

- 19) I have considered the pleadings, the medical evidence, the submissions by both parties and the authorities cited. I have also considered the consent on liability recorded on 12th August 2026. 20) As already stated, liability is not an issue for determination. The consent is binding upon the parties and the Court. The Defendant is liable at 90%, while the Plaintiff bears 10% contributory negligence. 21) The principal question is therefore what amount constitutes fair and reasonable compensation for the injuries proved. 22) The principles applicable to the assessment of general damages are well settled. The purpose of an award of general damages is to compensate an injured person for pain, suffering and loss of amenities. The Court is required to consider the nature and extent of the injuries, the period of recovery, any residual disability and comparable awards in similar cases. 23) In *Stanley Maore v Geoffrey Mwenda* [2004] eKLR, the Court of Appeal stated that comparable injuries should, as far as possible, attract comparable awards. The Court must, however, appreciate that each case depends on its own facts and that previous awards serve as guides rather than binding tariffs. 24) Similarly, in *Butt v Khan* [1981] KLR 349, the Court recognised that assessment of damages is a matter of judicial discretion. The award should neither be so high as to result in unjust enrichment nor so low as to fail to adequately compensate the injured party. 25) In the present case, the medical evidence establishes that the Plaintiff sustained injuries to the scalp, chest and both knees. There is no evidence of any fracture, surgical intervention, prolonged hospitalisation or permanent disability. 26) The medical evidence further indicates improvement in the Plaintiff's condition by the time he was examined by Dr. Ashwin Madhiwala on 1st August 2025. 27) The Plaintiff relies on *Lake Naivasha Growers v Muigai Thuka*, decided on 19th October 2020, where an award of Kshs. 250,000.00 was made for severe soft-tissue injuries to the left thigh and leg. 28) In my view, that authority is distinguishable. The injuries described therein were more severe than those established in the present case. There is no evidence before this Court of comparable severity or permanent incapacity. 29) The Court has also considered the authorities relied upon by the Defendant. While those authorities demonstrate that awards for minor soft-tissue injuries may fall within the lower range proposed by the Defendant, the injuries in the present case involved several parts of the Plaintiff's body, namely the scalp, chest and both knees. 30) I also find guidance in *Surian Enterprises Ltd v Peter*, Civil Appeal No. E199 of 2021, decided on 5th July 2023, where an award of Kshs. 150,000.00 was considered appropriate for comparable soft-tissue injuries. 31) Further, in *BB (Minor suing through next friend and mother EBM) v Ogangira & Another* [2026] KEHC 337 (KLR), decided on 22nd January 2026, the High Court considered recent authorities on soft-tissue injuries and found an award of Kshs.150,000.00 appropriate. 32) I have also considered *Equity Bank Kenya Ltd & 2 Others v David Githuu Kuria* [2020] KEHC 589 (KLR), decided on 16th December 2020, where the High Court considered injuries including soft-tissue injuries to the chest and knee and reduced the award to Kshs. 250,000.00 33) Having regard to the authorities, the nature of the injuries proved, the absence of permanent disability and the improvement demonstrated in the subsequent medical examination, I find that Kshs. 150,000.00 is a fair and reasonable award

for pain, suffering and loss of amenities. 34) I accordingly find the Plaintiff's proposal of Kshs. 280,000.00 to be excessive in the circumstances. Conversely, I find the Defendant's proposal of Kshs. 60,000.00 to be too low having regard to the number of body parts affected. Special Damages 35) The Plaintiff pleaded Special Damages of Kshs.6,990.00, comprising Kshs. 4,000.00 for the Medical Report, Kshs. 2,300.00 for treatment expenses, Kshs. 550.00 for copies of records and Kshs. 140.00 for postage. 36) The law is settled that Special Damages must be specifically pleaded and strictly proved. This principle was affirmed by the Court of Appeal in Hahn v Singh [1985] KLR 716. 37) The Defendant submits that Kshs. 6,350.00 was proved. Upon consideration of the evidence, I find that the Plaintiff has established special damages in the sum of Kshs. 6,350.00 38) I therefore award the Plaintiff Kshs. 6,350.00 as Special Damages. Contributory Negligence 39) The parties agreed on 12th August 2026 that liability would be apportioned at 90:10 in favour of the Plaintiff. The Plaintiff is therefore entitled to 90% of the damages subject to that consent. 40) The General Damages of Kshs.150,000.00 are accordingly reduced by 10%, as follows: Interest and Costs 41) Section 26 of the Civil Procedure Act, Cap. 21 empowers the Court to award interest on the principal sum and to determine the date from which such interest shall run. 42) In the circumstances of this case, I find it appropriate that interest on the Special Damages of Kshs. 6,350.00 shall run from 9th April 2025, being the date the suit was filed, until payment in full. 43) Interest on the net General Damages of Kshs.135,000.00 shall run from the date of this Judgment until payment in full at court rates. 44) Section 27 of the Civil Procedure Act provides that costs are in the discretion of the Court and ordinarily follow the event. 45) The Plaintiff has substantially succeeded in his claim. Further, the parties expressly agreed on liability at 90:10 in favour of the Plaintiff. I therefore award the Plaintiff 90% of the costs of the suit.

Disposition

- 46) Consequently, Judgment is entered for the Plaintiff against the Defendant as follows:
- a) General damages for pain, suffering and loss of Amenities Kshs. 150,000.00
 - b) Less 10% contributory negligence Kshs. (15,000.00)
 - c) Net General Damages Kshs. 135,000.00
 - d) Special Damages Kshs. 6,350.00
Total Kshs. 141,350.00
 - e) Interest on Special Damages of Kshs. 6,350.00 shall run from 9th April ,2025 until payment in full.
 - f) Interest on General Damages of Kshs.135,000.00 shall run from the date of this Judgment until payment in full at court rates.

- g) The Plaintiff shall have 90% of the costs of the suit, in accordance with the Consent on liability.
- h) The apportionment of liability at 90:10 in favour of the Plaintiff, recorded by Consent on 12th August 2026, remains undisturbed. 30 Days Right of Appeal.

L.A. MUMASSABBA PRINCIPAL MAGISTRATE 16.9.2026 JUDGEMENT DATED, READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI VIA MICROSOFT TEAMS PLATFORM THIS 16TH DAY OF SEPTEMBER,2026 In the presence of : M/s Omari Holding Brief for Mutunga for the Plaintiff Mr.Odongo for the Defendant Court Assistant: Phoebe.

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