



**Njoroge v Chokera & another (Civil Suit 1291 of 2019)
[2023] KEMC 211 (KLR) (31 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 211 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 1291 OF 2019
JP ADUKE, SRM
AUGUST 31, 2023**

BETWEEN

STEPHEN NDUNGU NJOROGE PLAINTIFF

AND

BASSANIO MWENDA CHOKERA 1ST DEFENDANT

JOHN NDUNGU KIMANI 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 22nd February 2017 along Limuru Road, Thika. In the plaint filed on 04th March 2019, the plaintiff avers his driver was driving motor vehicle registration number KAU 326E when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCD 067D negligently and carelessly drove the said motor vehicle, caused it to lose control and ram into KAU 326E causing damage to the plaintiff's car.
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 damages occasioned to the Plaintiff's car are captured in para 6 of the Plaintiff's Complaint while the particulars of alleged negligence are captured in para 4 of the Plaintiff's Complaint. The Plaintiff prays for 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. Interlocutory judgment was entered against the Defendants on 12th October 2021. The matter proceeded to formal proof hearing. The issue for determination before this court is quantum, seeing as liability is settled by the interlocutory judgment on record.



1. Quantum

5. The Plaintiff prays Special Damages, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for kes 120,750/- as captured in para 6 of the Plaintiff. I have seen assessment and inspection reports on record, cash sale receipts and corresponding claim payment requisitions attesting to settlement of kes 5,000+60,500+12,750+40,000/-. It is settled principle that special damages must be pleaded and proved (see *John Kibicho vs Emmanuel P Mkoitiko* [2017] eKLR). I find that kes 118,250/- has been pleaded and proved and award the same.
6. I have considered the Plaintiff's submissions 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 *Akamba Public Road Services vs Abdikadir Adan Galgalo* [2016] eKLR and *African Line Transport Company vs Swaleh Kitsao & Sylvester Keitany*, Civil Appeal No 6 of 2017 where the court outlined the principles to be applied in awarding special damages under the doctrine of subrogation.
7. In conclusion, I enter judgement in favour of the plaintiff as follows:
 1. Special damages kes 118,250/-
 2. Costs of the suit.
 3. Interest on 2 above at court rates.
8. The Plaintiff shall have costs in this suit and interests at court rates as outlined above from the date of this judgement until payment in full.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST AUGUST 2023.

In the presence of :

1. Court Assistant: Benjamin Kombe.
2. Counsel for the Plaintiff:
3. For the Defence:

