



Anyona v Midia (Civil Case E060 of 2024) [2025] KEMC 108 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEMC 108 (KLR)

**REPUBLIC OF KENYA
IN THE SIAYA LAW COURTS**

CIVIL CASE E060 OF 2024

JP MKALA, RM

MAY 23, 2025

BETWEEN

DAVID MARTIN ODHIAMBO ANYONA PLAINTIFF

AND

CHRISTINE AKOTH MIDIA DEFENDANT

JUDGMENT

Background

1. The Plaintiff claims that on 14/05/2023, at around 1950hours, he was lawfully travelling as a fare paying passenger onboard m/v reg. no. KDG 664F Toyota Matatu, along Siaya - Luanda Road, and upon reaching at Mlima Kilo area, there was another oncoming m/v reg. no. KDD 746D Volkswagen, that is owned by the Defendant, which was negligently, recklessly and/ or carelessly driven, without any due care, regard and/or attention to other road users, by the Defendant and/or her authorized driver, servant and/or agent.
2. That while following behind another unknown canter on the same direction, it lost control, veered off its lawful lane and rammed into m/v reg. no. KDG 664F Toyota Matatu head-on, on the right-hand side, thereby causing a grisly road traffic accident as a result of which he sustained serious injuries for which he claims damages for. That he consequently suffered loss and pain.
3. That he suffered compounded fracture of distal end of the left tibia and fibula and severe soft tissue injuries on the left leg.
4. The Defendant through a Statement of Defence denies all the allegations contained in the Plaintiff's Complaint. She avers that if any accident occurred then the same was caused by the Plaintiff's own negligence.

Analysis and Determination

5. I find the following issues commend themselves for determination;



- a. Liability; and
 - b. Quantum Liability;
6. When this matter came up for hearing on 7th May, 2025, parties recorded a consent on liability and judgement on the same was entered at the ratio of 80:20 in favour of the Plaintiff herein.

Quantum

General damages for pain and suffering

7. From the medical report dated 23rd May, 2023 by Dr. Manasseh O. Onyimba, the Plaintiff suffered compound fracture of the left tibia/fibula at the distal aspect, deep extensive wound and damage of the genitalia/testicles. He classified the injuries as grievous harm at 75%. He further stated that the injuries would take 2-3 years to fully heal.
8. Further Dr. Obed Omuyoma on the other hand, through his medical report dated 18th June, 2024, he states the injuries suffered as compound fracture of the left tibia and fibula. The Plaintiff also has a surgical scar on the left shin where orif was done. He observes that the Plaintiff has suffered a permanent disability of 10%.
9. According to the second medical report by Dr. Okoth Owila, dated 16th August, 2024, the Plaintiff sustained a cut wound on the anterior aspect of his right leg and fracture of the lower third, tibia/fibula of the left lower limb. He further observed that the plaintiff's left leg has minimal deformity in the lower third.
10. He concludes that the injuries would full heal within 4 to 6 months.
11. The Plaintiff submits that an award of Kshs. 2,000,000 in general damages would be sufficient while the Defendant on the other hand submits that an award of Kshs. 500,000 will be sufficient under this head.
12. I have considered the submissions and authorities relied upon by the parties, whereas it is impossible to find authorities with exact injuries. The authorities cited do not present injuries closely comparable to those sustained by the Claimant herein.
13. The Plaintiff in *Modern Coast Coaches Ltd (Wrongly sued as Modern Coast Bus) v Mwanzi* (Civil Appeal E125 of 2022) [2023] KEHC 25742 (KLR) (21 November 2023) (Judgment) which is cited by the Plaintiff suffered more serious injuries compared to the Plaintiff herein. The Plaintiff in that case suffered segmental fractures of left femur thigh one, with fragment/displaced, fracture left patella bone, component fracture of left tibia/ fibula, bones fracture proximal third and 4th metacarpal left hand, deep cut left hand and left periorbital area bruises and abrasions left shoulder/forearm and permanent disability of 65%.
Comparable injuries must be awarded similar amounts.
14. In *Aloise Mwangi Kahari v Martin Muitya & another* [2020] KEHC 5516 (KLR) where an award of Ksh.500,000/= as general damages was granted for the following injuries:
 - a. Compound fracture of the right tibia and fibula,
 - b. Severe soft tissue injuries on the face,
 - c. Soft tissue injury on the left shoulder joint.



15. In the case of *Dennis Matagaro v NKO* (Minor suing through next friend and father WOO) [2021] KEHC 7524 (KLR) Kshs. 700,000 was awarded where the Plaintiff suffered mild head injury, tenderness on the neck, dislocation of the left shoulder, tenderness on the back, deep lacerated cut wounds on the forearms and a fracture of the left tibia and fibula.
16. The Court must consider the current value of the shilling and the economy, inflation and time passed since the compared awards were granted. Although astronomical awards must be avoided, the court must ensure that awards make sense and result in fair compensation (see *Ugenya Bus Service v Gachoki* NKU CA Civil Appeal No. 66 of 1981 [1982]eKLR and *Jabane v Olenja* [1986] KLR 661).
17. In light of the above analysis I find that an award of Kshs 650,000/- in general damages for pain and suffering would suffice.

Future medical expenses

18. Future medical expenses are in the category of special damages. They must specifically pleaded and proven. In *Oracle Engineering Limited & another v Muliro* (Civil Appeal E006 of 2024) [2025] KEHC 5409 (KLR) (2 May 2025) (Judgment) D. K. Kemei J stated as follows:-

This brings me to the claim of future medical expenses. It is trite that such kind of expenses are in the form of special damages which must be specifically pleaded and proved. It is noted from the Respondent's statement of claim that the prayers sought were in respect of special damages, general damages, cost of the suit and interest. There is no prayer for future medical expenses. It was incumbent upon the Respondent to specifically plead the claim in order to justify an award in that regard.

22. The Plaintiff through amended Plaintiff he pleads a future medical expense of Kshs. 200,000. he avers that he has a metal implant that will require to be removed. According to the medical report by Dr. Obed Omuyoma, the Plaintiff has a metal Implant that will require Kshs. 200,000 to be removed in future.
23. The defendant on the other disputes this amount they aver that they have not proved that the Kshs. 200,000 will be required. According to Dr. Okoth Owila's second medical report, the left lower limb fracture was managed via an open reduction and internal fixation procedure. It is therefore clear that both doctors speak one language when it comes to the Plaintiff's injuries and kind of medication given. The point of departure between the two doctors is on the costs of removing the metal plates. Dr. Okoth Owila is silent on this aspect. Dr. Okoth Owila's report has the moderating effect but that does not necessarily mean that the Kshs. Will not be needed to remove the plates.
24. Even though the Defendant submits that the future medical has not been proved, but to the contrary, Dr. Owila who is a professional and more acquainted on such issues has given the future medical expenses as Kshs. 200,000. No evidence to the contrary has been given to controvert the Plaintiff's.
25. Based on the following, I find that the Plaintiff has pleaded and proved the future medical expense of Kshs. 200,000 and the same is hereby allowed as prayed.

Special damages.

26. The Plaintiff has produced receipt for the following.
 - a. Special damages.....7,550/-



Disposition

- a. General damages Kshs. 700,000
- b. Special damages 7,550/-
- c. Future medical expense Kshs. 200,000/-
- TotalKshs. 907,550 less 20% =Net..... Kshs. 726,040/-
- d. Costs to the Plaintiff.
- e. Interest on A, B, C, and D from the date of judgement until payment in full.
- f. Stay of execution 30 days.

SIGNED, DATED AND DELIVERED VIRTUALLY AT SIAYA COURT THIS 23RD DAY OF MAY, 2025

HON. J. P. MKALA

RESIDENT MAGISTRATE/ADJUDICATOR

Judgment Delivered in the presence of;

Plaintiff's/Counsel - Mr. Ochieng

Defendant's/Counsel - Mr. Mirembe

Court Assistant - John Okumu

