



**Nyaga v Nyapela & another; Chabadhiya Enterprises Ltd (Third party) (Civil Case 13 of 2012) [2023] KEHC 1348 (KLR) (Civ) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1348 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 13 OF 2012**

**JK SERGON, J**

**FEBRUARY 23, 2023**

**BETWEEN**

**JOYMERCY MUTHONI NYAGA ..... PLAINTIFF**

**AND**

**JACKSON KANALE NYAPELA ..... 1<sup>ST</sup> DEFENDANT**

**KAMPALA COACH LTD ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**CHABADHIYA ENTERPRISES LTD ..... THIRD PARTY**

**Court awards damages of Kshs. 21,274,114 to a passenger of a bus involved in a road accident.**

Reported by John Ribia

***Law of Torts** – negligence – burden of proof in negligence claims – absence of rebuttal evidence – whether, in the absence of contrary evidence, a court could find a party negligent.*

***Personal Injury Law** – liability – vicarious liability – road traffic accident – negligence of driver – excessive speed and unsafe driving conditions – driving an overloaded tractor without lights at night – contributory negligence – award of damages – special damages for future medical costs and costs of professional caregiving – general damages for pain and suffering for lumbar lordosis injury caused by muscle spasm – damages for loss of earning capacity – whether a victim who lost earning capacity due to another party’s negligence was entitled to compensation for physical and social incapacitation.*

***Damages** – assessment of damages – factors considered in awarding damages for victims of road traffic accidents – heads of damages including: special damages for future medical expenses and professional caregiving; general damages for pain and suffering for lumbar lordosis injury resulting from muscle spasm; damages for loss of earning capacity.*



## **Brief facts**

On or about September 17, 2010, the plaintiff was lawfully traveling from Uganda to Nairobi, having just completed her Form Four examinations at St. Lawrence School and College in Uganda. She was a fare-paying passenger in a motor vehicle driven by the 1<sup>st</sup> defendant, who was acting in the course of his employment. It was alleged that the 1<sup>st</sup> defendant negligently drove, managed, or controlled the vehicle, and that the third-party driver also contributed to the accident by operating an overloaded tractor without lights at night and in a reckless manner.

As a result of the collision, the plaintiff sustained severe injuries, including *lumbar lordosis* arising from muscle spasm. Her injuries left her almost completely incapacitated and largely immobile; she required the assistance of a wheelchair or crutches for mobility. The injuries rendered her unable to engage in meaningful economic activity, thereby depriving her of both current and future earnings and significantly impairing her social life.

The plaintiff filed suit seeking general damages for pain and suffering, loss of earning capacity, and physical and social incapacitation, as well as special damages for future medical expenses and the costs of a professional caregiver.

## **Issues**

- i. Whether the defendants and the third-party driver were negligent in causing the accident by driving their respective vehicles at excessive speed and in unsafe conditions, including the third party driving an overloaded tractor without lights during late hours.
- ii. Whether, in the absence of contrary evidence, a court could find a party negligent.
- iii. Whether a person who lost earning capacity due to an accident attributable to another party was entitled to damages for physical and social incapacitation caused by the accident.
- iv. What factors did courts consider in awarding damages for victims of road traffic accidents under the following heads:
  1. Special damages for future medical costs and the costs of a professional caregiver;
  2. General damages for pain and suffering for lumbar lordosis injury resulting from muscle spasm;
  3. Damages for loss of earning capacity.

## **Held**

1. The accident was jointly caused by the negligent actions of the defendants and the third-party drivers. The 1<sup>st</sup> defendant, while driving the bus, operated it at an excessively high speed; the third-party driver similarly drove at high speed while operating an overloaded tractor without lights during late hours, contrary to safe road usage. The collision occurred when the two vehicles struck each other, thereby causing the accident.
2. In the absence of rebuttal evidence from the defendants, the plaintiff established, on a balance of probabilities, the pleaded particulars of negligence against both the defendants and the third party. Where the circumstances of an accident gave rise to an inference of negligence, the burden shifted to the defendants to demonstrate either that the probable cause of the accident was unconnected to negligence or that the explanation was consistent only with the absence of negligence.
3. Both the 2<sup>nd</sup> defendant's motor vehicle and the third party's tractor were directly involved in the accident. Liability was apportioned equally between the two, with each being held 50% liable for the occurrence.
4. As a result of the serious injuries sustained, the plaintiff's mobility became severely restricted, necessitating constant reliance on a wheelchair and assistance from a caregiver. The injuries curtailed her educational aspirations at university, significantly diminished her social life, and deprived her of access to essential social amenities. The plaintiff's physical condition rendered her incapable of engaging in gainful employment, deprived her of future earnings, and adversely impacted her marital prospects, conjugal life, and ability to lead an independent existence. Her social and economic incapacitation was permanent.



5. While no monetary award could restore a human being's shattered physical condition, damages serve to provide reasonable compensation. In assessing damages, the court was guided by the principle that each case must be decided on its facts, that damages must not be excessive, and that comparable injuries should attract comparable awards.
6. In assessing loss of earnings and loss of earning capacity, the standard approach was to compute the plaintiff's annual earnings at the time of the accident, multiplied by the number of years during which the incapacity was likely to persist. Adjustments were made for contingencies, including possible changes in the plaintiff's circumstances, which may either increase or diminish the loss.
7. At the time of the accident, the plaintiff was 20 years old and, in her condition, would never be able to work again. Considering that the retirement age for public servants and most private sector employees in Kenya was 60 years, the court adopted a multiplier of 30 years, applying it against the prevailing statutory minimum wage at the time of the accident to determine the quantum of loss of earnings.

*Suit allowed.*

### **Orders**

- i. *General damages for pain and suffering and loss of amenities awarded at Kshs 2,000,000.*
- ii. *General damages for loss of earning capacity awarded at Kshs 2,239,560.*
- iii. *Future medical expenses awarded at Kshs 5,000,000.*
- iv. *Costs for a professional helper awarded at Ksh 7,200,000.*
- v. *Special damages awarded at Kshs 4,834,554.*
- vi. *Total award was Kshs 21,274,114.*
- vii. *The amounts attracted interest at court rates from the date of judgment until full payment.*
- viii. *Cost of the suit awarded to the plaintiff.*

### **Citations**

#### **Cases**

##### **Kenya**

1. *Emmanuel Kombe Nzai aka Kombe Emmanuel v Basari Company Limited & another* Civil Suit 80 of 2015; [2017] KEHC 1466 (KLR) — (Explained)
2. *Gathoni, Madina v Ali Shalo Shosi & another* Civil Suit 11 of 2006; [2009] KEHC 1277 (KLR) — (Explained)
3. *Kavoi, Daniel Mutiso v Gacheru Peter & 3 others* Civil Appeal 154 of 2016; [2020] KEHC 5427 (KLR) — (Explained)
4. *Kenya Commercial Bank v Suntra Investment Bank Ltd* Civil Suit 380 of 2013; [2015] KEHC 8144 (KLR) - (Explained)
5. *Mbaka, Dorothy Kanyua & another v PS In-Charge of Department of Defence In the Office of the President & another* Civil Case 15 of 2002; [2014] KEHC 6001 (KLR) — (Mentioned)
6. *Mugayilwa, Caroline Endovelvia v Lucas Mbae Muthara* Civil Case 665 of 2007; [2016] KEHC 6544 (KLR) — (Mentioned)
7. *Mwangi, Georgina Wangari v David Mwangi Muteti* Civil Case 40 of 2013; [2014] KEHC 1250 (KLR) — (Mentioned)
8. *Opondo, David Omutelema v Dela Rue Currency & another* (Civil Case 480 of 2009; [2017] KEHC 2125 (KLR) — (Explained)
9. *Tayab v Kinanu* Civil Appeal 29 of 1982; [1983] KECA 23 (KLR); (1983) KLR 114 — (Mentioned)

##### **Regional Court**

1. *Embu Public Road Services Ltd v Riimi* [1968] EA 22— (Explained)
2. *Lakhamsbi v Attorney-General* [1971] EA 118 — (Explained)

#### **Statutes**

##### **Kenya**



**Advocates**

None mentioned

**JUDGMENT**

1. Joymercy Muthoni Nyaga, the plaintiff herein instituted a suit against the defendants by way of plaint dated August 24, 2011 and sought for the following:
  - a. Compensation for General damages for pain, suffering and loss of amenities.
  - b. Special damages of over an estimate sum of Kshs 4,767,485
  - c. Cost of suit.
  - d. Future medical expenses of an estimated sum of Kshs 25,000,000 to cater towards the plaintiff's treatment and reconstructive surgery.
  - e. Any other relief and order the Honourable Court may deem fit.
2. On its part, the 1<sup>st</sup> defendant was sued in its capacity as the authorized driver of the motor vehicle registration KBJ 990E Kampala Coach Bus ("the subject motor vehicle") at all material times and engaged by the 2<sup>nd</sup> defendant is the registered owner of the said motor vehicle at the time of the accident which was under the control of the 1<sup>st</sup> defendant.
3. The plaintiff pleaded in her plaint that sometime on or about the September 17, 2010, she was lawfully travelling from Uganda to Nairobi after her form Four exams at St. Lawrence School and College at Paris in Uganda in the said motor vehicle as a fare paying passenger which was driven by the 1<sup>st</sup> defendant while in the course of his duties so negligently drove managed or controlled the said vehicle and as a result of the third party's contributory negligence of driving a tractor driving it in a reckless manner, an accident occurred and she was injured and sustained serious injuries.
4. It was pleaded by the plaintiff that as a result of the serious injuries, she became almost incapacitated and immobile and she can only move with the assistance of the wheel chair or crutches and has been unable to engage in any meaningful economic activity hence unable to earn earnings for now and future since the injuries she suffered were compound and serious, which has also affected her social life.
5. The plaint summarized the particulars of the injuries sustained by the plaintiff as follows,
  - a. Severe complex wounds on the left leg (Gustillo IIIC)
  - b. Severe complex wound and compound fracture on her left leg
  - c. Injury to the right peroneal nerve
  - d. Compound fracture on the left and right leg
  - e. Suffered serious injuries in the whole of her body parts including the face which were seriously damaged.
  - f. Suffered pain, and great suffering as a result of the accident.
  - g. External clumps and wiring of compound fracture of left tibia.



- h. External damage of the skin.
  - i. Got injured in the lower limbs with obvious deformities.
  - j. Left foot.
  - k. Drop with planter flexion deformities of all left toes.
  - l. Left foot
  - m. Drop with planter flexion deformities of all left toes.
  - n. External clumps with a large defect from loss of soft tissues in the left leg.
6. Upon service of summons, the defendants entered appearance and filed their statement of defence on February 12, 2012 essentially denying that it was at all material times the registered owner of the subject motor vehicle or that the accident occurred in the manner pleaded in the plaint.
  7. The defendants pleaded that the accident was caused solely or substantially by the negligence on the part of the plaintiff for failing to take any or any adequate precaution for her own safety, failure to heed the instructions on safety precautions when travelling and failure to heed the traffic rules and regulations when travelling.
  8. Subsequently, the defendant took out third party proceedings against one Chabhadiya Enterprises on the premise that their motor vehicle registration number KAZ 049B/ZC 3868 solely or substantially contributed to the accident. In the end this court dismissed the application dated February 17, 2017 for non-attendance by the defendants counsel but they later filed another motion dated July 25, 2017 seeking to reinstate the motion which was equally dismissed.
  9. Thereafter, the third party entered appearance and filed his statement of defence dated July 2, 2014 pleading that while it is true that the accident occurred as outlined in the plaint, he was not to blame for the same, alleging instead that the accident was caused wholly by the driver of the 2<sup>nd</sup> defendant. The third party went ahead to set out the particulars of negligence in that regard.
  10. Further to the above, it was pleaded by the third party that the defendants are in no way entitled to any indemnity and/or contribution against him. Consequently, the third party urged this court to dismiss the defendant's claim against him with costs.
  11. When the matter proceeded for hearing, the plaintiff and third party cases were supported by the evidence of each one witnesses while the defendants did not call any witness to support their case.
  12. The plaintiff who was PW1 began by adopting her witness statement signed on March 22, 2012 and produced his bundle of documents and supplementary bundle of documents dated February 15, 2019 as Pexh 1-14 and Pexh 15 dated October 25, 2021, indicating *inter alia*, that on November 17, 2010 she had travelled boarding Kampala Coach from Uganda and upon reaching, she was involved in a road accident.
  13. The plaintiff further testified that as a result of the accident, she was partially incapacitated as she has been attending hospital and spent to a tune of Kshs 4 Million in her first discharge.
  14. The plaintiff stated that she will incur future medical expenses to the tune of Kshs 25 Million, and may undergo reconstructive surgery and that she had to cut short her studies in Uganda.
  15. She further stated that the defendants should be held liable as the driver was driving very fast and the owner of the tractor are equally liable for the accident.



16. In cross-examination, the plaintiff stated that the bus was overloaded with luggage and that it hit the rear side of the tractor, that the tractor was parked at the road side and she could not tell whether the tractor was functioning or not .
17. The plaintiff further stated that several people were injured as a result of the accident and was not aware that some cases filed against the tractor driver were dismissed and the bus driver was held liable.
18. It was the evidence of the plaintiff that apart from her leg, she also got injured in other parts of her body and she cannot tell how much was paid by NHIF as part of her bills were settled by NHIF.
19. In re-examination, the plaintiff testified that the impact of the accident was so massive and that she is also claiming damages from the third party.
20. For the third party, Mr Owen Ochieng Okumu testified that he was an eye witness in the accident and was at the scene of accident, lives in Mumias and that he is a supervisor in transport.
21. The witness also adopted her witness statement signed on March 8, 2017 as his evidence in chief and stated that the driver of the tractor and some passengers in the bus died on the spot.
22. The witness further stated that The tractor was being driven uphill when a bus struck it from behind. The tractor driver was flung off the tractor and died as a result. In his opinion, the bus was solely to fault because the tractor driver had no choice because he was hit from behind.
23. It was the evidence of the plaintiff that the bus was moving in high speed and the bus overtook him in high speed, which the accident occurred when he attempted to get back to his lane.
24. In cross-examination, the witness testified that he is not a speed expert but was aware the bus overtook him in high speed and that the tractor was heading to the Shamba to check on another tractor in the farm which had a mechanical problem.
25. The witness further stated that the accident occurred at night therefore they were no other independent witness.
26. In re-examination, DW1 stated that the careless overtaking caused the accident and that he wholly blames the bus driver who did not get injured.
27. At the close of the hearing, the parties filed and exchanged written submissions but at the time of writing this judgment the 1<sup>st</sup> and 2<sup>nd</sup> defendants had not filed their submissions. I have considered the same and observed that the issues for determination are two twin issues for determination are liability and quantum.
28. On the first limb to do with liability, the plaintiff submitted that the evidence of the plaintiff against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is uncontested and not challenged in any manner by their failure to appear in court and impeach the plaintiff's evidence in any manner despite having filed defence to the plaintiff which was a mere general denial.
29. The plaintiff further submitted that as per the police abstract which was produced by the parties by consent, then it is clear that the 2<sup>nd</sup> defendant and third party's motor vehicle were involved in the accident ,and as a result the plaintiff who was travelling in the 2<sup>nd</sup> defendant's motor vehicle as a fare paying passenger was involved in a serious road accident.
30. It is the plaintiff's submissions that the police abstract which was produced in court confirms that the accident that occurred involved both the 2<sup>nd</sup> defendant's and third party motor vehicle.



31. The plaintiff contends that it is very clear that the third party even though enjoined in the proceedings as a third party also seriously contributed to the occurrence of the accident and therefore urge that if the third party's tractor was not being driven at a very late hours of the night and carelessly controlled or driven and managed on that fateful day, the accident would not have occurred.
32. On the other hand, the third party submitted that the defendants failed to prosecute the third party notice and or proceedings commenced by themselves, and therefore the 3<sup>rd</sup> party ought to be discharged forthwith and its neither the duty of this court or the plaintiff to try the third party.
33. On this argument, the appellant has relied on the case of *Kenya Commercial Bank v Suntra Investment Bank Ltd* [2015] eKLR was cited where the Court held that:

“In law, a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under order 1 rule 15 – 22 of the *Civil Procedure Rules*. And, liability between the Defendant and the third party is determined between the Defendant and the third party, but of course, after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant, and has given directions under order 1 rule 22 of the *Civil Procedure Rules*. The way I understand the law on third parties, such issues of third parties are issues and triable only between the third party and the Defendant, and cannot be a bona fide issue triable between the Defendant and the Plaintiff. On the basis of those legal reasons, even if the third party had been joined, which he has not, it is not a triable issue at all for purposes of liability between the Plaintiff and the Defendant. Looking at the defence and the generalized denials, it is a mere sham. It is a perfect candidate for striking out”

34. Going by the testimony of various witnesses for the plaintiff's and third party's cases respectively, it is clear that there is consistency in the position that the defendant's and the third party drivers caused the accident. It was explained that the driver of the bus the 1<sup>st</sup> defendant was driving at a very high speed and the tractor driver also was driving at high speed and was overloaded and was being driven at late hours for a tractor that does not have lights. It was further explained that the two subject motor vehicles hit each other thereby causing the accident.
35. I further noted that the third party witness who testified, did not avail any independent witness who was at the scene of the accident to corroborate their evidence and further to that the tractor was being driven at late hours of the night and fully loaded with sugar so it could not be easily noticed on the road and since the trailer does not have lights and even if it had they would have not been visible.
36. I note that none of the parties called the investigating officer to shed light on the circumstances surrounding the accident. In the absence of his evidence, I am left to examine the evidence placed before me. Having done so and in the absence of contrary evidence by the defendants, I find that the plaintiff has established on a balance of probabilities the particulars of negligence as against the defendants and the third party. I am guided by the following decision by the Court of Appeal in the case of *Embu Public Road Services Ltd v Riimi* [1968] EA 22:

“where the circumstances of the accident give rise to the inference of negligence then the defendants, in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence or that the explanation for the accident was consistent only with an absence of negligence.”

37. Taking into account the circumstances of the case; the evidence tendered it is clear that the third party's testimony and evidence is inaccurate and does not clearly exonerate and absolve the third party and



therefore it is clear that the 2<sup>nd</sup> defendant's motor vehicle and the third party's motor vehicle were involved in the accident and the two should be held 100% liable. I am of the view that the third party ought to be equally held liable.

38. Consequently, I am satisfied that the plaintiff has proved negligence on the part of the defendants and the third party to the required standard of a balance of probabilities. I find the defendants and the third party liable for the accident.
39. I will cite the case of *Shadrack Kilonzo Kavoi v Gacheru Peter & 3 others* [2020] eKLR where the court cited *inter alia*, the case of *Lakhamshi v Attorney-General* [1971] EA 118 in which the court rendered itself thus:

“A judge is under a duty when confronted with conflicting evidence to reach a decision on it and in most traffic accidents it is possible on a balance of probability to conclude that one or other party was guilty, or that both parties were guilty, of negligence...It is usually possible, although often extremely difficult, to apportion the degree of blame between two drivers both guilty of negligence but where it is not possible, it is proper to divide the blame equally between them.”
40. Having settled the first issue, I turn my attention to the second issue on quantum . Having found the defendants and the third party liable, I am convinced that the plaintiff is entitled to be compensated in monetary terms.
41. Under the heading of compensation of general damages, as a result of the serious injuries the plaintiff sustained, she has limited movement since she depends on a wheel chair and a helper to enable her move up and down and due to her injuries. She has not been able to pursue her studies at the university as anticipated, her social life has been greatly affected the same arising from the loss of essential social amenities, she will not get married to a husband of her choice.
42. The plaintiff cannot engage in any meaningful economic activity, she will not be able to draw earning for now and in the future, she cannot also comfortably engage in conjugal duties hence her future husband-wife life is totally doomed, therefore her chances of getting a companion her choice are minimal due to her status, since she is incapacitated.
43. The plaintiff submitted that as result of she suffered serious pain, agony torture and greatly traumatized which consequently has subjected her to great general damages and are requesting the court to consider the weight of sufferings from the accidents caused by the defendants and the third party and proceed and award the plaintiff a sum of Kshs 30,000,000 to cater for pain and suffering .
44. Under loss of amenities the plaintiff will also require a helper who she will pay a salary of Kshs 15,000 as provided under the minimum wages regulations. That the plaintiff will need another sum of Kshs 200,000 for the wheel chair plus another Kshs 500,000 for specialized equipment and further sum of Kshs 7,200,00.
45. The plaintiff therefore also urges the court to award an estimated sum of Kshs 20,000,000 towards loss of future earnings due to the plaintiff since she will not be in a position to secure a job of her choice, considering she is now incapacitated. Therefore the total under this item the sum required to cater for pain, suffering, loss of amenities will amount to Kshs 59,000,000.
46. To assist the court in considering damages awardable. It is accepted that no amount of money can renew the physical frame of a human being that has been battered and shattered. – see *Tayab v Kinany* [1983] KLR 114, *Dorothy Kanyua Mbaka & Another v PS Department of Defence* [2014] eKLR, *Georgina*



Wangari Mwangi v David Mwangi Muteti [2014] eKLR, Caroline Endovelia Mugayilwa v Lukas Mbae Muthara [2016] eKLR.

47. In considering damages to be awarded each case depends on its own facts because no two cases are alike. The court is also bound to consider that damages should not be excessive, and that comparable injuries should attract comparable awards.
48. In the case of Emmanuel Kombe Nzai aka Kombe Emmanuel v Basari Co Ltd & another [2017] eKLR where the claimant was awarded 6,000,000 for pain and suffering having suffered 80% incapacitation due to spinal injury.
49. I have however looked at the case of David Omutelema Opondo vs Dela Rue Currency & Security Printing Ltd [2017] eKLR where the claimant was awarded Ksh 1,200,00 for pain and suffering for lumbar lordosis injury resulting from muscle spasm. The claimant like in this case was later declared redundant.
50. I find the injuries in the case of David Omutelema Opondo vs Dela Rue Currency & Security Printing Ltd (supra) to be comparable to those obtained in this case. I however, find the injuries in this case to be more serious, therefore, I will instead award Ksh 2,000,000 as general damages for pain and suffering.
51. At the time of the accident, the plaintiff was aged 20 years old. In her condition she will never be able to work again. In Madina Gathoni v Ali Shalo Shosi & another [2009] eKLR, the court stated as follows,

“In assessing loss of earnings, and loss of earning capacity, the general practice is to take the plaintiff’s annual earnings at the accident and multiply the same with the number of years that the loss of the power of earning is likely to subsist, taking into account relevant changes in the plaintiff’s circumstances which could have taken place since the injury and which are likely to either increase or diminish the plaintiff’s loss.”
52. I will use the minimum wage applicable at the period when the accident which was Kshs 6,221, this is as per the Regulation of Wages (General)(Amendment) Order, 2010 that came into operation on May 1, 2010.
53. The retirement age of public servants and in many private companies is 60 years. I will apply a multiplier of 30 years which in my considered view is reasonable. The plaintiff has ended up with 100% incapacity. She is not likely to recover and this is confirmed by the medical reports. Her future earning capacity, for lack of a better word, is zero. Damages under this head would work out to Kshs 6,221 x 12 x 30 = Ksh 2,239,560.
54. There is a claim contained in the plaint for cost of future medication. From the documents presented, it is clear from the medical reports of Dr Stanley Ominde Khainga stated that the plaintiff will need a minimum of Kshs 4,000,000 for constructive surgery. The plaintiff contends that the report being issued ten years ago and considering the change of economic times increase of medical costs and due to inflation that the court to adjust the sum of Kshs 25,000,000 for future medical costs. I will award a sum of Kshs 5,000,000 for future medical costs.
55. Although the plaintiff submitted that the court should consider to enhance the special damages amounting to Kshs 15,000,000 although what has been pleaded and proved is, evidence adduced through the documents filed add up to Kshs 4,834,554 which I will consider.
56. The cost of looking after the plaintiff by a professional helper has been put at Kshs 15,000 per month x 40 years the expected period of life expectancy considering the plaintiff is 30 years old, which will be a grand total of Kshs 7,200,000.



57. Pursuant to the letter written by the plaintiff's advocate to the Deputy Registrar of this Division dated January 26, 2023, the file was placed before this court. In the letter, the learned advocate pointed out that there were arithmetic mistakes in the final judgment which this court should correct. In exercise of the court's power donated under sections 99 and 100 of the *Civil Procedure Act*, this court proceeded to correct the apparent errors as follows:
58. The award of Ksh 7,200,000 for professional care giver or helper which had been omitted is hereby given as an award.
- The award on special damages of Kshs 4,767,485 is corrected and set aside and is substituted with an award of Kshs 4,834,554
59. In the end, judgment is entered in favour of the plaintiff and against the defendants and third party as amended as follows:
- i. General damages for pain and suffering and loss of amenities Kshs 2,000,000
  - ii. General damages for loss of earning capacity Kshs 2,239,560
  - iii. Future medical expenses Kshs 5,000,000
  - iv. Professional helper Ksh 7,200,000
  - v. Special damages Kshs 4,834,554
- Total Kshs 21,274,114
- vi. The aforesaid amounts to attract interest at court rates from the date of judgment until full payment.
  - vii. Cost of the suit

**DATED, SIGNED AND AMENDED AT NAIROBI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**

**J. K. SERGON**

**JUDGE**

