Absal & Sons Enterprises Limited & another v Mwangangi & 2 others (Civil Appeal 19 of 2020) [2022] KEHC 12118 (KLR) (24 June 2022) (Judgment)

Neutral citation: [2022] KEHC 12118 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL APPEAL 19 OF 2020

RN NYAKUNDI, J

JUNE 24, 2022

BETWEEN

ABSAL & SONS ENTERPRISES LIMITED .... 1ST APPELLANT

ADAN ABDILAHI .... 2ND APPELLANT

AND

PETER EROT LOKITEL .... 1ST RESPONDENT

SUSAN MWIKALI MWANGANGI .... 2ND RESPONDENT

PETER MWANZUI MWAKIO .... 3RD RESPONDENT

(Being an Appeal from the Judgment and Decree of the Senior Resident Magistrate Honorable N. C. Adalo delivered on 3rd March 2020 in Prinicipal Magistrates Court at Mariakani Civil Suit No. 73 of 2015)

JUDGMENT

1. The appeal before me, by the 1st and 2nd defendants, hereinafter the 1st and 2nd appellants respectively, is against the award of general damages for pain, suffering and loss of amenities at Kshs 500,000.00 for Susan Mwikali Mwangangi and Kshs 1,500,000.00 for Peter Erot Lokitela together with costs and interests of the suit. The judgment was delivered on March 3, 2020. Aggrieved by the judgment, the appellant filed a memorandum of appeal on the March 9, 2020. The appeal is mainly on the trial court's finding on quantum. The grounds of appeal are that: -

    1. The learned trial magistrate erred in law and in fact in failing to hold that Susan Mwikali Mwangangi suffered soft tissue injuries as per the primary documents.

2. The learned trial magistrate erred in law and fact in making an award of general damages for pain, suffering and loss of amenities which was excessive and inordinate in the circumstances to Susan Mwikali Mwangangi and Peter Erot Lokitela.

3. The learned trial magistrate erred in law and fact in failing to consider judicial precedence and in taking into account things she ought not to have considered hence arrived at an assessment of damages that was erroneous.

4. The learned trial magistrate misapprehended the evidence and misapplied, misunderstood and or overlooked the correct legal principles and judicial precedent and that she made an award for pain and, suffering and loss of amenities that was erroneous and inordinately high.

5. The learned trial magistrate erred in fact and in law in failing to appreciate that similar injuries should attract similar awards and in failing to apply the doctrine of *stare decisis* and take into account public interest. She thus made an award for pain, suffering and loss of amenities that was arbitrary, inordinately high and erroneous.

2. Reasons whereof the appellants pray that the appeal be allowed and the following orders do issue: -

a. The assessment of general damages be set aside ad the awards be reduced downwards.

b. Costs of this appeal.

3. At the hearing of this appeal, directions were taken to have counsel file their respective submissions. The duty of an appellate court is well set out in the case of *Ann Wambui Nderitu v Joseph Kiprono Ropkoi & another* CA No 345 of 2000 where the court held:

> " As a first appellate court we are not bound by the findings of fact made by the superior court and we are under a duty to re-evaluate such evidence and reach our own conclusions. We should however be slow to differ with the trial Judge and the caution is always appropriate as O'Connor P stated in Peters v Sunday Post Ltd [1958] EA 424, at pg 429:
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> > "It is a strong thing for an appellate court to differ from the finding on a question of fact, of a Judge who tried the case and who has had the advantage of seeing and hearing the witness."
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> This court will however interfere where the finding is based on no evidence, or on a misapprehension of the evidence or the judge is shown demonstrably to have acted on wrong principles in reaching the finding he did. See Ephantus Mwangi & another v Wambugu [1983] 2 KCA 100:" or in accordance with the principles and guidelines in Robert Nsioki Kitavi v Coastal Bottlers Ltd [1982] – 198 I KAR 891 – 895
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> "The appellate court will only interfere with a trial Judge's assessment for damages when the trial Judge has taken into account a factor he ought not to have been into account or failed to take into account or the award is so low that it amounts to erroneous estimate."

4. This being the first appeal I am required to consider the evidence adduced, evaluate it and draw my own conclusions, bearing in mind that I did not hear and see the witnesses who testified see *Selle & another v Associated Motor Boat Company Ltd & others* [1968] EA 123.

5. Consequently, guided by the above principles of law stated in the aforementioned case I shall proceed to review the facts and evidence presented in the trial court.

Brief Facts

6. The respondents filed suit against the appellants vide plaints dated the March 26, 2015 and March 24, 2015 for general damages special damages and costs of the suit and interest thereof arising from a road traffic accident which was alleged to have occurred on or about the March 12, 2014 along Mombasa-Nairobi Highway, at Kokotoni Area, while both respondents were traveling aboard motor vehicle registration number KBH 189M Nissan Matatu, when motor vehicle registration number KBL 921U Caterpillar which was so negligently driven turned to the side resulting in an accident whereof they both sustained serious bodily injuries.

7. They alleged that the motor vehicle was in the authority, control and physical possession of the 2nd appellant at all material times while the 1st appellant was its authorized driver and or agent. The 3rd party who is also the 3rd respondent herein was the driver of the Nissan Matatu.

9. The respondents blamed the appellants for the alleged accident and set out particulars of negligence. They sought general damages, special damages and costs of the suit and interest thereof. They testified and produced exhibits in support of their cases. and filed submissions dated August 21, 2019.

10. The appellants filed a defence dated May 21, 2015 denying any liability arising from the said accident. They did not call any witnesses but filed an application to have the 3rd party enjoined in the suit which application was allowed. The court further consolidated the two matters and all parties filed submissions on quantum and liability.

The Evidence

11. PC Celestine Mwawaza testified that the driver of the Caterpillar, the 2nd appellant herein, had suddenly turned and failed to give way to the oncoming Nissan Matatu. The said driver was charged before the court and fined, she further produced two police abstracts and P3 forms in respect of the two matters.

12. Dr Ajoni Adede gave evidence that the 1st respondent had suffered a fracture of the right radius forearm bone, cut on the right lower limb, blunt object trauma to the neck and right elbow and she would heal with a residual disability of 4% due to the fracture which caused stiffness to the affected arm and remains a weak point for life. As regards the 2nd respondent the doctor indicated that he had suffered a comminuted fractures of the left tibia and left fibula leg bones.

13. The defence and the third party did not call any witnesses.

    All parties filed their submission on liability and quantum.

The Trial Court's Judgment

14. Judgment was delivered by the trial court on March 3, 2020. The court apportioned liability between the defendants (appellants herein) and the third party at 90:10 with the greater liability borne by the appellants. The learned trial magistrate awarded general and special damages as follows;

    1. For the first plaintiff-Susan Mwangangi

       General damages for pain and suffering Kshs 500, 000.00/=

       Special damages Kshs 2,000.00/=

       Liability by the defendants 90% Kshs 451,000/=

       Liability by third party 10% Kshs 50,200/=

Total..Kshs 502, 000.00/=

2. For the second plaintiff-Peter Erot

General damages for pain and suffering Kshs 1,500, 000.00/=

Special damages Kshs 2,000.00/=

Total..Kshs 1,502, 000.00/=

Liability by the defendants 90% Kshs 1, 351,800.00/=

Liability by third party 10% Kshs 148,200.00/=

The Learned Chief Magistrate also awarded costs of the suit and interest thereon at court rates.

The Appellant's Submissions

15. Counsel for the appellant, Mr Macmillan Jengo, in his submissions dated June 26, 2029, submitted that the appeal was against the award of damages and as such the court should be guided by the principles set out in the Court of Appeal in Henry Hidaya Ilanga v Manyema Manyioka [1961] 1 EA 705 (CAD) while applying with approval the rule laid down by the Privy Council in Nance v British Columbia Electric Railway Company Ltd (4) (1951) AC 601 at p 613.

16. Counsel submitted that the trial court failed to apply the correct principles took into account extraneous unpleaded issues and filed to apply statutory law and guidance properly hence acted arbitrarily and exercised its discretion wrongly. Counsel submitted that the trial court had erred on the finding of the injuries suffered by Susan Mwikali by holding that the secondary evidence (documents) being the medical report had more probative value than the primary document viz the treatment notes and the p3 form.

17. The main bone of contention was whether the 1st respondent did indeed suffer a fracture as stipulated in her testimony. It's their submission that the 1st respondent only supplied a request for an Xray and not an actual Xray more than 10 months after the accident, that the treatment notes showed no evidence of a fraction and that the fracture issue only appeared in the testimony of their witness Dr Ajoni Adede and his Medical report. Further they submitted that the Doctor did not provide any evidence of the said fracture.

18. They thus request the court to consider her injuries as soft tissue injuries and thus Kshs 100,000 should have been sufficient for the same. They cited case law as recent as 2018 where the award of similar injury was Kshs 180,000/=.

19. With regard to the 2nd respondent counsel submitted that Dr Ajoni did not actually produce a medical report but that the same was marked and never produced as the doctor was stepped down to go and bring the report but never returned. He further submits that the award was inordinately high as compared to recent similar cases. He argues that the range is Kshs, 250,000 to Kshs 300,000 for similar comparable injuries, his latest case being in 2019 where the court awarded Kshs 300,000 for similar injuries.

20. Finally, he submitted that the assessment for damages was inordinately high and that comparable cases were not considered and that there was a breach and violation of the principals in assessment of damages. He asked the court to allow the appeal and assess damages downwards to Kshs. 100,000 in the case of Susan Mwikali Mwangangi and Kshs 300,000 in the case of Peter Erot Lokitela. He also prayed for costs of the appeal.

21. For these submissions counsel relied on the cases of; *PN Mashru Ltd v Omar Mwakoro Makenge alias Omar Masoud* HCCA No 9 of 2017, *Cecilia W Mwangi & another v Ruth Mwangi* [1977] eKLR, *Daniel Kosgei Ngelechi v Catholic Trustee Registered Diocese of Eldoret & another* [2013] eKLR, *Ndungu Denis v Ann Wangari Ndirangu & another* [2015] eKLR, *Paul Karimi Kithinji v Joseph Mutai Kireria* HCCA No 75 of 2017, *Muraya v Mwangi* [2004] eKLR, *Twin River 1 Estate v Teresia Mutheu Nzui* [2018] eKLR, *Simon Mungai Kariuki v Fatma Hassan* [2017] eKLR, *Harun Muyoma Boge v Daniel Otieno Agula* [2015] eKLR, *Maselus Eric Atieno v Unitel Services Limited* [2017] eKLR, *Sabastian Jackson Asembo v Peter Nyamwange & anor* [2019] eKLR, AN Investments Ltd v Jeremiah Mwakulenga CA No 96 of 2018, *James Gathirwa Ngungi v Multiple Haulers (EA) Ltd & another* HCCA No 658 of 2009 and *Franklin Chilibasi Spii v Kirangi Liston* HCCC No 30 of 2015.

The Respondents' Submissions

22. The respondents filed their submissions on September 30, 2020. They submitted liability is not contested and that the only issue for determination by this court was whether the trial court applied the wrong principles of law in assessing damages and whether the amount was so inordinately high that it must be a wholly erroneous estimate of the damages.

23. Counsel submitted that it is trite that the issue of assessment of damages is a matter for discretion of the trial court and must be exercised judicially and with regard to the general conditions prevailing in the country and to prior relevant decisions. They submitted that the trial court relied on the medical report, treatment notes, the circumstances of the case, the seriousness of the injuries and the relevant authorities cited by both parties as such the trial court relied on all relevant factors.

24. They further submitted that the appellants did not bring any witnesses to controvert the evidence adduced at trial, no expert challenged the evidence by Dr Ajoni.

25. They also submit that the trial court heard the witnesses, saw their demeanor and the injuries and resultant scars and that in fact the 2nd respondent had undergone 13 surgeries and was still in crutches at the time of the trial and is yet to recover.

26. Finally, they submitted that the purpose of the general damages award is to give the injured person compensation for the pain, damage or loss suffered and the general rule was that the injured party should be awarded a sum that would put him in the same position as he would have been if he had not sustained the injury.

27. Counsel submitted that the trial magistrate had relied on good, sound authorities since they had striking similarities with the respondents' injuries and prevailing conditions. Consequently, he urged this court to dismiss the appeal with costs and order the appellants to satisfy the judgment of the trial court.

28. For these submissions counsel relied on the cases of; *Total security Ltd v Benard Bosire* [2016] eKLR, *Mary Njeri Murigi v Peter Macharia & another* [2016] eKLR, *Dick Omondi Ndiewo T/A Ditech engineering Service v Cell Care Electronics* [2015] eKLR, *Peter M Kariuki v Attorney General* [2014] eKLR, *Rose Makombo Masanju v Night Flora Alias Nightie Flora & another* [2016] eKLR, *Agility Logistics Limited v John Wambua Musau & another* [2017] eKLR, *James Gathirwa Ngugi v Multiple Haulers (EA) Limited & another* [2015] eKLR and *Franklin Chilibasi Spii v Kirangi Liston* [2017] eKLR.

The 3rd Respondent's Submissions

29. The 3rd respondent mainly concurred with the appellant's submissions. They submitted that the award was inordinately high compared to similar cases and that although the trial court could exercise its discretion the same should be done judicially. Further, Counsel submitted that the 1st respondent did not sustain any fracture on the day of the accident as there is no evidence of the said fracture in the treatment notes.

30. Finally, they submitted that an award of Kshs 90,000 for the 1st respondent and Kshs 300,000/= for the 2nd respondent would have been sufficient.

31. For these submissions counsel relied on the cases of; *Timsales Ltd v Wilson Libuywa* [2008] eKLR, *James Mburu Njoki v Richard Kipkorir Langat* [2020] eKLR, *Kemfro Africa LTD T/A Meru Express Services (1976) & anor v Lubia & another (No 2)* [1985] eKLR, *Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd* [2013] eKLR, *Paul Karimi Kithinji v Joseph Mutai Kireria* HCCA No 75 of 2017, *Muraya v Mwangi* [2004] eKLR, *Twin River 1 Estate v Teresia Mutheu Nzui* [2018] eKLR, *Simon Mungai Kariuki v Fatma Hassan* [2017] eKLR, *Harun Muyoma Boge v Daniel Otieno Agula* [2015] eKLR, *Maselus Eric Atieno v Unitel Services Limited* [2017] eKLR, *Sabastian Jackson Asembo v Peter Nyamwange & anor* [2019] eKLR, *AN Investments Ltd v Jeremiah Mwakulenga* CA No 96 of 2018, *James Gathirwa Ngungi v Multiple Haulers (EA) Ltd & another* HCCA No 658 of 2009 and *Franklin chilibasi Spii v Kirangi Liston* HCCC No 30 of 2015.

Issues for Determination

32. I stand by the Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424 where Sir Kenneth O'Connor stated as follows:

> "It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion. I take as a guide to the exercise of this jurisdiction the following extracts from the opinion of their Lordships in the House of Lords in Watt v Thomas (1), [1947] AC 484."

> "My Lords, before entering upon an examination of the testimony at the trial, I desire to make some observations as to the circumstances in which an appellate court may be justified in taking a different view on facts from that of a trial judge. For convenience, I use English terms, but the same principles apply to appeals in Scotland. Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law (for example, on a case stated or on an appeal under the County Courts Acts) an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial

judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

32. The appropriate standard of review established in cases of appeal can be stated in three complementary principles:

    i. First, on first appeal, the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;

    ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and

    iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

33. These three principles are well settled and are derived from various binding and persuasive authorities including;

    a. *Mary Wanjiku Gachigi v Ruth Muthoni Kamau* (Civil Appeal No 172 of 2000: Tunoi, Bosire and Owuor, JJA);

    b. *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another* (Civil Appeal No 345 of 2000: O'Kubasu, Githinji and Waki JJA); *Virani T/A Kisumu Beach Resourt v Phoenix of East Africa Assurance Co Ltd* (Kisumu High Court CC No 88 of 2002).

34. With this in mind, I have analyzed the evidence as this court is obliged to do so as to draw my own inferences and conclusions on the matter. I find that the issue of liability is not disputed. Consequently I will put my mind to the issue of quantum.

Determination

35. On the issue of quantum, I shall rely on the Court of Appeal's decision in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, where the Court of Appeal held that –

> "...it is firmly established that this court will be disinclined to disturb the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in Rook v Rairrie [1941] 1 All ER 297. It was echoed with approval by this Court in Butt v Khan [1981] KLR 349 when it held as per Law, JA that:
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>> 'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended

the evidence in some material respect, and so arrived at a figure which was either inordinately high or low."

36. From my re-evaluation of the evidence on assessment of damages I make the following conclusion. For the 2nd respondent I find no misapprehension of the facts in the legal principles made by the learned trial magistrate made reference to the relevant evidence on record.

37. For the 1st respondent however, there is a gap that could not be filled by the learned trial magistrate and should have been filled by the party who had a duty to avail the same to court. The issue of whether or not the 1st Respondent had suffered a fracture as concluded by the trial court is still in contention. The 1st respondent's treatment notes indeed have no mention of a fracture and further there was no xray or xray report indicated that she had indeed suffered a fracture as a result of the accident. I concur with the submissions of learned counsel for the appellants on this issue. Consequently, I find that this court will have to interfere with the learned trial magistrates award on account of the injuries sustained by the 1st respondent.

38. That said, it is for me to determine whether the award was consistent with comparable awards made in the case of similar soft tissue injuries. The Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that

> "comparable injuries should attract comparable awards".

39. I have considered the parties' submissions on quantum of damages as well as the authorities cited by counsel in their submissions for this appeal. It must be noted that injuries will never be fully comparable to other person's injuries. What a court is to consider is that as far as possible comparable to the other person's injuries, and the after effects.

40. The determination of damages will involve the principles laid down in various judicial decisions such as in the case of *Yorkshire Electricity Board v Naylor* [1968] AC 52G where the court held that:

> "It is to be observed and remembered that the prospects to be considered and those which were being referred to by Viscount Simon LC. in his speech were not the prospects of employment or of social status or of relative pecuniary affluence but the prospects of a 'positive measure of happiness' or of a 'predominantly happy life."

41. I have considered the rival submissions on the quantum of damages, the authorities cited by the appellants and respondents in their submissions. Further, in dealing with an appeal on quantum I stand guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;

> "An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low"

42. In the case of *Savanna Saw Mills Ltd v Gorge Mwale Mudomo* [2005] eKLR the court stated as follows: -

> "It is the law that the assessment of damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the

court simply because it would have awarded a different figure if it had tried the case at the first instance …"

43. For this I shall rely on the Court of Appeal's decision in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, where the Court of Appeal held that –

> "…it is firmly established that this court will be disinclined to disturb the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in Rook v Rairrie [1941] 1 All ER 297. It was echoed with approval by this Court in Butt v Khan [1981] KLR 349 when it held as per Law, JA that:
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> > 'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low." Emphasis my own.

44. The appellants propose an award of the sum in the region of Kshs 180,000.00 for the 1st respondent and Kshs 300,000 for the 2nd respondent.

45. Looking at similar cases where the plaintiffs suffered similar injuries I am persuaded that the learned trial magistrate's estimate on the amount of general damages entitled to the 1st respondent was manifestly excessive as the trial court relied solely on the evidence of Dr Ajoni and his medical report. It is perplexing however that the appellants never introduced their own expert to rebut this allegation and put to rest the issue of whether or not the 1st respondent suffered a fracture. This court finds reason to revise the quantum awarded to the 1st respondent. In my view an award of Kshs 300,000/= would be adequate to compensate for the injuries suffered in the case of the 1st respondent.

Special Damages

46. The test to be applied in this award of damages is clearly articulated in the cases of *Mariam Maghema Ali v Jackson M Nyambu T/A Sisera Store* Civil Appeal No 5 of 1990 and *Idi Ayub Shaban v City Council of Nairobi* [1982 – 1988] I KAR 681 which laid down the principle that special damages in addition to being pleaded must be strictly proved. Consequently, on special damages I find that the respondent had clearly proven the amount pleaded as special damages and as such i find no reason to vary the learned magistrate's decision on that.

The Award On Interest

47. It is important to note that the award on interest is discretional as such I find no basis for tempering with the trial court's decision on this. I further wish to point out that in assessing compensatory damages, the Law seeks at most to indemnify the victim for the loss suffered, not to mulct the tortfeasor for the injury he has caused see the case of *Lim v Camden* HA [1980] AC 174.

48. For the above reasons, the appellants appeal partially succeeds and the following orders abide the decision of this court:

For the first respondent-Susan Mwikali Mwangangi

General damages for pain and suffering Kshs 300, 000.00/=

Special damages Kshs 2,000.00/=

Liability by the defendants 90% Kshs 271,800.00/=

Liability by third party 10% Kshs 30,200.00/=

Total...Kshs 302, 000.00/=

For the second respondent-Peter Erot

General damages for pain and suffering Kshs 1,500,000.00/=

Special damages Kshs 2,000.00/=

Total...Kshs. 1,502, 000.00/=

Liability by the defendants 90% Kshs. 1, 351,800.00/=

Liability by third party 10% Kshs. 148,200.00/=

Interest shall abide from the date of judgment until payment in full.

Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 24TH DAY OF JUNE 2022.

....

R NYAKUNDI

JUDGE

Coram: Hon. Justice R. Nyakundi

Macmillan Jengo advocate for the Appellants

Otieno Asewe and Kimondo Gachoka & Company advocate for the Respondents

NB: This judgment is dispatched electronically to the respective emails of the advocates in the matter.