Mukila v Taita Taveta University College (Civil Appeal E002 of 2021)
[2022] KEHC 12774 (KLR) (31 August 2022) (Judgment)

Neutral citation: [2022] KEHC 12774 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VOI

CIVIL APPEAL E002 OF 2021

JM MATIVO, J

AUGUST 31, 2022

BETWEEN

DAVID MUKILA MUKITI ALIAS MUKILA MUKITI ALIAS DAVID MUKILA ..... APPELLANT

AND

TAITA TAVETA UNIVERSITY COLLEGE ..... RESPONDENT

(An appeal against the Judgment of Hon. E.M. Nyakundi, RM, delivered on 17th December 2020, in Wundanyi PMCC No. 15 of 2020)

JUDGMENT

1. The appellant challenges the decision of the Resident Magistrate in Nakuru PMCC No 15 of 2020. In the said case, the appellant had sued the Respondent seeking recovery of general and special damages arising from personal injuries he sustained after the motor vehicle registration number KAD 558 M in which he was a lawful passenger overturned along Wundanyi/Mwatate Road on September 6, 2019. He attributed the occurrence of the accident to the negligent driving of the Respondents driver/agent particulars whereof are pleaded at paragraph 4 (a) to (l) of the Plaint.

2. A first appellate is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. (See *Selle & another v Associated Motor Boat Co Ltd & others*[1] and *Peters v Sunday Post Limited*[2]). A first appellate court has jurisdiction to reverse or affirm the findings of the trial court. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions

1 **{1968} EA 123.**

2 {1958} EA page 424.

of fact and law. The judgment of the appellate court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.[3]

3. A first appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust.[4] The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard on both questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. While considering the scope of Section 78 of *Civil Procedure Act*,[5] a court of first appeal can appreciate the entire evidence and come to a different conclusion.

4. In his plaint dated June 19, 2020, the appellant pleade that he sustained the following injuries:

   i. Soft tissue injuries to the face-cut on the right side of the eye and forehead.

   ii. Mild head injury with transient loss of consciousness.

   iii. Low back pain due to muscle spasm.

   iv. Soft tissue injuries to the neck.

5. He sought general damages for pain, suffering and loss of amenities/diminished earning capacity and special damages as follows: - (a) Medical legal report-Kshs 3,000/=; (b) Copy of records-Kshs 550/=; (c) Treatment and medical expenses-Kshs 212,000/= all aggregating to Kshs 215,550/=.

6. In its statement of defence dated July 1, 2020, the Respondent denied the appellant's claim. Alternatively, it attributed the injuries to the appellant's negligence particulars whereof are pleaded at paragraph 5 (a) to (c) of the Plaint.

7. Before the trial court, the appellant adopted his witness statement dated June 19, 2020. He testified that he was still in pain and he is unable to do some activities for long. He said he was a student doing agro-business.

8. The Respondent did not adduce evidence at all. A request by its counsel to attach a Medical Report prepared by Dr. Wambugu to his submission was refused by the court.

9. In the impugned judgment, the learned Magistrate noted that liability was agreed by consent at 10% as against the appellant and 90% as against the Respondent. As for special damages, the allowed Kshs 3,000/= for the Medical Report, Kshs 550/= for conducting a search at the registrar of motor vehicles and treatment and medical expenses of Kshs 216,550/= all aggregating to Kshs 219,550/=.

10. Regarding general damages, the court considered the injuries and the law and awarded Kshs 400,000/= for pain and suffering and loss of amenities, Kshs 100,000/= for loss of earning capacity. The total award is Kshs 719,550/= less 10% contribution ie Kshs 71,955/= leaving a balance of Kshs 647,595/= plus interests from date of judgment and costs of the case.

[3] See *Santosh Hazari v Purushottam Tiwari (Deceased) by L.R's* {2001} 3 SCC 179.

[4] See *Kurian Chacko v Varkey Ouseph* AIR 1969 Kerala 316.

[5] Cap 21, Laws of Kenya.

11. The appellant seeks to upset the above award on grounds that: - (a) that the award of Kshs 500,000/ = for general damages is low; (b) that the learned Magistrate failed to consider the uncontroverted evidence on the nature of the injuries sustained; (c) that he failed to consider the appellant's authorities; (d) that he failed to appreciate that similar injuries should so far as possible attract similar awards.

12. In his submissions, the appellant's counsel urged the court to interfere with the award arguing that the lower court misapprehended the evidence before it and applied the wrong principles. He referred to the appellant's evidence and medical report prepared by Dr. Musyoki and the appellant's persistent low back pain and inability to bend for long. He submitted that the award of Kshs 500,000/= was erroneous. He cited *West (H) & Sons Ltd v Shepherd*,[6] Tayab v Kinanu[7] *and Kenya Industrial Industries Ltd v Lee Enterprises Ltd*[8] all in support of the proposition that money cannot renew a body that has been battered and shattered. He also cited what he argued were comparable decisions namely; *Diploy Plastics Ltd v Kennedy Anwonga Mokaya*[9] in which the high court awarded Kshs 500,000/= for a back injury, *David Omutelema Opondo v Dela Rue Currency and Security Limited*[10]in which the court awarded Kshs 1,200,000/= for a back injury with no fractures.

13. On the Kshs 100,000/= awarded for loss of future earnings, he urged this court to consider the 5% disability suffered by the appellant and his inability to do some activities for long and enhance the said sum. In support of the claim for diminished earning capacity, he cited S J v Francesco Di Nello & another,[11] *Mumias Sugar Company Limited v Francis Wanalo*,[12] Butler v Butler[13] and *John Kanyungu Njogu v Daniel Kimani Maingi*[14]and other similar decisions in support of his plea for enhancement of the award for loss for diminished earnings.

14. The Respondents' counsel submitted that the injuries sustained are soft tissue in nature and proposed an award of Kshs 120,000/=. He cited *Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 others*[15]in which the court awarded Kshs 90,000/= for a deep cut on the scalp, blunt injury to the left side of the chest, concussion on the back and both legs. He also cited *Maimuna Kilunga v Motrex Transporters Ltd*[16]in which the court awarded Kshs 125,000/= for a blunt injury on the neck and the left shoulder and bruises on the left ear. As for the claim for diminished earnings he submitted that no evidence was tendered to prove the claim. He cited *Patrick Mwiti M'imanene & another v Kevin Mgambi Nkunja*[17]in support of the holding that an appellate court will not interfere with

6 [1964] AC 326 at 345.

7 [*1983] e KLR.*

8 [2009] e KLR.

9 [2017] e KLR.

10 [2017] e KLR.

11 [2015] e KLR.

12 [2017] e KLR.

13 [1984] KLR 225.

14 [2000] e KLR.

15 [2019] e KLR.

16 [2019] e KLR.

17 [2013] e KLR.

quantum of damages unless it is satisfied that either the trial court acted on wrong principles of law or it misapprehended the facts.

15. The law on circumstances under which an appellate court would interfere with an award of damages is settled. The authorities cited by the appellant's counsel aptly represent the law. At the risk of repeating the principles in the cited decisions, it will suffice to state that an appellate court will not interfere with an award of general damages by a trial court unless the trial court acted under a mistake of law, or, where the trial court acted in disregard of principles, or, where the trial court took into account irrelevant matters or failed to take into account relevant matters, or, where the trial court acted under a misapprehension of facts, or, where injustice would result if the appellate court does not interfere; and, where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage.[18]

16. Award of damages is an exercise of discretion of the trial court but the same should be within limits set out in decided case law and must not be inordinately so low or so high as to reflect an erroneous figure. The award must also take into account the prevailing economic environment. The Court of Appeal in *Kivati v Coastal Bottlers Ltd*[19] stated:-

> " The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate."

17. As was held in *Ken Odondi & two others v James Okoth Omburah t/a Okoth Omburah & Company Advocates*[20] "an appellate court will not ordinarily interfere with the findings of a trial judge on an award of damages merely because this court may take the view that had it tried the case it would have awarded higher or lower damages different from the award of the trial judge.

18. Turning to the facts of this case the learned Magistrate awarded general damages of Ksh 400,000/ = for pain and suffering. The injuries are soft tissue in nature as pleaded in the Plaint. The P3 form at page 21 is incomplete, so its not easy to ascertain the injuries as reported in the P3. Dr. Musyoki in her report dated May 14, 2020 confirms that the injuries were soft tissue in nature. She assessed permanent incapacity at 5%. The document from German Medical Centre attributes the back pain to muscle spasm. To my mind, muscle spasm can be attributed to many reasons which include not using one's muscles enough (inactive) or sitting for long hours, poor posture, failure to exercise or rarely using ones back or stomach muscles. It can also be caused by over using muscles, dietary issues., health issues or trauma. The medical professional ought to have gone step further to connect the muscle spasm with the trauma. The Medical Referral Form from St. Josephs Hospital states that the patient sustained injuries in a road traffic accident. It did not disclose the injuries. What is disclosed is the impression of the person preparing the document. Additionally, the discharge summary from Pandya Hospital discloses minor injuries. The invoice from Pandya Hospital refers to ICU Ward nursing. No explanation was proffered as why a patient with soft tissue injuries required ICU nursing, which under normal circumstances if preceded by admission to the ICU. There was no attempt to explain this important issue nor was the said invoice challenged. But what is important is that the appellant in his Plaint pleaded that he sustained sift tissue injuries.

[18] The Court of Appeal of Nigeria discussing the same issue in the case of *Dumez (Nig) Ltd V. Ogboli* {1972} 3 S.C. Page 196." Per BADA, J.C.A (P. 28, paras. C-G).

[19] Civil Appeal No 69 of 1984

[20] Court of Appeal, Kisumu, CA No 84 of 2009, Onyango Otieno, Azangalala & Kantai JJA

19. The learned Magistrate had the benefit of seeing and hearing the appellant first hand. He considered the injuries and the authorities cited before him. He fully appreciated the nature and extent of the injuries. He applied the correct principles of the law. An appellate court will only interfere with a lower court's discretion to award damages where the award is inordinately low or inordinately high or where it manifests injustice. A high court will not interfere simply because it could have awarded a different amount. Bearing in mind the nature and extent of the injuries sustained, it is my view that the amount of Kshs 400,000/= awarded under this head is adequate. It is nit low. A review of awards for similar injuries shows that the amounts awarded for comparable injuries is much lower. If I were to be persuaded to interfere with the said award, the only way would have been to lower it not to enhance it because it borders on the higher side. I would have easily found support in case law. However, I decline to interfere with this award. I will instead allow it to stand.

20. As for the claim for diminished earning, the appellant said he was a student. He complained of back pains, in ability to sit or bend for long which made it difficult for him to perform certain tasks. The concept of diminished earning capacity recognizes that every individual, given his mental and physical abilities, has an inherent and/or acquired ability to earn money, i.e., the person has a certain "economic horizon." When that person is injured and suffers a loss of those mental or physical capabilities, there is a corresponding decrease in his ability to earn income. That, in essence, is the claim for lost earning capacity.

21. The starting point in proving any diminished earning capacity claim is the existence of a "qualifying injury." In order to be worthy of a charge on diminished earning capacity, case law indicates that the injury must be a permanent one. There is no statutory definition of permanent injury. No clear definition of the term "permanent" is recited inreported cases; rather, one must fashion a definition by inference from the particular injuries which have been deemed sufficient to support the claim.

22. However, injuries such as the following are, by their nature, easily categorized as "permanent": loss of a finger;[21] loss of several toes;[22] lasting facial disfigurement;[23] severe burns to upper extremities and torso.[24] In addition to those obvious examples, however, the following less obvious injuries have been deemed to be sufficiently permanent. Soft tissue cervical and lumbar injuries which may produce "flare-ups" with excessive activity;[25] traumatic cervical syndrome which impedes ability to lift and bend;[26] leg fracture which impedes ability to run and reduces general activity level;[27] chronic cervical sprain superimposed on normal aging process.[28]

23. In toto, these cases suggest the following general rule: an injury is "permanent" when it involves some constant, visible loss, or where it will likely produce persistent symptoms (though perhaps not constantly so) into the future. In the latter instance there must apparently be medical testimony to

21 Swartley v Tredyffrin Easton School District, 430 A.2d 1001(1981); McKnight v City of Philadelphia, 445 A.2d 778 (1982)

22 Mattox v City of Philadelphia, 454 A.2d 46 (1982)

23 Fish v Gosnell, 463 A.2d 1042 (1983)

24 O'Malley v Peerless Petroleum Inc., 423 A.2d 1251 (1980).

25 Janson v Hughes, 455 A.2d 670 (1983)

26 Lewis v. Pruitt, 487 A.2d 16 (1985).

27 City of Philadelphia v Philadelphia Transportation Company, 162 A.2d 222 (1960).

28 Williams v Dulaney, 480 A.2d 1080 (1984)

establish the likelihood of future symptoms. Thus, even the classic soft tissue injury may support a charge on diminished earning capacity if competent evidence establishes that the injury has not resolved itself and that a regular pattern of symptoms may occur in the future.

24. Talking about the absolute necessity of medical evidence, the appellant's doctor opined that as a result of the injuries, the appellant suffered a disability of 5%. He did not explain the nature of the disability or the extent of the injury to the appellant's back. The Doctor did not elaborate the basis of his conclusion in his report nor was he called to explain why and how such soft tissue injuries could occasion a permanent disability if at all they did. Granted, expert evidence forms an important part of litigation. This is because it is vitally important for the courts to get the necessary help from those skilled in particular fields and in the different technologies in forming an opinion and coming to a conclusion. Such crucial evidence should not be scanty. The doctor should always give a basis and reasoning for his opinion.

25. It is essential that a factual basis be laid for experts' opinion and that such opinion be based on facts established by the evidence and founded on logical reasoning. The court must first consider whether the underlying facts relied on by the witnesses have been established on a prima facie basis. If not, then the experts' opinion is worthless because it is purely hypothetical, based on facts that cannot be demonstrated even on a prima facie basis. It can be disregarded. If the relevant facts are established on prima facie basis, then the court must consider whether the experts' view is one that can reasonably be held on the basis of those facts. In other words, it examines the reasoning of the expert and determines whether it is logical in the light of those facts and any others that are undisputed or cannot be disputed. If it concludes that an opinion is one that can reasonably be held on the basis of the facts and the chain of reasoning of the expert the threshold will be satisfied.

26. Expert testimony, like all other evidence, must be given only appropriate weight. It must be as influential in the overall decision-making process as it deserves; no more, no less. The weight to be given to expert evidence will derive from how that evidence is assessed in the context of all other evidence. Expert evidence is most obviously needed when the evaluation of the issues requires technical or scientific knowledge only an expert in the field is likely to possess.

27. Even though expert evidence is important evidence, it is nevertheless merely part of the evidence which a court has to take into account.[29] Four consequences flow from this. Firstly, expert evidence does not "trump all other evidence".[7] It is axiomatic that judges are entitled to disagree with an expert witness. Expert evidence should be tested against known facts, as it is the primary factual evidence which is of the greatest importance. It is therefore necessary to ensure that expert evidence is not elevated into a fixed framework or formula, against which actions are then to be rigidly judged with a mathematical precision.[9]

28. Secondly, a judge must not consider expert evidence in a vacuum. It should not therefore be "artificially separated" from the rest of the evidence. To do so is a structural failing.[12] A court's findings will often derive from an interaction of its views on the factual and the expert evidence taken together. The more persuasive elements of the factual evidence will assist the court in forming its views on the expert testimony and vice versa. For example, expert evidence can provide a framework for the consideration of other evidence.

29. Thirdly, where there is conflicting expert opinion, a judge should test it against the background of all the other evidence in the case which they accept in order to decide which expert evidence is to be

[29] Huntley (also known as Hopkins) (a protected party by his litigation friend, McClure) v. Simmons [2010] E.W.C.A. Civ 54.

preferred. Fourthly, a judge should consider all the evidence in the case, including that of the experts, before making any findings of fact, even provisional ones.[30]

30. A further criterion for assessing an expert's evidence focuses on the quality of the expert's reasoning. A court should examine each expert's testimony in terms of its rationality and internal consistency in relation to all the evidence presented. In Routestone Ltd. v. Minories Finance Ltd. and Another[31] Jacob J. observed that what really mattered in most cases was the reasons given for an expert's opinion, noting that a well-constructed expert report containing opinion evidence sets out both the opinion and the reasons for it. The judge pithily commented "[i]f the reasons stand up the opinion does, if not, not." A court should not therefore allow an expert merely to present their conclusion without also presenting the analytical process by which they reached that conclusion. Where there is a conflict between experts on a fundamental point, it is the court's task to justify its preference for one over the other by an analysis of the underlying material and of their reasoning.

31. Acourt may find that an expert's opinion is based on illogical or even irrational reasoning and reject it.[32] A judge may give little weight to an expert's testimony where he finds the expert's reasoning speculative[33] or manifestly illogical.[34] Where a court finds that the evidence of an expert witness is so internally contradictory as to be unreliable, the court may reject that evidence and make its decision on the remainder of the evidence. The expert's process of reasoning must therefore be clearly identified so as to enable a court to choose which of competing hypotheses is the more probable. An expert gives an opinion based on facts. Because of that, the expert must either prove by admissible means the facts on which the opinion is based, or state explicitly the assumptions as to fact on which the opinion is based.[35] The alleged disability of 5%, (if any), is not supported by cogent reasoning. As stated earlier, much more was required from the doctor.

32. Even if assuming such a disability was proved, there is one important aspect the trial court failed to consider, which is, its effect on his future employment. This is because, in addition to the injury being "permanent" in nature, a plaintiff seeking to establish a diminished earning capacity claim must prove that the permanent injury has some effect on employment prospects. This underlying point is best illustrated by the case of *Kearns v Clark*.[36] Here, the plaintiff, a housewife suffered the functional loss of one of her kidneys — undoubtedly a permanent condition — but she was denied a charge on diminished earning capacity because there was no indication that the injury would adversely impact upon her employability. The court explained its rationale as follows: -

> " ...In order for a jury to be permitted to consider a future loss of earning power, it is necessary that there be competent evidence of the likelihood that disability will continue in the future. Evidence that permanent injury has been sustained is not equivalent to evidence that future earning capacity has been impaired. (Citation omitted.) There must be some evidence from

30 Jakto Transport Ltd. v. Derek Hall [2005] E.W.C.A Civ. 1327.

31 Routestone Ltd. v Minories Finance Ltd. and Another; Same v. Bird and others [1997] B.C.C. 180.

32 Drake v Thos Agnew & Sons Ltd. [2002] E.W.H.C. 294.

33 Gorelik v Holder 339 Fed. App 70 (2nd Cir 2009)

34 Golville v Verries Pechet et du Cauval Sciete Anonyme (Court of Appeal (Civil Division), unreported, 27 October 1989).

35 Makita (Australia) Pty. Ltd. v. Sprowles, {2001} N.S.W.C.A. 305

36 493 A.2d 1358 (1985).

which a jury can reasonably infer that earning power will probably be reduced or limited in the future." Kearns, supra, at p. 1364.

33. Hence, in addition to proving the permanence of the injury, a plaintiff seeking compensation for diminished earning capacity must establish some effect on future earning ability. To appreciate the broad interpretation of the "effect on employment" requirement, I refer back to the earlier explanation of the term earning capacity. As noted earlier, this term refers to the general "economic horizon" of any individual given his particular education, training, skills, etc. By definition, therefore, the concept is concerned primarily with the effect an injury may have on one's future rather than one's past. As such, one of the fundamental principles to have emerged in this area of the law is that a plaintiff may be entitled to damages for lost earning capacity even though he has suffered no actual wage loss as of the time of trial. The rationale for this principle was best explained in *Bochar v. J.B. Martin Motors*,[37] in these terms: -

> "(A) tortfeasor is not entitled to a reduction in his financial responsibility because, through fortuitous circumstances or unusual application on the part of the injured person, his wages following the accident are as high or even higher than they were prior to the accident .... The office worker who loses a leg has obviously had his earning ability impaired even though he can still sit at a desk and punch a comptometer as vigorously as before. It is not the status of the immediate present which determines capacity for remunerative employment. Where permanent injury is involved, the whole span of life must be considered. Has the economic horizon of the disabled person been shortened because of the injury sustained as a result of the tortfeasor's negligence? That is the test. And it is no answer to that test to say that there are just as many dollars in the patient's pay envelope now as prior to his accident." Bochar, supra, at p. 815.

34. The basic principle in respect of an award of damages in this kind of action is that the compensation must be such as to place the Plaintiff, as far as possible, in the position he or she would have occupied had the wrongful act causing injury not occurred. The onus of showing that there is sufficient likelihood of such loss rests upon the Plaintiff. In *Cecilia W. Mwangi and Another v Ruth W. Mwangi*,[38] the Court of Appeal held that:-"loss of earnings is a special damage claim. It must be specifically pleaded and strictly proved. The damages under the head of "loss of earning capacity" can be classified as general damages but these have also to be proved on a balance of probability." Similarly, in *Douglas Kalafa Ombeva v David Ngama*,[39] the Court of Appeal held that: -

> "Loss of earnings is a special damage claim, and it is trite law that special damages must be pleaded and proved. Where there is no evidence regarding special damages, the court will not act in a vacuum or whimsically."

35. The Court of Appeal in *S J v Francesco Di Nello & another*[40] held :-

> "Claims under the heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future

[37] 97 A.2d 813 (1953).

[38] NYR CA Civil Appeal No 251 of 1996 [1997] e KLR

[39] [2013] e KLR.

[40] [2015] e KLR.

earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand loss of earning capacity is compensated by an award in general damages, once proved. This was the position enunciated in Fairley v John Thomson Ltd [1973] 2 Lloyd's Law Reports 40 at pg 14 wherein Lord Denning M. R. said in part as follows:-

"It is important to realize that there is a difference between an award for loss of earning as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages."

Learned counsel for the respondent was therefore wrong in stating that loss of earning capacity was not pleaded and that it must be proved as though it was a claim under loss of income or future earnings."

36. Decisional law is in agreement that loss of income and/or future earnings must be pleaded and proved as they are in the nature of special damages whereas loss of earning capacity is in the nature of general damages and need not be pleaded though it has to be proved on a balance of probability. By now two important points are clear. One, the alleged disability of 5% allegedly caused by soft tissue injuries was not proved at all. As stated herein above, the medical opinion is not supported by sound reasoning. Two, to succeed in a claim of diminished earning capacity a plaintiff must prove that he has:-(a) a permanent injury which has some adverse effect on his employability. Three, in proving an injury's effect on his employability (either present or future), plaintiff may establish disability from a particular job or a general class of work. Four, as to the necessity of expert testimony, the cases suggest that the only issue on which such testimony is mandatory is the "permanence" of the non-obvious injury. Five, once the plaintiff has a physician state that his injury is permanent, the balance of the foundation for the diminished earning capacity claim can usually be provided by the plaintiff himself, a co-worker, or any other person who provides a reasonable basis from which a jury might render a verdict.

37. It is my finding that there was no basis at all for allowing the claim for diminished/future earnings. I disallow it.Accordingly, I hereby substitute the lower court judgment/decree with the following orders :-

a. Liability be and is hereby at 10% as against the appellant and 90% as against the Respondent.

b. General damages for pain and suffering-----Kshs 400,000/=

c. Special damages----------Kshs 219,550/=

Total----------Kshs 619,550/=

Less 10%----------Kshs 61,955/=

Balance----------Kshs 557,955/=

d. The above sum shall attract interests from the date of the judgment of the lower court.

e. The Respondent shall bear the costs of the lower court.

f. Each party shall bear its own costs for this appeal.

Orders accordingly

Signed, and dated at Voi this 29th day of August, 2022

John M. Mativo

Judge

Dated, Signed and Delivered at virtually this 31st day of August, 2022

STEPHEN GITHINJI

JUDGE