

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO.22 OF 2007

ANDREW MWORI KASAYA.....APPELLANT

- V E R S U S -

KENYA BUS SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Court of Appeal delivered a Judgment on 14/7/2016 setting aside the findings of the High Court and substituting it with an order that on the basis of the record, liability was established in favour of the Appellant against the Respondent at 100%.
2. The matter was remitted back to the High Court for assessment of damages payable to the Appellant.
3. The issues for determination are as follows: -
 - (i) *What General Damages are payable to the Appellant?*
 - (ii) *What Special Damages are payable?*
4. The parties filed written submissions which I have duly considered. The Plaintiff relied on the case of ***MBITHI MUINDE WILLIAM - VS- ROSE MUTHEU MULATYA MAKUENI HCCA. NO.34 OF 2018*** where Kshs.400,000/= was awarded for similar injuries.
5. The Plaintiff is seeking General Damages of Kshs.600,000/= and Special Damages of Kshs.9,084 making a total of Kshs.609,084/=
6. The Respondent proposed General Damages of Kshs.300,000/= and relied on the case of ***IBRAHIM KALEMA LEWA -VS- ESTEEL COMPANY LIMITED NAIROBI HCCA. NO.475 OF 2012 (2016) eKLR*** where Kshs.300,000/= was awarded for inter trochanteric fracture of the left femur.
7. The Defendants submitted that it is trite law that Special Damages must be specifically pleaded and proved which was done in this case.
8. I have considered the authorities relied on by both parties. In my opinion General Damages of Kshs.400,000/= is reasonable in the circumstances of this case.
9. As regards special damages, the Court of Appeal, in Civil Appeal no.189 of 2014 stated that “...it is trite law that special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit.” The court further stated that “...the appellant apart from listing the alleged loss and damage, it did not, according to the respondent lead any evidence at all in support of the alleged loss and damage. As it were, the appellant merely threw figures at the trial court without any credible evidence in support thereof and expected the court to award them. Indeed, there was not credible documentary evidence in support of the alleged special damages.”
10. I find that Special Damages must be specifically pleaded and proved. The same required to be proved and the same cannot be assessed by this Court.
11. I accordingly enter Judgment in favour of the Plaintiff against the Defendant in the sum of Kshs.400,000/= together with costs and interest from the date of this Judgment until payment in full.

Delivered, signed and dated at Kericho this 29th day of January, 2021.

A. N. ONGERI

JUDGE