



**Export Consolidation Services Limited v Keriso (Civil Appeal  
E027 of 2024) [2025] KEHC 9035 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 9035 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E027 OF 2024  
AN ONGERI, J  
FEBRUARY 4, 2025**

**BETWEEN**

**EXPORT CONSOLIDATION SERVICES LIMITED ..... APPELLANT**

**AND**

**PETER LOPUONYANG KERISO ..... RESPONDENT**

*((Being an appeal from the Judgment of Hon. A. M. Obura (CM)  
in Voi CMCC No. E013 of 2023 delivered on 29th February 2024))*

**JUDGMENT**

1. The Respondent Peter Lopusonyang Keriso sued the Appellant in Voi CMCC No. E013 of 2023 seeking general damages and special damages for injuries the respondent sustained on or about 7<sup>th</sup> November 2022 while lawfully travelling as a passenger in motor vehicle registration KDJ 710C.
2. The accident occurred at Man Eaters area along the Nairobi – Mombasa road.
3. The parties entered into a consent judgment on liability and apportioned the same at 15% in favour of the Appellant and 80% in favour of the Respondent.
4. The trial court assessed damages as follows:-
  1. General damages for pain and suffering Kshs. 1,000,000/=
  2. Special damages Kshs. 60,735/=
  3. Future medical expenses Kshs. 18,000/=  
Total Kshs. 1,078,735/=
  4. Subject to 15% liability = Kshs. 916,924.75



5. The Appellant filed this appeal on the following grounds:-
  - i. That the Learned Trial Magistrate erred in law and in fact and misdirected herself by failing to consider at all the submissions made before her by the Defendant and reached an erroneous conclusion thereby occasioning a miscarriage of justice.
  - ii. That the Learned Trial Magistrate erred in law and in fact by not considering the legal authorities cited by the Defendant on general damages and future medical costs and thereby reaching an erroneous conclusion on the award of general damages and future medical costs.
  - iii. That the Learned Trial Magistrate's award under the headings of general damages and future medical cost is inordinately high and grossly exaggerated taking into account the cited authorities by the Defendant on similar matters.
  - iv. That the award on general damages and future medical costs fails to recognize the submissions by the Defendant and the binding authorities cited therein and ought to be set aside and/or award adjusted downward.
  - v. That the Learned Trial Magistrate in assessing quantum of damages considered irrelevant factors and wrong principles and arrived at a wrong decision and excessive award on quantum of damages.
6. The parties filed written submissions as follows:- the appellant submitted that the report by Dr. Gaya indicated that the respondent suffered; soft tissue injury of the head with concussion, soft tissue injury both shoulders, soft tissue injury to the chest with right side rib fractures, soft tissue injury to the back, fracture of the right scapular and soft tissue injuries of both lower limbs. Dr. Gaya re-examined the respondent in 25/4/2023 and assessed permanent disability of 5%.
7. The appellant argued that the trial court made an award of Kshs. 1,000,000 which was inordinately high. The appellant proposed an award of Kshs. 300,000 and in support cited the following cases;
  - a. *K.B Sanghani v Lydia Wanjiku Njuguna & 2 Others* [2016] eKLR cited in *Bolpak Trading Co Ltd & another v Gilbert Onyango Odie* [2022] eKLR where the plaintiff therein suffered fracture of the ribs (9th right rib as well as 5th, 6th 7th 8th and 9th ribs on the left side), bruised knee and developed chest problems and the court awarded general damages of Kshs 450,000/-
  - b. *Morris Miriti v Nahashon Muriuki & another* [2018] eKLR cited in *Bolpak Trading Co Ltd & another v Gilbert Onyango Odie* [2022] eKLR the plaintiff sustained the following injuries: tender chest posterior and anterior, multiple bruises on the posterior chest, post traumatic fracture of the 3rd and 4th ribs with bilateral haemophreino thorax, left Zung contusion and fracture of the right scapula. The court affirmed an award of Kshs 300,000/- for general damages.
8. The appellant further argued that the respondents claim for future medical expenses was not supported by recent medical receipts indicating that the respondent was still purchasing pain medication and bone/joint medication as the receipts that were produced were for the period immediately after the occurrence of the accident. The appellant submitted that the court in the case of *Stephen Kinini Wang'ondu v. The Ark Limited* [2016] eKLR cited in the case of *Kagina v Kagina & 2 others* (Civil AppeaZ 21 of 2017) [2021] KECA 242 (KLR) (3 December 2021) (Judgment), opined as follows:

“In my view its correct to state that a court may find that an expert's opinion is based on illogical or even irrational reasoning and reject it. A judge may give little weight to an expert's testimony where he finds the expert's reasoning speculative or manifestly illogical. ... 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. It is a trite principle of evidence that the opinion of an expert, whatever the field of expertise, is worthless unless founded upon a sub-stratum of facts which are proved, exclusive of the evidence of the expert, to the satisfaction of the court according to the appropriate standard of proof.

The importance of proving the facts underlying an opinion is that the absence of such evidence deprives the court "of an important opportunity of testing the validity of process by which the opinion was formed, and substantially reduces the value and cogency of the opinion evidence."

9. The respondent alternatively submitted that the injuries sustained by the respondent are not contested. Both doctors concurred on the injuries sustained as well as the residual effects. Both doctors also concurred on the level of incapacity sustained by the respondents with a very minimal range.
10. The respondent argued that on perusal of the impugned judgement the learned magistrate exhibited a complete comprehension of the evidence on record and the applicable principles on assessment of the damages and applied the same. The appellant has not demonstrated that the relied upon authorities by the trial court were incomparable and unsuitable in the instant case. The respondent contended that the award made by the trial court was within the range of other recent decided cases and as such ought not to be interfered with.
11. On future medical expenses the respondent submitted that he pleaded the same in the amended plaint and indicated that he would require funds to purchase painkillers and bon/joint care medication at a cost of Kshs. 3,000 per month for at least six months. The respondent testified that his right side of the body is incapacitated and Dr Kiema similarly testified that the injuries sustained by the respondent predisposed him to recurring post fracture pains and Dr. Gaya echoed the same.
12. This being a first appeal, the duty of the first appellate court is as stated in the case of *Selle - v- Associated Motor Boat Co.* [1968] EA 123 where the Court held as follows;

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

13. The sole issue for determination is whether the award of damages was excessive.
14. I have considered the submissions filed herein and the authorities relied on by the trial court.
15. The Respondent sustained the following injuries according to Doctor Kiema:-
  - i. Multiple rib fracture.



- ii. Mid scapula fracture.
- iii. Mid head injury with loss of consciousness.
16. The doctor assessed permanent injuries at 4%.
17. However, Doctor Gaya's report stated that the Respondent sustained the following injuries:-
  - i. Soft tissue injuries of the head.
  - ii. Soft tissue injuries of both shoulders.
  - iii. Soft tissue injuries to the chest with right side rib fracture.
  - iv. Soft tissue injuries to the back.
  - v. Fracture of the right scapula.
  - vi. Soft tissue injuries of both lower limbs.
18. Doctor Gaya assessed permanent incapacity at 5%. I find that both doctors found that the Respondent suffered permanent disability of 4 – 5%.
19. The trial court relied on the case of Kisumu Hcca No. E06 of 2021 *Swift Riders Logistics Limited =versus= Clarice Akinyi Ogambo* (2022) eklr where the court awarded Kshs. 1,400,000/= in a case where the Plaintiff sustained very serious injuries than in the current case.
20. I find that the authority relied upon by the trial court was comparable.
21. The Appellant did not file submissions in the trial court and this appeal is an attempt to sneak in their submissions at appeal stage which were not availed before the trial court.
22. However, I find that the future medical expenses in respect of pain killers worth Kshs. 18,000/= is not justified and the same is struck off.
23. The total award is Kshs. 1,060,735/= less 15% contributory negligence = 901,624.75 is upheld.
24. Judgment be and is hereby entered in favour of the Respondent against the Appellant in the sum of Kshs. 901,624.75 plus costs in respect of special damages from the date of filing suit and in respect of general damages from the date of the trial court's judgment.
25. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 4<sup>TH</sup> FEBRUARY 2025 IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Maina

