



**Omondi v Bett & 2 others (Civil Suit E047 of 2023)
[2025] KEHC 2031 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E047 OF 2023
JK NG'ARNG'AR, J
FEBRUARY 20, 2025**

BETWEEN

OMONDI BRIAN OMONDI PLAINTIFF

AND

MARK KIPLIMO BETT 1ST DEFENDANT

JAMES FINLAY (K) LTD 2ND DEFENDANT

JOHN MUTUA 3RD DEFENDANT

JUDGMENT

1. The Plaintiff's claim is anchored on the plaint dated 2nd May 2023 where the Plaintiff averred that at all material times to this suit the 1st and 2nd Defendants were the registered owners of motor vehicle registration number KCV 686U make Toyota Prado while the 3rd Defendant was the 1st and 2nd Defendants' employee, servant, agent and/or authorized driver or the beneficial owner and/or in the course of employment. That on or about the 16th February 2023 at around 1900 hrs, the Plaintiff was lawfully walking as a pedestrian along airport road when he was knocked down by motor vehicle registration number KCV 686V make Toyota Prado which was recklessly, carelessly and/or negligently being driven and as a result the Plaintiff sustained severe injuries. That the said accident was solely caused by the negligence of the 3rd Defendant of which the 1st and 2nd Defendants were vicariously liable.
2. The Plaintiff prayed for judgment against the Defendants jointly and severally for general damages for pain and suffering, special damages of Kshs. 1,764,336, taxi and fuel for motor vehicle of Kshs. 3,000 per day for the rest of his life, the sum already expended at a monthly rate of Kshs. 15,000 per month until determination of the suit, adequate provision for hiring a helper at the rate of Kshs. 15,000 per month for the rest of his life, cost of the suit, interest on general damages, special damages and taxi and fueling of motor vehicle at court rates, and any other relief that this court may deem fit and just to grant.



3. The 1st Defendant entered appearance and filed a Statement of Defence dated 24th July 2023 that he was not the insured, registered or beneficial owner of motor vehicle registration number KCV 686V Toyota Prado on 16th February 2023. That the said motor vehicle was sold to one John Mutua Mutuku vide an agreement dated 3rd December 2021 and logbook transfer initiated through NTSA on 8th December 2021, and that the latest search confirms that the motor vehicle is registered in the name of the said John Mutua Mutuku. The 1st Defendant averred that he was wrongly joined in the suit as he has no interest at all in the motor vehicle. The 1st Defendant therefore denied all allegations of negligence and special damages as pleaded in the Plaintiff as he is not vicariously liable. The 1st Defendant however admits jurisdiction of this court.
4. The 3rd Defendant entered appearance and filed an Amended Statement of Defence dated 23rd October 2023 where he denied averments in the Plaintiff save for jurisdiction of this court to hear and determine the suit which is admitted.
5. The matter proceeded to hearing of the main suit on 30th September 2024 where the Plaintiff and the 1st Defendant's case were heard and closed. The 3rd Defendant's case was heard on 7th November 2024 and further defence hearing was scheduled for 18th November 2024 where the 3rd Defendant closed its case. The court then gave directions for parties to file submissions.
6. The court gave directions for parties to file their submissions. The Plaintiff in their submissions dated 27th November 2024 stated that on 16th February 2023 at around 1900 hours, an accident occurred along airport road involving him and motor vehicle registration number KCV 686U Toyota Prado having been caused by the 3rd Defendant herein. That the accident was reported at Changamwe Police Station as evidenced by the police abstract dated 6th April 2024. That the 3rd Defendant on cross examination confirmed that the accident occurred on 16th February 2023 involving the said motor vehicle.
7. On whether the Defendants were owners of the motor vehicle registration number KCV 686U that caused the accident, the Plaintiff submitted that the police abstract dated 6th April 2024 and 17th February 2024 both show that the Plaintiff was the pedestrian and the 3rd Defendant herein was the driver of motor vehicle KCV 686U Toyota Prado, the motor vehicle search exhibit number 10 shows that the owner of the motor vehicle KCV 686U as at 6th April 2023 was the 1st Defendant and subsequently the 2nd Defendant herein. That the 1st Defendant testified he was not the owner of motor vehicle KCV 686U by relying on a sale agreement dated 3rd December 2021 where he sold the said motor vehicle to the to the 3rd Defendant. That on cross examination, the 1st Defendant indicated that there was no evidence before court to show that the transfer was complete, that there was no bank statement to show that the 3rd Defendant paid the consideration of Kshs. 3,900,000 to the 1st Defendant and there is no logbook from NTSA that has so far been issued to the 3rd Defendant herein.
8. The Plaintiff relied on Section 8 of the *Traffic Act* and the decision of the Court of Appeal in Nzioka Ngao v Silas Thiani Nkunga in submitting that there is nothing in the court's record that proves the 1st Defendant notified the Registrar of the alleged motor vehicle transfer. That therefore, the 1st and 2nd Defendants were the owners of the motor vehicle while the 3rd Defendant was the driver. That considering the 2nd Defendant never disputed ownership and/or prosecuted the suit as such, the same should be allowed as against the 2nd Defendant herein.
9. On whether the Defendants are liable for the accident, the Plaintiff submitted that having demonstrated that all the defendants herein own the subject motor vehicle, they should be jointly and severally be held 100% liable for the accident. The Plaintiff cited the case of Masembe v Sugar



- Corporation and Another (2002) 2 EA 434 and maintained that the police abstract indicated that the 3rd Defendant was the beneficial owner of motor vehicle registration number KCV 686U Toyota Prado while the search of the motor vehicle shows that the 1st and 2nd Defendants are the registered owners. That therefore, all the Defendants ought to be jointly and severally held liable for the accident.
10. On whether the Plaintiff is entitled to the reliefs sought, he submitted that Dr. Darius Wambua Kiema produced a medical report dated 2nd May 2023 which indicated that the injuries suffered by the Plaintiff as a result of the accident included head injury with loss of consciousness, skull fracture left parietal/occipital area, intracranial epidural bleeding left parietal/occipital area, and cystic hygroma left parietal/occipital area, fracture left mid shaft humerus bone, comminuted fracture right tibia/fibula bones, blunt trauma to the chest, abdomen and pelvis, and bruises and abrasions both hands, neck area, scalp, and right knee. That the medical report indicated that the Plaintiff had permanent disability/incapacity at 35%, and that an award of Kshs. 7,000,000 as general damages for pain and suffering is sufficient. The Plaintiff cited the cases of Naftaly Muiruri Macharia v Samuel Maina & Another (2018) eKLR where the court awarded Kshs. 5,000,000, James Gathirwa Ngugi v Multiple Hauliers (EA) Limited & Another (2015) eKLR where the court awarded Kshs. 1,500,000 and Mwaura Muiruri v Suera Flowers Limited & Another (2014) eKLR where the court awarded Kshs. 1,450,000. That in light of the above cases, an award of Kshs. 7,000,000 in general damages would be sufficient.
 11. The Plaintiff submitted on the award for special damages that the claim for Kshs. 1,764,336 is supported by the medical report and payment receipts. On future expenses, the Plaintiff stated that the accident occurred when he was 26 years old and therefore, a multiplier of 40 years as his life expectancy can be used. The Plaintiff relied on the case of Naftaly Muiruri Macharia v Samuel Maina & Another (2018) eKLR. That taxi and fueling of motor vehicle at Kshs. 3,000 per day for the rest of his life would amount to Kshs. 1,440,000, the sum already expended at a monthly rate of Kshs. 15,000 per month until determination of the suit amounting to Kshs. 180,000, and adequate provision for hiring a helper at the rate of Kshs. 15,000 per month for the rest of his life amounting to Kshs. 7,200,000. The Plaintiff cited the case of *Esther Wanjiru Kiare v Joseph Kiarie Mugo (Nku) HCC 384 of 2000*. The Plaintiff prayed for future expenses of Kshs. 8,820,000.
 12. The 1st Defendant filed submissions dated 4th December 2024 and argued that the police abstract together with the evidence produced is sufficient proof that the 3rd Defendant is the registered and beneficial owner of the subject motor vehicle. The 1st Defendant relied on the case of Samuel Mukunya Kamunge v John Mwangi Kamuru, Nyeri HCCC No. 34 of 2002. That the witness statement of the 3rd Defendant and the testimony in court is clear that the 3rd Defendant was the owner of the subject motor vehicle. That the 1st Defendant sold the subject motor vehicle and initiated the process of transfer of the motor vehicle. That at the time of the accident, the same was in exclusive control of the 3rd Defendant. That the 3rd Defendant was not the driver, agent or servant of the 1st Defendant and that liability does not attach to the 1st Defendant whatsoever.
 13. The 1st Defendant further submitted on general damages that a sum of Kshs. 1,000,000 will suffice and that the proposed sum of Kshs. 7,000,000 is on the higher side. That special damages may be assessed as prayed and proved. On the claim for fueling of motor vehicle for Kshs. 3,000 per day, the 1st Defendant stated that the same is not supported by evidence. The 1st Defendant prayed that the case against hem is dismissed with costs.
 14. The 3rd Defendant filed submissions dated 5th December 2024 and submitted on whether the 3rd Defendant is liable for the accident that he who alleges must prove and that the Plaintiff must provide evidence to substantiate facts as provided for under Section 107 and 108 of the *Evidence Act*. That the Claimant has not fulfilled the burden of proof. That no eye witness was called and no sketch plan was



- produced to illustrate negligence on the part of the 3rd Defendant. That instead, the Plaintiff produced Police Abstract dated 6th April 2023 as ‘PE-4’ which clearly indicated that the Plaintiff was to blame for the accident and that he was negligent. That evidence of the 3rd Defendant and the police officer was to the effect that the Plaintiff was to blame for the accident. The 3rd Defendant relied on the holding in the case of ZOS & CAO (Suing as the Legal Representatives in the Estate of SAO (Deceased) v Amollo Stephen (2019) eKLR and Wainaina (Suing as the Administrator of the Estate of Ephantus Kamande Wainaina - Deceased) v Kiruthi (2024) KEHC 14955 (KLR).
15. The 3rd Defendant further submitted that he is not liable for the accident but should the court find him so, then the Plaintiff is equally responsible for contributory negligence. That it is uncontested that the accident occurred on a flyover and not where pedestrians ordinarily cross. That it is also not disputed that there was a pedestrian crossing some meters away from where the accident occurred. That it is common knowledge that if a pedestrian uses the motor vehicle lane, then automatically he is assuming serious risk and/or danger upon himself. That failure of the Plaintiff to take care of his own safety constitutes a breach of the duty of care he owed to himself and other potential road users. The 3rd Defendant cited the case of Okello Omedi v Clement Ochieng (2006) eKLR. That a strict interpretation of the doctrine of *volenti non fit injuria* as was held in the case AAA Growers Ltd v Ann Wambui (Suing as the Administratrix in the Estate of Thomas Wahome Wambui) & Another (2016) eKLR leads to the conclusion that the Claimant assumed the risk which a reasonable person would not have undertaken by not using the designated walkway and carelessly positioning himself in an area meant for vehicles. The 3rd Defendant submitted that should the court find him liable, liability should be apportioned at the ratio of 50:50 pursuant to the holding in the case of Patrick Mutie Kamau & Another v Judy Wambui Ndurumo (1997) eKLR.
16. The 3rd Defendant submitted on general damages that given the conflicting evidence of expert witnesses on the nature of the injuries suffered by the Plaintiff, the report dated 25th October 2023 by Dr. Muthuuri is more credible. That the courts held that medical reports by orthopedic consultants like Dr. Muthuuri are more credible than reports by general practitioners like Dr. Darius as was held in the case of Simon Mutisya Kavii v Simon Kigutu Mwangi (2013) KEHC 4456 (KLR). That the medical report by Dr. Darius was generated 2 ½ months after the accident while the medical report by Dr. Muthuuri was generated 8 months after the accident. That during cross examination, Dr. Darius testified that with time some wounds heal and to that effect he recommended that a reevaluation is done after 6 months for sufficient healing to occur. The 3rd Defendant further argued that it is a cardinal principal of law that compensation for general damages must be evaluated and determined by the nature and extent of the injuries and comparable awards made in the past. The 3rd Defendant proposed an award of Kshs. 900,000 pursuant to the holdings in the cases of *Kirimi v Mugambi (Civil Appeal E111 of 2022)* (2024) KEHC 3781 (KLR) (20 March 2024) (Judgment), *Housemart Company Limited v Kanana* (2023) KEHC 22519 (KLR) and *Bikeri v Kipkurui (Civil Appeal E083 of 2021)* (2023) KEHC 4087 (KLR) (4 May 2023) (Judgment).
17. The 3rd Defendant contended that Special damages must be both pleaded and proved before they can be awarded by the court as was held by the Court of Appeal in *Hahn v Singh*, Civil Appeal No. 42 of 1983 (1985) KLR 716. That special damages pleaded in the Statement of Claim include police abstract of Kshs. 500, medical report of Kshs. 2,000, and treatment expenses of Kshs. 1,348,836 amounting to a total of Kshs. 1,351,336. That the Claimant only produced receipts from Pandya Hospital dated: 27th February 2023 of Kshs. 1,098,836; 24th February 2023 of Kshs. 5,863; 6th March 2023 of Kshs. 174; and 6th March 2023 of Kshs. 1050. That additionally, the courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. That it is not enough for a party to provide proforma invoices and that the court in *Zacharia Waweru Thumbi v Samuel Njoroge*



- Thuku (2006) eKLR held that an invoice is not proof of payment and that only a receipt meets the test. That therefore, the only allowable award for special damages is Kshs. 1,105,923 being the receipts from Pandya Hospital.
18. The 3rd Defendant submitted on future medical expenses that the same are based on a report by Dr. Darius dated 2nd May 2023 who on cross examination acknowledged that such implants are often left in place indefinitely without causing any issues. That he further admitted that the figures provided were mere estimates and not fixed and that the expenses were calculated based on worst case scenario. That the Plaintiff during cross examination admitted resuming work after 6 months and conceded that he had no receipts or documentation to substantiate the claimed future medical expenses. The 3rd Defendant stated that the law on future medical expenses is well settled as was held by the Court of Appeal in the case of *Tracom Limited & Another v Hassan Mohamed Adan* (2009) eKLR. That the Plaintiff cannot be awarded future medical expenses as pleaded as he failed to prove the same as required.
 19. On the taxi and fueling of motor vehicle at Kshs. 3,000 per day for the rest of the Plaintiff's life, the 3rd Defendant submitted that the same is unsubstantiated in law and in fact. That the Plaintiff has not provided a medical report to establish the condition necessitating daily taxi or motor vehicle use. That during cross examination the Plaintiff admitted to having no receipts/documentation for the alleged expenses either before or after the accident. That it is undisputed the Plaintiff resumed work six months after the accident, demonstrating the absence of permanent incapacitation that would justify perpetual transportation costs. The 3rd Respondent relied on the authority of *David Tuti Matendechere v Alice Wanjiku Maina* (2020) KEHC 5779 (KLR).
 20. The 3rd Defendant submitted on the sum expended of Kshs. 15,000 per month until determination of the suit and adequate provision for hiring a helper at the rate of Kshs. 15,000 per month for the rest of the Plaintiff's life that the same is unsubstantiated in law and fact. That the Plaintiff has not provided a medical report to establish a condition necessitating the claim. That during cross examination, the Plaintiff admitted not having an employment contract, he admitted that there was no recommendation from the doctor to hire a helper, and also admitted to not having any receipts/documentation for the alleged expenses either before or after the accident. The 3rd Defendant urged the court to dismiss this aspect of the claim as unproven and unfounded by citing the case of *Diro v Suntu & Another (Civil Case No. E071 of 2021)* (2024) KEHC 7261 (KLR) (Civ) (12 June 2024) (Judgment). The 3rd Defendant prayed that the Plaintiff's suit is dismissed with costs.
 21. After considering the pleadings, proceedings, and submissions of the parties, the issues for determination are: -
 - a. Ownership of motor vehicle registration number KCV 686U
 - b. Who was liable for the accident
 - c. Whether the Plaintiff is entitled to relief sought
 - d. Who should bear costs
 22. On ownership of motor vehicle registration number KCV 686U, the Plaintiff submitted that the motor vehicle search shows that the owner of the motor vehicle as at 6th April 2023 was the 1st Defendant, and subsequently the 2nd Defendant. The 1st Defendant stated that he sold the motor vehicle to the 3rd Defendant and at the time of the accident, the same was in exclusive control of the 3rd Defendant. The Plaintiff however stated that the 1st Defendant on cross examination indicated that there was no accident before the court to show that the transfer was complete, that there was no



- bank statement to show that the 3rd Defendant paid the consideration of Kshs. 3,900,000 to the 1st Defendant, and that there was no logbook from NTSA that was issued to the 3rd Defendant.
23. This court has perused the proceedings and established that the 3rd Defendant admitted ownership of the motor vehicle in his defence.
24. Order 2 Rule 11 (1) of the Civil Procedure Rules provides: -
- Subject to subrule (4), any allegation of fact made by a party in his pleading shall be deemed to be admitted by the opposing party unless it is traversed by that party in his pleading or a joinder of issue under rule 10 operates as a denial of it.
25. This court will therefore not belabor on the issue of ownership of motor vehicle registration number KCV 686U.
26. On who was liable for the accident, the Plaintiff maintained that the police abstract indicated that the 3rd Defendant was the beneficial owner of the subject motor vehicle while the search showed that the 1st and 2nd Defendants were the registered owners. That all the Defendants therefore ought to be held jointly and severally liable for the accident. The 1st Defendant stated that he sold the vehicle to the 3rd Defendant and that liability therefore does not attach to him.
27. The 3rd Defendant stated that it is uncontested that the accident occurred on a flyover and not where pedestrians ordinarily cross. That it is also not disputed that there was a pedestrian crossing some meters away from where the accident occurred. That it is common knowledge that if a pedestrian uses the motor vehicle lane, then automatically he is assuming serious risk or danger upon himself. That failure of the Plaintiff to take care of his own safety constitutes a breach of the duty of care he owed himself and the other potential road users. The 3rd Defendant submitted that should the court find him liable, liability should be apportioned at the ratio of 50:50.
28. The Court of Appeal in Hussein Omar Farar v Lento Agencies, C.A Nairobi, Civil Appeal No.34/2005 (2006) eKLR held that: -
- “In our view it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.”
29. Where the court is unable to determine who is to blame for the accident, liability is apportioned equally. Since it has been established that the 3rd Defendant is the owner of the motor vehicle and was in control of the said vehicle on the material day, the 1st Defendant is therefore exonerated from liability. This then leaves the Plaintiff and the 3rd Defendant in the picture. It is the finding of this court that the Plaintiff and the Defendant should share liability at the ratio of 50:50 as they are both to blame for the accident.
30. On whether the Plaintiff is entitled to the reliefs sought, he submitted on general damages that Dr. Darius Wambua Kiema produced a medical report dated 2nd May 2023 which indicated that the injuries suffered by the Plaintiff as a result of the accident included head injury with loss of consciousness, skull fracture left parietal/occipital area, intracranial epidural bleeding left parietal/occipital area, and cystic hygroma left parietal/occipital area, fracture left mid shaft humerus bone, comminuted fracture right tibia/fibula bones, blunt trauma to the chest, abdomen and pelvis, and bruises and abrasions both hands, neck area, scalp, and right knee. That the medical report indicated that the Plaintiff had



permanent disability/incapacity at 35%, and that an award of Kshs. 7,000,000 as general damages for pain and suffering is sufficient.

31. The 3rd Defendant submitted that the medical report by Dr. Darius was generated 2 ½ months after the accident while the medical report by Dr. Muthuuri was generated 8 months after the accident. That during cross examination, Dr. Darius testified that with time some wounds heal and to that effect he recommended that a reevaluation is done after 6 months for sufficient healing to occur. The 3rd Defendant further argued that it is a cardinal principal of law that compensation for general damages must be evaluated and determined by the nature and extent of the injuries and comparable awards made in the past. The 3rd Defendant proposed an award of Kshs. 900,000.
32. The Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* (2016) eKLR stated that
“... comparable injuries should attract comparable awards.”
33. This court placed reliance on the awards by the courts for similar injuries. In *James Gathirwa Ngungi v Multiple Hauliers (EA) Ltd* (2015) eKLR, the plaintiff was awarded Kshs. 1,500,000.00 after sustaining compound comminuted fractures of the right tibia and right fibula, fracture of the left ulna, head injury and deep cut wound of the parietal region, soft tissue injuries and bruises on both hands, multiple facial cuts and lacerations and fracture of the right leg. In *Dorcas Wangithi Nderi v Samuel Kiburu Mwaura and Another* (2015) eKLR, the plaintiff sustained multiple soft tissue injuries, blunt injury to the head, failure fracture of the right radius/ulna, compound fracture of the right and left tibia and fibula and was awarded Kshs. 2,000,000.00. In *Porim Insurance Brokers Limited v Patrick Rugendo Mugambi* (2021) eKLR, the plaintiff suffered a fracture of the left femur, right tibia, pro lapsed of vertebra C6, head injury blunt injuries to the chest, right shoulder and cut on the left knee and whose disability was assessed at 16% and was awarded 1,600,000.00.
34. It is my considered view that the sum of Kshs. 2,000,000 is reasonable compensation.
35. The Plaintiff on the one hand submitted on special damages that the claim for Kshs. 1,764,336 is supported by the medical report and payment receipts. The 3rd Defendant on the other hand submitted that special damages pleaded in the Statement of Claim include police abstract of Kshs. 500, medical report of Kshs. 2,000, and treatment expenses of Kshs. 1,348,836 amounting to a total of Kshs. 1,351,336. That the Claimant only produced receipts from Pandya Hospital dated: 27th February 2023 of Kshs. 1,098,836; 24th February 2023 of Kshs. 5,863; 6th March 2023 of Kshs. 174; and 6th March 2023 of Kshs. 1050. That additionally, the courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. That therefore, the only allowable award for special damages is Kshs. 1,105,923 being the receipts from Pandya Hospital.
36. The Court of Appeal decision of *Hahn v Singh*, Civil Appeal No. 42 of 1983 (1985) KLR 716 held that: -
“Special damages must not only be specifically claimed (pleaded) but also strictly proved ... for they are not direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
37. This court finds that the Plaintiff pleaded a claim of Kshs. 1,764,336 for special damages but only Kshs. 1,105,923 has been proved. The award of Kshs. 1,105,923 would therefore be proper.
38. The Plaintiff submitted on future expenses that the accident occurred when he was 26 years old and therefore, a multiplier of 40 years as his life expectancy can be used. That taxi and fueling of motor



vehicle at Kshs. 3,000 per day for the rest of his life would amount to Kshs. 1,440,000, the sum already expended at a monthly rate of Kshs. 15,000 per month until determination of the suit amounting to Kshs. 180,000, and adequate provision for hiring a helper at the rate of Kshs. 15,000 per month for the rest of his life amounting to Kshs. 7,200,000.

39. On future expenses, the 3rd Defendant submitted on future medical expenses that the same are based on a report by Dr. Darius dated 2nd May 2023 who on cross examination acknowledged that implants are often left in place indefinitely without causing any issues. That the figures provided are mere estimates and that the expenses were calculated on the worst-case scenario. That the Plaintiff during cross examination admitted resuming work after 6 months and conceded that he had no receipts or documentation to substantiate the future medical expenses. That the Plaintiff has not provided medical reports to establish a condition necessitating the claim for taxi and fueling of motor vehicle, and hiring a helper.
40. This court has perused the evidence on record and it is inclined to hold the view that the Plaintiff has not provided medical reports to establish a condition necessitating the claim for taxi and fueling of motor vehicle, and hiring a helper. This court cannot therefore make an award under this head.
41. On who should bear costs, Section 27(1) of the *Civil Procedure Act* provides: -

Costs shall follow the event unless the court or judge shall for good reason otherwise order.

42. In *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai Estate & 4 Others* (2014) eKLR, the Supreme Court explained: -

“The purpose of costs is to indemnify the successful party for expenses incurred in pursuing or defending a claim. However, courts retain discretion to consider the conduct of the parties and the circumstances of the case in determining costs.”

43. In the upshot, judgment is entered as follows: -

- a. Liability – 50%
 - b. General damages – Kshs. 2,000,000
 - c. Special damages – Kshs. 1,105,923
- Total – Kshs. 3,105,923
Less 50% - Kshs. 1,552,961.50

The Plaintiff is therefore awarded Kshs. 1,552,961.50. Each party to bear their own costs.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 20TH DAY OF FEBRUARY, 2025.

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J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

..... Advocate for the Plaintiff

..... Advocate for the 1st Defendant

..... Advocate for the 2nd Defendant



..... Advocate for the 3rd Defendant
Court Assistant – Shitemi

