



**Ibrahim v Durage & another (Civil Suit 194 of 1999)
[2025] KEHC 8743 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT 194 OF 1999
RB NGETICH, J
JUNE 19, 2025**

BETWEEN

ABDI KADIR JELLE IBRAHIM PLAINTIFF

AND

ABDILAME HASSAN DURAGE 1ST DEFENDANT

ABDI RASHID 2ND DEFENDANT

JUDGMENT

1. The Plaintiff moved this court vide a plaint dated 8th April,1998 and amended with leave of court on the 21st May,2003 seeking special damages, general damages for pain and suffering and loss of amenities, costs of the suits and interests following accident involving him and the 1st defendant's motor vehicle registration number UVV 181 Trailer UWJ 95J Mercedes which was driven by the 2nd defendant.
2. The Plaintiff avers that on or about the 7th December,1998, he was lawfully on duty constructing and repairing the Maai-Mahiu-Naivasha road when the 2nd Defendant recklessly and negligently controlled lorry registration Number UVV 181, ferrying trailer UWJ 955 which resulted in the vehicle running over part of the plaintiff's body causing the following injuries:-
 - a. Crushed left foot injury necessitating a guillotine amputation and subsequently a formal below knee amputation.
 - b. Tenderness at the area of amputation and a feeling of pain on the absent 'foot'.
 - c. A residual scar on the left parietal aspect of the scalp approximately 1 cm.
 - d. Resultant need for psychotherapy.
 - e. Grievous harm to the extent of 40% disability.



3. The Defendants entered appearance and filed a statement of defence dated 20th September, 2000 where they denied that the 1st Defendant was the registered owner of motor vehicle registration number UVV 181, Trailer UNJ 955 or at all that the 2nd Defendant was the driver, servant and or agent of the 1st defendant and invited the Plaintiff to strict proof.
4. The Defendant further denied that there was any negligence on their part and further denied all the particulars of negligence attributed to the 2nd defendant and aver that if the alleged accident occurred which they denied, then it was solely caused and or alternatively substantially contributed to by the plaintiff's own negligence.
5. The defendants denied that the plaintiff suffered any loss or damage and more specially did not admit any of the particulars of special damages or injuries pleaded and invited the plaintiff to strict proof.

Plaintiff's Evidence

6. PW 1 Abdi Kadir Jelle Ibrahim testified that he lives in Mombasa and that he used to work with Sarajevo General Engineering Company which was involved in road construction and he was a mechanic until 7th December, 1998 when the accident occurred. He said that on the said date of 7th December, 1998, he was in field at work in Maai Mahiu Naivasha road and was on the left side of the road and 200m of the road had been closed as it was under construction. He said he was standing on the left of the road when suddenly the truck registration No. UVV 181 with a trailer No. UWJ 955 which was from Nairobi direction heading to Naivasha left the road and hit him. He said the road was clear and there was no obstruction. He said he was taken by a mechanic to Mt. Longonot Hospital.
7. The plaintiff testified that he said sustained amputation on the leg which was crushed by the wheel and has not been able to work to support his wife and 5 children. He said he now uses prosthesis. He produced his certificate of employment and said that he was dismissed from work. He also produced police abstract, a medical report, the treatment notes and the discharge summary.
8. On cross examination, he said that he did not see the vehicle that hit him approaching and impact show it was being driven in high speed. He said the vehicle was supposed to pass the left side of the road but there was no space for the vehicle to pass on the side and he was therefore supposed to stop and wait for the tractor on the left side to pass.
9. On 27th January, 2020 the hearing proceeded ex-parte upon the Plaintiff's advocates demonstrating to the court that they had served the hearing notices but the defendants counsel failed to attend court.
10. PW2 No. 94895 PCW Caroline Kilonzo a police officer attached to Naivasha police station Traffic section confirmed that an accident occurred on the 7th December, 1998 at Maai Mahiu centre along Maai Mahiu-Naivasha road involving motor vehicle registration No. UWJ 955 with the trailer No. UVV 181 Mercedes Benz and a pedestrian. She confirmed that the victim was Abdikadir Jelle the plaintiff herein. She said that as per investigations carried out by P.C Charles Ombui Abdi Kadir Jelle was to blame as per the report. She said Abdikadir Rashid was the driver of the vehicle and that it is the pedestrian Abdi Kadir Jelle who was injured and he was the one to blame. She produced the police abstract as exhibit in court.
11. PW3 Oscar Lihanda an administrator at Mt. Longonot Medical Service Naivasha which was previously known as Mt. Longonot Nursing home testified that he treated Abdi Kadir Ibrahim who visited the facility on the 7th December, 1998 and that he had a crushed left foot which was crushed by a lorry. He said they amputated his foot and he was discharged on the 9th January, 1999. He produced the treatment



- documents from the medical facility being treatment notes dated 31st December,1998 and discharge summary dated 9th January,1999 produced as Exhibits 3[a] and[b].
12. He said he paid for treatment and there are invoices and receipts for Kshs.130,000/= which he produced in court as exhibit 4. He said the patient was attended at their facility twice after discharge and that he went back on 9th January,1998 for outpatient and went later for amputation below the knee then he was followed up on outpatient. He said that he had medical examination report which is a summary of how the patient was proceeding after the surgery which was produced as Exhibit 5.
 13. He said the patient later went to the facility with the P3 Form and Dosh Form which was filled and percentage of incapacity was assessed at 50%. He said the last medical examination was on 3rd May,1999.
 14. PW2 testified that he knows Dr. Odhiambo who works in a different facility and who used the information from their facility and that what he says tallies with what they have in their medical facility. He said that he assessed and gave percentage of disability at 45%. He said the doctor is now in Busia and produced the medical report on his behalf as Exhibit 7. He confirmed that AbdiKadir was a patient in their facility and that he paid all the medical bills.
 15. The Plaintiff then closed his case and the defence case was also closed. On the 12th November,2020 counsel for the Plaintiff informed the court that they had filed an application to re-open the plaintiff's case for one witness to be heard being the Doctor who had not been availed since he was not available. The application was allowed on the 28th January,2021 where the Plaintiff's case was re-opened.
 16. PW4 Dr. Kenneth Odhiambo testified that he is an orthopedic surgeon based in Western Kenya. He said he prepared a medical report in respect to Plaintiff on 22nd March,1999 when he was a medical officer based in Naivasha. He said the plaintiff was involved in a road traffic accident in Naivasha on the 7th December,1998 and sustained a crushed left foot injury. He confirmed the Plaintiff was admitted in Mt. Longonot maternity Hospital where a guillotine amputation was done which is an emergency amputation where part of the limb is cut off to save the patient and formal amputation is done later.
 17. He said formal amputation below the knee was done on the 17th December,1998 10 days later and the client was discharged on the 31st December,1998 and was later followed as outpatient in the same hospital. He said when he saw the Plaintiff on the 1st March,1999, he found him to be of good general physical condition and on the amputation side, he found the amputation stamp still oozing a fluid and he formed an opinion that he was still suffering pain from the amputation stamp which was still not well that time.
 18. He recommended that the Plaintiff continues with treatment and advised sessions of counselling and psychotherapy in view of the fact that he still felt pain in the foot which is common with amputees. He said the plaintiff could not continue with his job as a mechanic because of resultant disability. He classified the degree of injury as grievous harm and assessed plaintiff's level of disability at 45%. He relied on the discharge report from Mt. Longonot maternity and nursing home which he produced in court and also a P3 Form from police station. He said the injury resulted from a road traffic accident.
 19. Pw4 testified that he was paid for the medical report and for the day's engagement to the tune of Kshs.35,000/= and produced the receipt in court. He said that the plaintiff worked as a mechanic and was involved in carrying things which is difficult to do with one leg.

Plaintiff's Submissions

20. The Plaintiff restated evidence captured above and submitted that the accident occurred due to negligence and recklessness of the 2nd defendant and the 1st defendant was its authorized driver and



- the particulars of negligence in the plaint have not been challenged and urged this Court to admit the particulars of negligence as stated in the plaint as the truth.
21. Counsel submit that the plaintiff was on duty on the fateful day doing road works on the road and the defendant ought to have seen the signs and markings indicating road work construction was going on and exercise and/or take caution while driving on the road. He urged this court to find the Defendants jointly liable on 100% basis.
 22. On quantum in respect to general damages, counsel submit that as a result of defendant's negligence, the Plaintiff has suffered Irreparable loss and damage and holds the Defendants vigorously liable for being the owner of the motor vehicle registration No. UVV 181 and Trailer UWJ 955 Mercedes Benz.
 23. Counsel submit that Dr. Odhiambo produced medical report dated 22nd December 1999 prepared by himself which clearly specified the nature of injuries sustained with permanent incapacity of 45% and restated injuries as hereunder:-
 - a. Crushed left foot injury.
 - b. Guillotine amputation.
 - c. Resultant need for physiotherapy.
 - d. Grievous harm.
 24. Under Loss of Amenities under Pain & Suffering, as per Pw4 the doctor, guillotine amputation of the Plaintiffs' left leg was done on 7th December, 1998 and Considering the nature of injuries sustained by the plaintiff which resulted in 45% incapacity and current inflation rates, they opine that an award of Kenya Shillings five Million [Ksh.5,000,000/-] will suffice to compensate for the injuries sustained.
 25. The plaintiff relied on the following Authorities:-
 - i. Kiambu HCC Civil Appeal No. 97 OF 2016 formerly Civil Appeal No.80 of 2015 Murang'a C M [a minor suing through mother and next friend M N versus Joseph Mwangangi Maina.
 - ii. Meru HCC Civil No. 28 OF 2019 Murang'a - AMK [suing as the mother and Next friend of JMK-Minor]-versus-Kenya Power &Lighting Company Limited.
 26. On Loss of future Earnings/dependency, counsel submit that the Plaintiff was 35 years old working as a mechanic at Put Sarajevo General Engineering Co and could not continue working due to amputation of one leg; that he still had 25 more years to engage in meaningful employment but was cut short due to the said accident. The Plaintiff produced his Pay Slip which showed that at the time of accident, the plaintiff was earning Kenya Shillings Six thousand [Ksh. 6000/-] per month. Kshs.6000.00 X 12X 25years totals to Kshs.1,800,000.00 [250 months-from 1999 to 2020]. It is the Plaintiff submission that the sum of Kenya shillings One Million Eight Hundred Twelve Thousand [Kshs.1,800,000] will fairly and reasonably compensate the Plaintiff on this item.
 27. On anticipated Future Medical Expense, they submit that the Costs of limb Lengthening procedure is Ksh.300,000.00 plus the Costs of left knee joint Replacement is Ksh.400,000.00 totaling Ksh.700,000.00.
 28. On special damages, they submit that the Plaintiff in his evidence produced invoice and payment receipts from Mt. Longonot Nursing Home and AIC Kijabe Hospital where he was treated for a total sum of Kshs. 99,000/-which he paid and, Police Abstract Kshs.100, Transport and court attendance cost for Plaintiffs from Wajir-Nakuru-Mombasa witness cost plus transport Naivasha -Nakuru Kshs.45,000/= . That other costs he incurred includes the payment to the Hospital Superintendent



Longonot Nursing Home. Ksh. 15,000.00, Naivasha Police Commandant Ksh. 25,000.00, Doctor Odhiambo Ksh. 35,000.00 TOTAL Ksh.219,100.00.

29. They submit that the Plaintiff shall be praying for judgement against the Defendant severally and jointly as prayed in the Amended Plaint as follows:-
- a. General damage for pain and suffering & loss of amenities 45%permanent incapacityKshs.5,000,000.00.
 - b. Loss of earning Kshs. 1,800,000.00.
 - c. Loss of future earningsKshs. 585,000.00.
 - d. Anticipated future medical expense Kshs. 700,000.00. Special damages
.....Kshs 219,100.00
 - e. Physiotherapy and further treatmentKshs.500,000.00
Total.....Kshs.8,804,100.00
30. The Plaintiff prayed for Kshs 8,804,100/= plus interest and cost of suit.

Analysis And Determination

31. I have considered the Plaintiff's evidence, the defence and the submissions filed herein. The issues for determination are that: -
- i. Who is liable for the accident and to what extend?
 - ii. Assessment of damages

[i] Who is liable for the accident and to what extend?

32. It is not disputed that an accident occurred on 7th December,1998 involving motor vehicle registration Number UVV 181, ferrying trailer UWJ 955 and the plaintiff herein at Maii Mahiu centre along Mahi-Mahiu-Naivasha road. This was confirmed by PW2 No.94895 PC Caroline Kilonzo a traffic police officer attached at Naivasha police station Traffic section. It is not also in dispute that the plaintiff sustained injuries as a result of the accident.
33. In respect to liability, the plaintiff was a mechanic working for road construction company which was repairing the Maai-Mahiu-Naivasha road when motor vehicle registration Number UVV 181, ferrying trailer UWJ 955 hit the plaintiff. The plaintiff said he was on the left side of the road and the road was clear and the 2nd defendant was able to see him.
34. He testified 200m of the road had been closed as it was under construction and while he was standing and talking to another person who escaped, he was suddenly hit motor vehicle registration No. UVV 181 with a trailer No. UWJ 955 was being driven at high speed. PW2 a traffic police officer testified that from the police file, results of the investigations was that the plaintiff was to blame for the accident.
35. In *Karanja v Malele* [1983] eKLR 147, the court considered the two elements to be considered when assessing the issue of negligence, that is causation and blame worthiness. The court rendered that:
- “---there should be no distinction which can be drawn on attribution of negligence after seeing danger and negligence is not seeing it before hand, and lastly in assessing blame



worthiness, the distinction is that the driver had a lethal machine/car in her control. Apportionment of blame represents an exercise of discretion.”

36. In the persuasive case of *Bwire v Wayo & Sailoki [Civil Appeal 032 of 2021]* [2022] KEHC 7 [KLR], Mativo, J. stated as follows:

“28. ... Eyewitness testimony is critical in both criminal and civil trials, and is frequently accorded high status in the courtroom.

29. Direct evidence is evidence, that if believed, directly proves a fact in issue. Directly means that a person does not have to make any inferences or presumptions as to proof. Direct evidence is a piece of evidence often in the form of the testimony of witnesses or eye witness accounts...”

37. In this case, the direct evidence tendered before the lower court was that of the Plaintiff who was the pedestrian. The Plaintiff blamed the driver of the subject motor vehicle for veering to the side of the road in which he was standing thus hitting him. The plaintiff testified that the side of the road in which the accident occurred was closed since it was under construction. He also stated that the motor vehicle was speeding. The police officer blamed the plaintiff for the accident.

38. Section 107 of the *evidence Act* provide that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Section 109 provide that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

39. From the evidence adduced, the plaintiff blamed 2nd defendant for driving at high speed and knocking him while he was on the side of the road and that there were signs showing that him and other workers were doing construction works on the road. The defendants did not adduce evidence in court. On failure by defence to adduce evidence, in the case of *Charterhouse Bank Limited [under statutory management v Frank N. Kamau [2016] eKLR* the court of appeal had this to say:-

“We would therefore venture to suggest that before the trial court can conclude that the plaintiff’s case is not controverted or is proved on a balance of probabilities by reason of the defendant’s failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgment merely because the defendant has not testified.”

40. The Plaintiff has the burden of proving the facts constituting negligence on the part of the defendants even if the defendants did not tender any evidence. Further in the case of *Susan Mumbi Waititu v Kefala Grebedhin Nairobi HCCC No. 3321 of 1993* where the court stated as follows-

“In that instant case there was a collision between two motor vehicles and in the absence of any evidence as to how the accident occurred the Court of Appeal has held that liability be



apportioned on 50/50 basis. I therefore hold that the defendant was 50% to blame for the collision.”

41. Pw2 testified that the plaintiff was to blame but the plaintiff testified that the road was under construction and he was among those doing the construction work and that there was no obstruction the road was clear. The vehicle driver was therefore able to see people that works were going on the road and seeing signs that road works were on, he ought to have been cautious while driving to avoid collision with people working on the road who included the plaintiff. In my view the plaintiff and the 2nd defendant equally had responsibility of ensuring safety of other people either working or using the road. In view of the above, I am inclined to apportion liability at 50:50 between the parties herein.

[ii] Assessment of damages

42. On assessment of damages, the plaintiff testified that as a result of the accident, he sustained a crushed left foot which led to amputation. PW4 Dr. Odhiambo attended court and produced the Medical Report dated 22nd December 1999 prepared by himself which clearly specified the nature of injuries sustained with permanent incapacity of 45%. He confirmed that the Plaintiff suffered the following injuries:

- a. Crushed left foot injury.
- b. Guillotine amputation.
- c. Resultant need for physiotherapy.
- d. Grievous harm.

43. In respect to assessment of damages, the Court of Appeal observed in *Stanley Maore v Geoffrey Mwenda*, Nyeri CA Civil Appeal No.147 of 2002 [2004] eKLR that:

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

44. From the medical report, the plaintiff suffered a crush injury on his left leg that led to its amputation below the knee. The Defendant did not call any witness or lead any evidence to rebut or challenge the Plaintiff’s evidence.

[a] General damages for pain and suffering

45. The Plaintiff has proposed an award of Kshs 5,000,000/= under pain and suffering. In *Odinga Jactone Ouma v Moureen Achieng Odera* [2016] eKLR, the Court of Appeal held:-

“.....In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* CA Civil Appeal No. 26 of 2013 [2014] eKLR thus: The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”

46. The Plaintiff’s leg was amputated as a result of a crush injury. I have found the following cases quite helpful in terms of comparison:-



- i. In *Nelson Njihia Kimani v David Marwa & Another* [2017] eKLR, the court awarded Kshs 1,500,000/= on amputation of lower right limb with only 40% incapacity.
 - ii. In *Joyce Moraa Oyaro v Hussein Dairy Ltd.* [2016] eKLR, the court awarded Kshs 1,300,000/= as compensation for loss of a right leg by amputation. The amputee in this case was only five years old with his whole life ahead of him and therefore a long future of disability and loss of amenity occasioned by amputation of his right leg.
 - iii. In *Frodak Cleaning Services & Another v Daniel Meshack Shikanga* [2017] eKLR the Court maintained an award of Kshs.1, 500,000/= for amputation above the knee.
 - iv. In *John Kipkemboi & another v Morris Kedolo* [2019] eKLR, the respondent sustained injuries including amputation of the left leg below the knee, chest injury, bruises on the shoulder, back injury and crush injury. The Court awarded him Kshs 2,500,000/= as compensation.
47. I have considered the authorities above and the nature of the injury suffered by the Plaintiff. I have noted that the awards in the aforementioned cases were made about 6 or 7 years ago and that the inflation rate in the present day is not the same as it was back then. In view of the above I find that an award of Kshs 3,000,000 under pain and suffering will be sufficient to compensate the plaintiff.

[b] Loss of earnings

48. The plaintiff testified that he was 35 years old at the time of accident and that he was earning Kshs 6000 and that he could not continue working after amputation of the leg. I take note of the fact that if the plaintiff worked up to retirement, he would have retired at 60 years which means he would have worked for another 25 years. I however take note of the fact that there are chances that other factors in life could have affected his period of service and will therefore apply a multiplier of 20 years. The plaintiff's loss of future earning are therefore as follows:- Kshs 6000 x 12 x 20 =1,440,000.

[c] Future medical expense

49. A prayer for future medical expense is not an ordinary prayer that a court can grant in its discretion but it is a special award that must be pleaded specifically and proved. In the case of *Tracom Limited & another v Hassan Mohamed Adan* [2009] eKLR, the Court of Appeal stated:

“...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v Gituma* [2004] 1 EA 91, this Court, stated: -

“And as regards future medication [physiotherapy], the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person's legal right should be pleaded.” We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at



the time of the treatment. We think all that will be necessary to plead [if it has to be pleaded at all] is the approximate sum of money that the future medical expenses will require...”

50. The Appellant stated that cost of limb Lengthening procedure is Ksh.300,000 plus the Costs of left knee joint Replacement is Ksh.400,000 totaling Ksh.700,000. This was not controverted and I proceed to grant as prayed.

[d] Special damages

51. The plaintiff prayed for special damages as hereunder:-

Medical Expenses.....Kshs.99,000
Police AbstractKshs.100
TransportKshs.45,000
Hospital Superintendent Longonot Nursing Home ..Ksh.15,000
Naivasha Police Commandant.....Ksh. 25,000
Doctor OdhiamboKsh.35,000
Total.....Ksh.219,100

52. The plaintiff produced a bundle of receipts from Mt. Longonot Hospital to show that he incurred Kshs 99,000/= as medical expenses. He also produced receipts for the payment for the preparation of the Medical Report which showed he incurred Kshs 35,000/= making a total of Kshs. 134,000/= under this head.

53. Damages are therefore assessed as hereunder:-

a. Pain and suffering Kshs 3,000,000
b. Loss of earnings Kshs 1,440,000
c. Special damages Kshs 134,000
d. Future treatment Kshs 700,000
Grand Total.....Kshs 5,274,000
Less 50%..... Kshs 2,637,000[net]

54. I therefore enter judgment for the plaintiff against the defendants jointly and severally for Kshs 2,637,000 plus costs and interest.

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET

THIS 19TH DAY OF JUNE, 2025.

.....
RACHEL NGETICH

JUDGE

In the presence of:

No appearance by parties.

CA, Elvis/Momanyi.

