



REPUBLIC OF KENYA



**Nabwoba v Ronak Agrovet Limited (Civil Appeal E127 of 2024)
[2025] KEHC 8236 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E127 OF 2024**

**S MBUNGI, J
JUNE 11, 2025**

BETWEEN

MARSIANA NAFULA NABWOBA APPELLANT

AND

RONAK AGROVET LIMITED RESPONDENT

*(Being an appeal against the judgment by Hon. T.A Obutu (CM) delivered
on 20.06.2024 in Mumias Magistrate's Court Civil Case No. E036 of 2021)*

JUDGMENT

Background

1. The appellant, Marsiana Nafula Nabwoba, instituted a suit before the Principal Magistrate's Court at Mumias vide a plaint dated 10th May, 2021 in Civil Case No. E036 of 2021 against the respondent, Ronak Agrovet Limited, seeking general damages, special damages, costs of the suit, and interest thereon.
2. She contended that on or about the 4th day of December, 2020, she was travelling as a pillion passenger aboard motorcycle registration number KMEZ 635Z along Bungoma–Mumias road when, upon reaching the Panyako area, the respondent's driver, servant, or agent carelessly, recklessly, and negligently drove motor vehicle registration number KCP 297U, causing it to violently collide with the motorcycle.
3. The appellant claimed special damages amounting to Kshs. 80,617, comprising medical report costs (Kshs. 9,000), medical expenses at Moi Teaching and Referral Hospital (Kshs. 70,867), copy of records (Kshs. 550), and certificate of postage (Kshs. 200). The appellant thus sought judgment for general damages for pain, suffering, and future medical expenses, special damages as pleaded, interest on the sums awarded at court rates, and the costs of the suit.



4. The respondent filed a statement of defence dated 20th June 2021, denying all the allegations and particulars of negligence as set out in the plaint. The respondent further blamed the appellant for contributing to the occurrence of the accident.
5. When the matter came up for further hearing on 20th January 2024, the parties recorded a consent on liability, apportioning it at 90:10 in favor of the appellant. The trial court was thereafter tasked with assessing the quantum of damages.
6. The trial court, in its judgment delivered on 20th June 2024, found that the appellant had been treated at St. Mary's Hospital, Kakamega County Referral Hospital, and Moi Teaching and Referral Hospital, where she was admitted for 16 days following the accident. It was confirmed that she had suffered multiple facial injuries and a fracture of the right femur.
7. In assessing general damages, the trial magistrate considered comparable authorities, including the case of *Primia Management Ltd v Wilson Suba Kindaranga* (2017) eKLR, in which Kshs. 700,000 had been awarded for similar injuries. Taking into account the circumstances of the case and the injuries sustained, the court awarded Kshs. 500,000 in general damages, subject to the agreed 10% contribution, resulting in a net award of Kshs. 450,000/-.
8. The trial court found that only Kshs. 30,250 had been specifically proved as special damages, making a total award of Kshs. 480,250/- together with costs of the suit and interest on the sums awarded at court rates from the date of judgment until payment in full.

The Appeal

9. The appellant, being dissatisfied with the judgment by the trial court, lodged the present appeal on the following grounds:
 - a. The Learned Magistrate erred in fact and in law by failing to award the Appellant the costs of future medical expense which was not only pleaded but also proved.
 - b. The learned Magistrate erred in fact and in law in giving a minimal award of Kshs. 500.000 considering the authority cited as general damages to an extent that it occasioned a miscarriage of justice.
10. The appellant sought the following prayers:
 - a. That the Appeal be allowed.
 - b. That the Subordinate's Court Judgment delivered on 20th June 2024 as regards to future medical expense be set aside and substituted with a judgment awarding the Appellant the costs of future medical expense of Kshs. 150.000.
 - c. That the Subordinate's Court Judgment delivered on 20th June 2024 as regards to the award of general damages be set aside and substituted with an enhanced award for the same considering the inflation and lapse of time.
 - d. The Respondents be condemned to pay the Cost of this appeal.
 - e. Such further and or other orders and or reliefs that the Honorable Court will deem fit and just to grant in the circumstances.



11. The court directed that the matter be canvassed by way of written submissions. On record are the appellant's submissions dated 4th April, 2025. At the time of writing this judgment, no submissions are on record for the respondent in the court file nor online via the CTS.

Appellant's Case.

12. In her submissions, the appellant abandoned the second ground of appeal concerning quantum on general damages and based their submissions solely on the failure by the trial court to award future medical expenses, which were both and, in the appellant's view, sufficiently proved.
13. The appellant submitted that future medical expenses were pleaded in her plaint, and testimony given in court. Further, she averred that these medical details were confirmed through the testimony of PW1, Dr. Joseph Sokobe, who testified that the appellant had not healed completely and required Kshs. 150,000/- as the recommended amount for removal of implants which were fixed to assist the healing of the fracture.
14. It was the appellant's submission that the trial court erred in failing to make any award under this head of claim, despite the existence of oral and documentary evidence was led to substantiate the estimate of Kshs. 150,000 and that no contrary evidence had been adduced by the defence to challenge this figure or the necessity of the procedure.
15. In support of her position, the appellant cited the Court of Appeal decision in *Forwarding Company Limited & another v Kisilu; Gladwell (Third party)* [2022] KECA 96 (KLR) where the court affirmed the principle that where future medical expenses are specifically pleaded and supported by expert medical evidence, a court ought to make an award under that head, even in the absence of receipts, provided the need for future treatment is sufficiently demonstrated.

Analysis and Determination

16. This being a first appeal, this Court has the duty to analyse and re-examine the evidence adduced in the lower Court and reach its own conclusion but bear in mind that it neither saw nor heard the witnesses testify and make due allowance for the said fact. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the Court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
17. I have carefully considered the record of appeal, the lower court proceedings, the memorandum of appeal and submissions filed.
18. The sole issue for determination is whether the trial court erred in law and fact by failing to award the appellant the costs of future medical expenses despite it being pleaded and proved.
19. In determining this issue, the court will examine:
 - (a) Whether the claim for future medical expenses was properly pleaded;
 - (b) Whether the appellant adduced sufficient evidence to prove the necessity and estimated cost of future medical treatment; and



- (c) Whether the trial court's omission to award the claimed amount constitutes an error warranting appellate intervention.
20. It is trite law that future medical expenses are awardable where they are pleaded and proved on a balance of probabilities. The Court of Appeal decision in *Forwarding Company Ltd v Kisilu* (supra) is binding on this Court and reiterates that it is sufficient that the expenses be established through credible expert evidence; receipts are not required for future procedures not yet undertaken.
21. I have looked at the plaint from the trial court. The appellant herein indeed pleaded for general expenses, present and future expenses.
22. Further, annexed in the plaintiff's list of documents was a medical report prepared by one Dr. J.C Sokobe whom in his report stated as follows:
- “Opinion and prognosis
- Marsiana Nafula sustained both soft & bony (fracture) tissue injuries from which she is recovering well. She requires further treatment (i.e removal of implants) at an estimated cost of Kshs. 150,000/-(one hundred and fifty thousand)...”
23. From the trial court's judgment, the learned magistrate awarded Kshs. 500,000/- for general damages. He however, did not specify whether the breakdown included loss, pain and suffering and future medical expenses altogether as pleaded.
24. The Court of Appeal in the case of *Tracom Limited & Another vs Hassan Mohammed Adan* [2009] eKLR stated thus:-
- “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 vs 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 raising 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 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 treatment is 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 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.”
25. While being reminded of the role of an appellate court, which is to reconsider matters of law and fact as presented before the trial court and determine whether the trial court erred in its findings, conclusions, or exercise of discretion, I therefore find that the trial magistrate erred in failing to address the claim for future medical expenses altogether, despite clear pleadings and uncontroverted evidence.



Disposition

26. In light of the above, the appeal succeeds on the single ground pursued. Accordingly, the Court issues the following orders:
- i. The appeal is hereby allowed.
 - ii. The judgment of the trial Court delivered on 20th June 2024 is set aside insofar as it failed to make an award for future medical expenses.
 - iii. Judgment is hereby entered for the appellant in the sum of Kshs. 150,000 under the head of future medical expenses less 10% on the apportioned 90:10 probability.
 - iv. The award of general damages and special damages by the trial court is upheld as no appeal now lies against those awards.
 - v. Since the error was on the part of the trial court, each party shall bear its own costs of the appeal.
27. Right of appeal 30 days explained.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11TH DAY OF JUNE, 2025

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Elizabeth Agong'a

Ms Anwar for the Appellant present online.

Parties absent.

