



**Kenya Power & Lighting Co Ltd & another v Wanjiru (Civil Appeal
E1099 of 2023) [2025] KEHC 11863 (KLR) (Civ) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1099 OF 2023

DKN MAGARE, J

JULY 23, 2025

BETWEEN

KENYA POWER & LIGHTING CO LTD 1ST APPELLANT

DAVIS MOLO 2ND APPELLANT

AND

PETER NJUGUNA WANJIRU RESPONDENT

*(An appeal from the Judgment and decree of Hon. Paul Rotich
(SPM) given on 30.01.2023 in Nairobi CMCC No. 3276 of 2020)*

JUDGMENT

1. This is an appeal from the Judgment and decree of Hon. Paul Rotich (SPM) given on 30.01.2023 in Nairobi CMCC No. 3276 of 2020. The appellants were the defendants in the court below. The memorandum of appeal is on a single issue, that is the award of future medical expenses at a sum of Ksh 350,000/=. The words describing the errors made by the court are not edifying or palatable to the heart. More respectable words could have been used to get the same message.
2. The appeal is said to have been filed pursuant to leave granted on 13.10.2023. Though it appears to be on quantum and liability, all grounds are on quantum.
3. The same raised the following grounds:
 - a. The learned trial magistrate erred in law and in fact by awarding the Respondent Kshs.350,000/= as future medical expenses when the same had neither been specifically pleaded nor proved.



- b. The learned trial magistrate erred in law and in fact by failing to read and consider the appellants' submissions on future medical expenses and wholly relying on the Respondent's submissions.
 - c. The learned trial magistrate erred in law and in fact by failing to scrutinize the evidence produced in support of the prayer for future medical expenses by the respondent and by considering irrelevant factors while leaving out relevant ones in arriving at the award on future medical expenses.
 - d. The learned trial magistrate's judgment was arrived at in a cursory and perfunctory manner without any legal justification and the award of future medical expenses is unjustified and oppressive to the Appellants.
4. The question of loss of future earnings is addressed in the appellants' submissions. They posited that the amounts were neither pleaded nor proved. Ground 2 of the memorandum of appeal is otiose and has no relevance to the appeal. This is because the authorities and submissions disregarded must relate to an issue for determination. An issue of submissions cannot be raised in vacuo. Mwera J, posited as follows when postulating on what is the role of submissions. He stated that they are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim. In the case of *Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993*, it was stated that:

“Indeed and strictly speaking submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case.”

5. Submissions are not, strictly speaking, part of the case, the absence of which may do no prejudice to a party. Their presence or absence does not in any way prejudice a case as held in *Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749*, where the Court held that:

“As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable.”

6. The Court of Appeal was more succinct in that submissions cannot take the place of evidence when they addressed the question in the case of *Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR*:

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course



only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.

Pleadings

7. Vide a plaint dated 17.04.2020, the Respondent pleaded that he was involved in a road traffic accident on 14.09.2019. He sought various prayers which I will address in the analysis. The Respondent sought at the prayer level for general damages for pain and suffering, loss of amenities, and ability to engage in income generating activity and future medical expenses.

Submissions

8. The respondent submitted that he pleaded the prayer for general damages for future medical expenses. It was submitted that the duty of the court is to re-evaluate evidence. Reliance was placed in the case of *Mursal v Manese*[2022] eKLR, where it was stated as follows:

“A first Appellate Court is mandated to re-evaluate the evidence presented before the trial Court as well as the judgment and to arrive at its own independent judgment on whether or not to allow the appeal. A first Appellate Court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and to make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & another v- Associated Motor Boat Co. Ltd & another* [1968] E.A. 123 and *In Peters v Sunday Post Ltd* [1958] EA page 424.”

9. As regards the sufficiency of the prayer for future medical expenses, it was submitted that the Court of Appeal has accepted that such a prayer is sufficient. Reliance was placed on the case of *Forwarding Company Limited & another v Kisilu; Gladwell (Third party)* (Civil Appeal 344 of 2018) [2022] KECA 96 (KLR) (4 February 2022) (Judgment) where the Court of Appeal overturned a decision of the High Court not to award future medical expenses on the ground that the plaintiff had attached a specific sum to it. The court of appeal posited as follows:

62. In the instant case, we do not agree with the finding of the learned judge that failure to plead future medical expenses would fatally affect this specific claim. To demand a specific sum to be proved specifically like special damages would be unreasonable. This is a claim for money not yet spent, for money estimated to be spent depending on how the claimant's body is responding to treatment, among other things. It is not always clear at the time of filing a case what these future costs may be. The prognosis could change for better or for worse depending on various circumstances.”

10. They also relied on a decision of *Tracom Limited & another v Hasssan Mohamed Adan* [2009] eKLR, where the Court of Appeal, P. K. Tunoi, P. N. Waki, J. W. Onyango Otieno stated as doth:

The award for future medical expenses is challenged on two fronts. First, that it was not specifically pleaded and strictly proved. Second, that the multiplier of 25 years was inflated. 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 thereon 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 the 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.

11. They argued that parties are bound by pleadings and the court is equally bound to decide on the case before it. Reliance was placed on the case of *Independent Electoral and Boundaries Commission & another v Mule & 3 others* (Civil Appeal 219 of 2013) [2014] KECA 890 (KLR) (31 January 2014) (Judgment). They stated that medical reports were produced by both parties. The reports indicated that surgery was required, though there were differences on the amounts. They stated that the question of removal of implants was live before the court. They prayed that the appeal be allowed. They prayed for costs, relying on the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR.
12. The court is yet to access the Appellant’s submissions.

Analysis

13. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In the case of *Mbogo and Another vs. Shah* [1968] EA 93 the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

14. The duty of the first appellate court was laid down in the case of *Selle and another Vs Associated Motor Board Company and Others* [1968]EA 123, where the Judges in their usual gusto, held as follows:-

“.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court’s finding of fact if it appears either that he failed to take account of particular



circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.”

15. The particulars of injuries are set out in paragraph 8 of the plaint. However, it is important to set out paragraphs 5 and 6 of the plaint. They plead as follows:
 - “5. The plaintiff was taken to Mama Lucy Kibaki hospital and subsequently to Kenyatta National Hospital where he was treated for compound fracture of the right tibia, and blunt soft tissue injuries to the trunk.
 6. Consequently, the plaintiff has not been able to ride a motor bike, his main source of livelihood and has lost the ability to use his right thumb.
16. Special damages were set out, without totals at paragraph 8. The *raison d'être* for the prayers were set out in the body without a specific claim. At the prayer section the Respondent prayed for the following:
 - a. Special damages of Ksh. 243,244/=.
 - b. General damages for pain and suffering, loss of amenities, and ability to engage in income generating activity and future medical expenses.
 - c. costs of the suit
 - d. Interest.
17. The general damages were thus claimed under 3 limbs that is:
 - a. General damages for pain and suffering, loss of amenities,
 - b. General damages for loss of the ability to engage in income generating activity, and
 - c. General damages for future medical expenses.
18. All the three limbs for general damages, that is, for pain and suffering, loss of amenities, and for ability to engage in income generating activity and for future medical expenses, are not prayed for in the main body of the plaint. This is therefore the gravamen of the appeal, that it is not enough to set prayers in the foot of the plaint. They stated that the prayers for loss of future medical expenses should be particularized in the plaint.
19. The question arising therefore is whether the damages for loss of future medical expenses need to be specifically particularized and proved. The amount of Ksh. 350,000/= as awarded is not in doubt or question. However, the award as a whole is. I agree with the decision referred to by the Respondent, that is, *Forwarding Company Limited & another v Kisilu; Gladwell (Third party)* (Civil Appeal 344 of 2018) [2022] KECA 96 (KLR) (4 February 2022) (Judgment). This is a binding decision of the Court of Appeal. What is needed is for the defendant to be sufficiently warned of the cost of future medical expenses. The appellant cannot say that they were ambushed with the claim for future medical expenses. It is telling that there was no question regarding general damages, when the same were also not pleaded within the plaint. Therefore, future medical expenses, being decidedly general damages, may not be known upfront.
20. The next issue was that the issue of future medical expenses was active in the trial and left to the court to decide. The Appellant submitted, in the lower court that the respondent prayed for both special damages and future medical expenses with the latter prayed for under special damages. They relied on



the case of Hahn V Singh [1985] eKLR, which they quoted out of context. The proper quote of the Court of Appeal [Kneller, Nyarangi, JJA and Chesoni, Ag JA] posited as follows:

Now the next two grounds of the memorandum concern special damages which must be not only claimed specially but proved strictly for they are not the 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 the nature of the acts themselves. This has been adumbrated by Bowen, LJ in Ratcliffe v Evans (1892), 2 QB 524, 532, 533, Lord Macnaghten in Stoms Bruks Aktic Bolag v John & Peter Hutchinson, [1905] AC 515, 525, 526, Lutta, JA in Kampala City Council v Nakaye, [1972] EA 446, 447 and Chesoni, J, in Ouma v Nairobi City Council, [1976] KLR 297, 304.

21. The court was thus under duty to decide matters placed before it. In Pacific Frontier Seas Ltd v Kyengo & another [2022] KECA 396 (KLR), the Court of Appeal at Malindi in Civil Appeal No. 32 of 2018 held as follows:

As regards unpleaded issues, the principle is well settled that a court, even when it has jurisdiction, will not base its decision on unpleaded issues because the issues determined by the court must flow from pleadings. It is the pleadings which guide the litigation and succinctly inform the parties and the court what is in dispute. However, where the parties lead evidence and address the unpleaded issues and from the cause adopted at trial it appears that the unpleaded issues have been left for the decision of the court, the court will validly determine the unpleaded issues. (See Captain Harry Gandy v. Caspar Air Charters Ltd [1956] 23 EACA 139; Odd Jobs v. Mubea [1970] EA 476, D.E.N. v. P.N.N. (supra), Baber Alibhai Mawji v. Sultan Hashim Lalji & Another, CA No 296 of 2001; and Mapis Investment (K) Ltd v. Kenya Railways Corporation (2005) 2 KLR 410). Nevertheless, we should add that parties cannot validly leave unpleaded issues over which the court has no jurisdiction for it to decide, simply because parties cannot by consent, confer jurisdiction to a court which in law it does not have.

22. The above position was affirmed by the Court of Appeal in Civil Appeal No. 1 of 2016 at Nairobi, in Justice Kalpana H. Rawal v Judicial Service Commission & 3 others [2016] eKLR, where the Court expressed itself as follows::

“The principles of law on unpleaded issues, as stated by the appellant, are correct and not in dispute. A court will not determine or base its decision on unpleaded issues. Where however, evidence is led and it appears from the cause followed at trial that an unpleaded issue has been left to the court to decide, the trial court can validly determine the unpleaded issue. Accordingly, we need not belabour or restate the principles here in detail, save to mention but some decisions, which have crystallized those principles. These include Captain Harry Gandy v. Caspar Air Charters Ltd [1956] 23 EACA 139; Odd Jobs v. Mubea [1970] 476, D.E.N. v. P.N.N. (supra), Baber Alibhai Mawji v. Sultan Hashim Lalji & Another, CA No 296 of 2001; and Mapis Investment (K) Ltd v. Kenya Railways Corporation (2005) 2 KLR 410.”

23. The circumstances in which an unpleaded issue can become an issue in a suit is a question which was considered in *causa* celebrate of Odd Jobs –vs- Mubia [1970] EA 476 in which it was held that:

- a) A court may base its decision on an unpleaded issue if it appears from the cause followed at the trial that the issue had been left to the court for decision.



- b) On the facts the issue had been left for decision by the court as the advocate for the appellant led evidence and addressed the court on it.”
24. In this context, the court was correct in two aspects: that is, the acceptance of unpleaded issues and the fact that the general damages should not be specifically pleaded. It is enough that they are general damages for future medical expenses. In the case of *Ongata Works Ltd v Mwangi* (Civil Appeal E046 of 2021) [2024] KEHC 5738 (KLR) (9 May 2024) (Judgment), this court was of the view that:
- [Though]The loss of future medical expenses is of the same genre of special damages, they are within the general damages. They must be pleaded before being specifically being proved. The Court of Appeal, in the case of *Tracom Limited & another v Hassan Mohamed Adan* [2009] eKLR (P. K. Tunoi, J.W.Onyango Otieno, P. N. Waki JJA) held that: “We readily agree that the claim for future medical expenses is a special 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 thereon 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 the 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.”
25. From the foregoing, the operative words were, we understand that to mean that once a plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specifically state what amount it will be as indeed the exact amount of that future expenses. This will depend on several other factors. In this case the respondent pleaded the need of future medical expenses. They then went forward and proved the same.
26. It is not true that future medical expenses are special damages that must be specifically pleaded and proved. The claim for future medical expenses unlike general damages must also be specifically pleaded.
27. It is true about the essence of pleadings. The Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of *Raila Amolo Odinga & Another vs. IEBC & 2 others* (2017) eKLR found and held as follows in an election petition: -

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the



court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”

28. In analyzing experts, the court has duty to come up with the most pragmatic approach to a matter. In *Parvin Singh Dhalay vs. Republic* [1997] eKLR; [1995-1998] 1 EA 29, it was held that:

“It is now trite law that while the courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so. We will repeat what this Court said in the case of *Elizabeth Kamene Ndolo vs. George Matata Ndolo*, Civil Appeal No. 128 of 1995. There the Court said with regard to the evidence of experts:-

“The evidence of PW1 and the report of Munga were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held the evidence of experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not it believes the expert and give reasons for its decision. A court cannot simply say:- “Because this is the evidence of an expert, I believe it.”...”

29. This court cannot substitute exercise of discretion for its own. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd Vs Meru Express Service Vs. A.M Lubia & Another* 1957 KLR 27 as follows: -

The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.

30. Regarding future medical expenses, the governing principle was explained by the Court of Appeal in *Kenya Bus Services Ltd v Gituma* [2004] EA 91 as follows:

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 damages and is a fact that must be pleaded, if evidence thereon 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 the infringement of a person’s legal rights should be pleaded.



31. This Court appreciates that courts have impressively expressed the extent of application of an expert opinion in judicial proceedings and the general trend is that such evidence is not necessarily conclusive and binding. As was held in *Shah and Another vs. Shah and Others* [2003] 1 EA 290:

“The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so.”

32. Further, the Court of Appeal on its part in *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko* Civil Appeal No. 203 of 2001 [2007] 1 EA 139 held that:

“... such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.”

33. Were the amounts proved? Court’s award of a sum of Ksh. 350,000/= as an amount payable under future medical expenses is discretionary. The court cannot interfere with the same unless the same is not judicious. In the case of *Kenya Power & Lighting Company Limited v AMK (Suing as the mother and next friend of JMK - Minor (Civil Appeal 58 of 2020) [2021] KECA 52 (KLR) (8 October 2021) (Judgment)*, the court of appeal [RN Nambuye, W Karanja & PO Kiage, JJA] stated as hereunder:

Addressing the issue on interfering with the trial court’s discretion, this Court in Civil Appeal Number 192 of 2006, *Tracom Limited & another v Hasssan Mohamed Adan (supra)* pronounced itself as hereunder: “In law, sitting on appeal, we are duty bound to be slow in interfering with the assessment made by the trial Judge as in doing so the trial Judge is exercising discretionary powers. We can, however, interfere only where the trial Judge either considered matters that he ought not to have considered or did not consider what he should have considered or misapprehended certain aspects of the case, or on looking at the award in itself the award is either too low or too high that it must have reflected improper award – see the case of *Henry H. Ilanga vs. M. Manyoka* [1961] EA 705 at page 713.”

34. The award of Ksh 350,000/- was based on the evidence presented before the court. The said amount is therefore proper. Accordingly, the appeal in respect of this head is dismissed.

35. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
- (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.



36. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

37. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

38. The appellant lost the appeal herein. They made a single issue appeal, which the court has found against them. In the circumstances, they ought to bear costs of the appeal. A sum of Ksh. 65,000/= will suffice.

Determination

39. In the circumstances, I make the following orders: -

- a. The appeal on future medical expenses is dismissed with costs of the appeal of Ksh. 65,000/=.
- b. 30 days stay of execution.
- c. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 23RD DAY OF JULY, 2025.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Wairimu for the Appellant

Ms. Mungai for Joy Anami for the Respondent



