



**Ngethe v Unique Loo Limited & another (Civil Suit 16 of 2020)  
[2025] KEHC 11552 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11552 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL SUIT 16 OF 2020  
DO CHEPKWONY, J  
JULY 10, 2025**

**BETWEEN**

**RACHAEL WANJIKU NGETHE ..... PLAINTIFF**

**AND**

**UNIQUE LOO LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ERIC KIMALI MUTUKU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Rachael Wanjiku Ngethe, the Plaintiff herein claim as elucidated in the Amended Plaint dated 12<sup>th</sup> October, 2022 wherein she has stated that on 4<sup>th</sup> September, 2019, she was a lawful pillion passenger on Motor Cycle Registration Number KMDN 860E and travelling along Getathuru and Gathiga road. She has pleaded that on the material day, while driving Motor Vehicle Registration Number KBR 661B owned by the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant was distracted and without due regard of other road users, violently rammed into the said Motor Cycle which completely shattered the right leg of the Plaintiff as from the foot to the waist.
2. The Plaintiff blames the Defendants for the negligence of causing the accident as particularised at Paragraph 7 of the Amended Plaint as follows (verbatim):-
  - i. Driving the said Motor Vehicle Registration No. KBR 661B recklessly, carelessly and at an excessive speed in the circumstances hence causing the accident and subsequent injuries to the Plaintiff.
  - ii. Failing to have proper regard to the other road users and especially the Plaintiff herein.
  - iii. Driving without due care and/or attention at all causing injuries to the Plaintiff.
  - iv. Failing to slow down, swerve, yield stop and/or securely control the said Motor Vehicle Registration No. KBR 661B so as to avoid the accident in question.



- v. Failing to abide by the Highway Code and Traffic Rules.
  - vi. Failing to exercise sufficient control of the said Motor Vehicle hence injuring the Plaintiff.
3. The Plaintiff pleads that she sustained serious injuries to the right leg, causing her to suffer extensive loss of her limb and consequently a total loss of income (See Paragraph 8 and 0 of the Amended Plaintiff for particulars thereof) as a beauty therapist which she now seeks compensation for.
  4. Therefore, the Plaintiff seeks the following orders:=
    - a. Special damages Kshs. 26,801,717/=
    - b. General damages
    - c. Costs and interest of this suit on (a) and (b) above.
    - d. Any other reliefs that this Honourable court deems just and fit to grant.
  5. The Defendants entered appearance through the firm of Karanja Otunga & Associates. In the 1<sup>st</sup> Defendant's Defence dated 23<sup>rd</sup> April, 2023 and the 2<sup>nd</sup> Defendant in their Defence dated 23<sup>rd</sup> March, 2023, both denied the particulars of the Plaintiff and urged the court to dismiss the suit while attributing negligence on the Plaintiff as particularized at Paragraph 6 of their respective statement of defence as follows:-
    - a. Being a pillion passenger on Motor Cycle Registration Number KMDN 860E which was being ridden by a person without driving license.
    - b. Being a pillion passenger on Motor Cycle Registration Number KMDN 860E plying on Kenyan roads without a valid insurance cover.
    - c. Failing to wear a safety helmet as required by law.
  6. During hearing, the Plaintiff called four(4) witnesses being the Plaintiff Rachael Wanjiku Ngethe (PW1), John Njenga Mwangi (PW2), Allan Karanja Michuki (PW3), Kevin Kariuki Mwaura (PW4) and No. 81238 PC John Ndungu (PW5)
  7. PW1 testified that on the material day she was a passenger in the subject Motor Cycle when a Motor Vehicle crashed into them. She stated that on that day she was going to work and she called her regular bodaboda rider to take her to work as she always did. According to PW1, she was riding from Wangige area and was heading to Westlands on a rough road when a green land rover which was going to the opposite direction appeared, made an abrupt u-turn in the middle of the road and it crashed on them causing them to fall into a ditch. PW1 told court that she tried to get up but could not and she realised that she had been badly injured. She testified that many people gathered and she was shocked when she heard people say 'wachana na huyu ni mlevi' translated into English language to mean 'leave this one alone, he is drunk' in reference to the driver.
  8. It was PW1's testimony that a good Samaritan took her to M.P Shah Hospital as the driver of the Motor Vehicle managed to escape but was however arrested afterwards. PW1 said she was later informed of the registration number of the Motor Vehicle. She went on to tell the court that at MP Shah hospital, she was taken to the HDU then underwent surgery for sixteen (16) hours and the bill became overwhelming as it came to a total of Kshs.3.5 million. She said that her family managed to raise Kshs. 2million and she transferred to Coptic Hospital whereby a bill of Kshs.1.3 million remains pending at MP Shah Hospital. PW1 told court that she stayed at the Coptic hospital for three(3) months and



- underwent several surgeries while there, and the bill accumulated to about Kshs.4 million shillings. That she was discharged and to a specialist in Muthaiga where she would go for dressing.
9. That upon discharge, PW1 went home in an ambulance as she could not sit down and had to be assisted into a wheelchair. PW1 told this court that she suffered any infections and she was referred for further treatment in India where she stayed for seven (7) months, a result of which her family and friends mobilised for funds and borrowed so much debt. She urged the court to award the amount she has already spent, future medical treatments and loss of income.
  10. It is PW1's further evidence that her husband was diagnosed with diabetes years ago and got complications as a result. That she has children who are all school going and who have been affected by the accident. She stated that she got into so much debt and her life shattered as a result of the accident. She adopted her witness statement dated 19<sup>th</sup> September, 2022 and list of documents dated 12<sup>th</sup> May, 2021 and 28<sup>th</sup> arch, 2023 to be adopted as her exhibits in support of her case by the court.
  11. On cross examination, PW1 stated that she did not check to confirm whether the Motor Cycle was licensed but stated that at the time of the accident the Motor Cycle rider was riding the sae in a slow motion since there were potholes on the road. She stated that the Motor Vehicle came from the opposite direction and the Motor Cycle was being driven at a speed of about 50kph since they had just gotten into the main road.
  12. PW1 stated that she had a helmet but the motor bikes do not provide any protection for the legs. She stated that she also had a helmet but attributed the accident to the abrupt turn which the Motor Vehicle made. On the claim of Kshs. 800,000/=, PW1 stated that she availed an agreement between herself and one Catherine Kamau but has not provided a receipt to confirm its payment. She further stated that she took the money as a loan. With reference to the claim of future medical expenses of Kshs. 8,720,000/=, PW1 has availed documents in support of the projection and is yet to undergo the surgeries.
  13. PW1 has further stated that she lost income of Kshs. 6,400,000/= as she worked in semi-formal organisation and does not have documents to support the income. She states that she has availed a letter from her employer to show that she was employed at the time of the accident. On the police abstract, PW1 confirmed that she had not provided a receipt for it. She stated that when she boarded the bodaboda she knew that it was supposed to be insured. She states that in the police abstract the Motor Vehicle was blamed.
  14. On re-examination, PW1 stated that the rider is one of the witnesses in the case. She confirmed the injuries she sustained and that the Motor Vehicle made an abrupt u-turn. She stated that in her industry it is common to work without a formal contract and that the police officer will produce the police abstract and answer some of the questions therein.
  15. PW2, John Njenga Mwangi, is the boda boda rider who adopted his statement as evidence. He stated that on the material day, PW1 called and asked him to take her to work, which he did and they were onto Mwimuto- Getathuru road heading towards Westlands which road had potholes He stated that the subject Motor Vehicle while been driven at a high speed made a u-turn and trying to avoid some potholes, it hit them causing them to fall into a ditch but he was not injured.
  16. However, PW2 could hear PW1 screaming for help and he ran to the Motor Vehicle to ask for help so she could take her to hospital. PW2 told court that when he went near the Motor Vehicle, there was vomit and smell of alcohol. He was not arrested but his Motor Cycle was taken to King'ero Police Post where he was asked for his license, logbook and insurance cover. He stated that the driver of the Motor Vehicle was arrested but was released. According to PW2, there was no roundabout or u-turn sign on the road and prayed for justice to be done for PW1.



17. On cross examination, PW2 stated that he is a licensed Motor Cycle rider but does not know if the same was availed in court . He confirmed that there were potholes on the road and the vehicle was being driven at a high speed and they were hit as the driver was avoiding the potholes which were on his side. PW2 testified that he was not injured because he had a helmet the required uniform while PW1 had a helmet too and a reflector. On re-examination, he stated that it was just by God's will that he was not injured.
18. PW3, Allan Karanja Michuki also a bodaboda operator, stated that on the material day, he was at work along the T. Junction of Wangige to Westlands. He told court that he heard an impact (sound) and went to the scene where he saw a lady screaming and there was a bodaboda rider and a Motor Vehicle. That he went straight to the lady PW1 and he saw her leg had been injured. And as he was trying to wrap the injured leg so as to stop the bleeding, he realised that he knew the lady. That together with other people who were there got a taxi to take her to hospital for which he paid Kshs.1000/=. On cross examination, PW3 stated that he did not witness the accident happen but only heard an impact from a distance and rushed to the scene.
19. PW4, Kelvin Kariuki Mwaura, an Orthopedic and Trauma Surgeon, produced a medical report marked as PEXB 4 in respect of PW1 and testified that PW1 sustained an open fracture of the right tibia plateau and shaft of the tibia and fibula, had a crushed injury to the posterior tibial arteries and veins, and extensive degloving injuries to the right leg with gross stein substantaneous tissues and muscle loss. He stated that the injuries were quite severe and at the time of examination, PW1 had undergone treatment which were still ongoing. According to PW4, she requires post trauma counselling and extensive physiotherapy to regain motion. That she also requires four(4) to five(5) surgeries to cover the exposed bone and graft the wound. He told court that he charged Kshs. 22,500/= to prepare the medical report and produced its receipt as Item No. 154 of the Plaintiff's list of documents to confirm this and was also charged Kshs. 15,000/= to attend court.
20. When cross examined, PW4 stated that at the time he examined PW1, it was two (2) years ago and then she needed the 4 to 5 surgeries. He also stated that she went to India and underwent further surgeries which he had projected in the future medical expenses but does not know how much she had incurred. He confirmed her permanent incapacity to be 50% of disability. He stated that the scale used was on mobility at the ankle and knee which had significantly reduced.
21. PW5, No. 81238 PC John Ndungu produced police abstract (PEXB 5) which reflects that Motor Vehicle Registration No. KBR 661L make Land Rover was blamed for the accident and he proposed Kshs. 5,000/= for attending court. On cross examination, PW5 stated that he was not the Investigating Officer and did not visit the scene of the accident. He said that the road was tarmacked but was not aware of the condition of the road. When re-examined, PW5 stated that the abstract bears an OB number which shows the entry of the report made.
22. Upon close of the Plaintiff's case, the Defence called one witness Eric Kimathi, (hereinafter referred to as DW1) who testified that he was the driver of the subject Motor Vehicle Registration No.KBR 661B at the time of the accident and the 2<sup>nd</sup> Defendant in this case. He adopted his witness statement dated 31<sup>st</sup> March, 2023 as his evidence in-chief in this case. He stated that on the material day, he was driving the subject Motor Vehicle and was heading towards Wangige on a road that was narrow with too any potholes and there was an oncoming Motor Cycle rider who was approaching at a high speed. That, as the rider was and as he was trying to avoid the potholes, he started swerving and in the process got into a ditch besides the road. That on hearing the commotion , DW1 stopped and found the rider had landed into a ditch with a pillion passenger who was injured. That other Motor Cycle riders came to the scene, due to this and mentioned that they were going to set his vehicle ablaze alleging that he was



the one who caused the accident. DW1 told court that they wanted to beat him and that was when he ran away from the scene and left the vehicle on the road. He went to report the incident at King'ero Police Station. He blamed the Motor Cycle for the occurrence of the accident.

23. On being cross-examined, DW1 stated that indeed the accident occurred on the material day and confirmed that he is a qualified driver, having driven for the past fourteen (14) years and had a driving license. It was his testimony that he was alone in the Motor Vehicle and he saw a Motor Cycle approaching at high speed. He stated that there was no vomit in the Motor Vehicle. He denied having tried to make a u-turn and stated that it was the Motor Cycle which swerved as it was avoiding potholes. He stated that in the police abstract from King'ero Police station, he was blamed for the accident but he is not a police officer or an investigator to know why this was so. He confirmed that there was a passenger who had injuries but did not know the nature of the injuries and did not know how long the treatment took. In re-examination, DW1 stated that he was never charged in any court for causing the said accident.
24. After the defence closed their case, the court directed the parties to file written submissions in summing up their respective positions. The Plaintiff filed submissions dated 20<sup>th</sup> January, 2025 while those by the Defendants are dated 17<sup>th</sup> March, 2025.

### **Analysis and Determination**

25. Having considered the Plaintiff, the Defence, and listened to the evidence of the witnesses in support of both the Plaintiff's case and the Defence case, I have also read through the two sets of submissions and find that there are two main issues for determination:-
  - a. Whether or not a road traffic accident occurred involving Motor Vehicle No.KBR 661B make Landrover and a Motor Cycle carrying the Plaintiff.
  - b. Who is to blame for the said accident
  - c. Who is entitled to being paid damages? What amount of damages would be reasonable compensation in the circumstances of this case.
26. With regard to the first issue, from the evidence adduced by both the Plaintiff and Defendant, it is not in dispute that a road traffic accident involving Motor Vehicle Registration No.KBR 661B and a Motor Cycle which was carrying the Plaintiff on 4<sup>th</sup> September, 2019. It is also not in dispute that the said Motor Vehicle was being driven by Eric Kimathi, the 2<sup>nd</sup> Defendant herein while the Motor Cycle was being ridden by John Njenga Mwangi, PW2 herein.
27. On the issue of who is to blame, and thus liable for the said accident the Plaintiff argues that the Defendants are jointly and severally liable for the occurrence of the accident. The Defendants on their part have attributed negligence to the Plaintiff. According to the Plaintiff, on the material day she was a pillion passenger on the Motor Cycle when the subject Motor Vehicle which was speeding on a road that had potholes made an abrupt u-turn in the middle of the road and hit the Motor Cycle causing them to fall into a ditch where she sustained injuries. This evidence was corroborated by PW2, the Motor Cycle rider who was carrying the Plaintiff on the said day. He also blamed the driver of the subject Motor Vehicle for the occurrence of the accident because he was driving at a high speed on a road full of potholes and suddenly made a u-turn and hit them. Although he did not witness the accident, PW3 testified that he heard a loud sound of an impact, ran to the road, saw commotion and heard a lady screaming from a ditch. He then saw a boda-boda rider trying to pull open the door to a Landrover. He did not bother much with them as he swung into assisting the Plaintiff who was seriously injured by getting her out of the ditch and taking her to hospital.



28. PW5, the Police Officer who testified, told court that he did not visit the scene and was not the Investigating Officer in the case. However, he produced the police abstract which confirmed that the Motor Vehicle was found to blame for the said accident. On his part, DW1 confirmed that he was the driver of this Motor Vehicle on the said day and that he saw a Motor Cycle approaching from the opposite direction at a high speed and while avoiding potholes, the rider swerved and fell into a ditch.
29. Having considered the evidence adduced by the Plaintiff and her witnesses vis-a vis that of the Defendant, this Court finds that indeed the Plaintiff was a Pillion passenger and therefore cannot be held liable for the accident since she did not have any control of the Motor Cycle that was carrying her. However, her evidence on how the accident occurred was corroborated by the evidence of PS2, the rider who was carrying her on the Motor Cycle. PW2's evidence was corroborated by the evidence of PW3 with regard to how he went to the Motor Vehicle and pulled the door open. This confirmed the presence of the vehicle which DW4, the 2<sup>nd</sup> Defendant was driving at the scene of accident. DW1 explained that he saw the rider swerve his Motor Cycle to avoid potholes on the road at a high speed and they landed in a ditch. That he stopped his Motor Cycle to see what was happening but had to escape when the crowd of Motor Cycle riders threatened to set his vehicle on fire and kill him. His evidence was not corroborated by any other independent evidence. A Police Abstract (P.Exh. 1) was produced by PW4 and it confirms the occurrence of the accident involving Motor Vehicle Registration No.KBR 661R and a Motor Cycle Registration No.KMDN 860 Honda and Pillion passenger, Rachael Mwangi Ngethe injured on 4<sup>th</sup> September, 2019 reported to King'ero Police Station vide OB No.20/4/9/2019 with comments that "matter referred to Insurance KBR 661R to blame".
30. This evidence was not strongly and convincingly rebutted by the defence and DW1 even confirmed in cross-examination that the said abstract was issued by King'ero Police Station and he believed the police. In view of the aforesaid analysis, this Court finds that the driver of the Motor Vehicle Registration NO.KBR 661R, the 2<sup>nd</sup> Defendant herein to blame for the occurrence of the accident, and as his employer, the 1<sup>st</sup> Defendant is held vicariously liable for the acts of its employee. Therefore, the Defendants are fairly wholly to blame for the accident that occurred on 4<sup>th</sup> September, 2019 involving their Motor Vehicle and Motor Cycle Registration No.KMDN 860 in which the Plaintiff sustained injuries.
31. Having found the Defendant to blame for the accident in which the Plaintiff sustained injuries, it goes without saying that the Plaintiff is entitled to compensation by way of damages, which this Court has a duty to compute and award. The duty of a court in regard to general damages is settled in the case of Nyambati Nyaswabu Erick -vs- Toyota Kenya Ltd & 2 Others[2019]eKLR, Justice B. S. Majanja (as he then was) held as doth:-

“General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.”

32. In the case of Charles Oriwo Odeyo -vs- Apollo Justus Andabwa & Another[2017]eKLR, the Court of Appeal listed the principles to be considered in awarding damages as follows:-

“The assessment of damages in personal injury case by a court is guided by the following principles:

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.



- 2) The award should be commensurable with the injuries sustained.
  - 3) Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.
  - 4) Previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account.
  - 5) The awards should not be inordinately low or high”
33. From the above cited case law, it is trite that a court ought to award damages that are commensurate to the injuries that a party sustained.
34. In the Amended Complaint dated 12<sup>th</sup> October, 2022, the Plaintiff particularised the injuries she sustained in the said accident alongside the effect the said injuries had had on life in general. She also testified on this in her evidence in court. The medical report by Dr. Kariuku Mwaura (PW4) dated 4<sup>th</sup> March, 2020 and produced as PExhibit 49 indicates that the Plaintiff sustained the following injuries:-
- a. Open fracture of the right Tibial plateau and shaft of the tibia fibula.
  - b. Crush injury to the posterior tibial arteries and veins.
  - c. Extensive degloving injuries to the right leg with gross skin, subcutaneous tissue and muscle loss.
  - d. Post traumatic shortening of the right leg.
  - e. Post traumatic inability to flex the leg more than 20 degrees.
  - f. Bruises, abrasions and lacerations on the scalp.
35. In his report and evidence to court, PW4 (Dr. Kariuki) stated he had assessed the Plaintiff’s permanent disability at 50% owing to the severity of the injuries she sustained which would require further surgeries, treatment and management. He also produced images he took of the Plaintiff’s injured leg to confirm the severity and extent of the injuries. The doctor also took time to explain the procedures that were undertaken to treat and manage the said injuries.
36. According to the Plaintiff, an award of Kshs.15,000,000/= would suffice as compensation for the injuries she sustained. She has relied on the case of Clement Muturi Kingano –vs- Strength Engineering Construction Group Ltd [2020]eKLR.
37. On their part, the Defendants have argued that an award of Kshs.15,000,000/= as proposed by the Plaintiff is inordinately high bearing in mind the circumstances of the occurrence of the accident. They have urged the court to award the Plaintiff a sum of Kshs.1,000,000/=. They relied on the case of Guardial Singh Ghataurhae –vs- Parminder Singh Manku & 3 Others [2018]eKLR, as follows:-
- i. Kiautha –vs-Ntarangwi (Civil Appeal E050 of 2021) [2022] KEHC 10595 (KLR) (30<sup>th</sup> June, 2022) (Judgment) where Muriithi J. reduced an award of Kshs.2,000,000/- to Kshs.800,000/- where the Respondent had sustained bruises on the right upper arm and right shoulder, tender upper back, bruised left foot, tender and swollen right thigh and a mid-shaft femur fracture. I find the injuries therein to be relatively comparable to those sustained by the Respondent in this appeal.
  - ii. David Mutembei –vs-Maurice Ochieng Odoyo [2019] eKLR where the Respondent suffered a fracture of the right femur and a proximal fracture of the left tibia and was awarded



general damages of Kshs.1,600,000/= had the same reduced on appeal to Kshs.800,000/=. It is however to be noted the respondent in that case had sustained fractures on both legs and therefore the injuries therein were more severe than those sustained by the Respondent in this matter.

- iii. Jackson Mbaluka Mwangangi –vs- Onesmus Nzioka & Another [2021] eKLR where the Appellant sustained blunt injury to the right shoulder and fracture of the right femur. In the opinion of the doctor, the Appellant would suffer from degenerative osteoarthritis at a later stage. It was his opinion that further surgery was necessary to remove the nail. The court (Odunga J.) found the award of Kshs.350,000/- not commensurate with the injuries sustained and substituted the award with one of Kshs.600,000/=.
  - iv. Kihara & Another –vs- Mutuku (Civil Appeal 27 of 2018) [2022] KEHC 15626 (KLR) (17<sup>th</sup> November, 2022) (Judgment) where the Respondent sustained blunt injuries to the chest, blunt injuries left thigh which developed into ecchymosis, bruises on forearms and fracture of the right femur. Permanent incapacity was assessed at 12%. The court (Mwongo J.) upheld the lower court’s award of Kshs.700,000/- in general damages.
  - v. Monyoro Mong’are Shem & Another –vs- Rose Kebaki [2021] eKLR where the Respondent sustained displaced fracture of the right femur, soft tissue injuries on the neck, soft tissue injuries of the chest, soft tissues injuries of the shoulder joint and soft tissue injuries of the forearms. On appeal, Maina J. reduced the award from Kh.1,500,000/- to ksh.600,000/=.
38. In consideration of the injuries sustained by the Plaintiff as demonstrated by the evidence adduced in support of the case, alongside the doctor’s evidence and medical report alongside the length of time and monies used in treatment of the same, this court finds the proposed award of Kshs.1,000,000 as general damages too low and not comparable to the injuries she sustained. The court has considered all the cited case law, others of its own and opts to rely on the case of Bernard Mutisya Wambua –vs- Swaleh Hashil [2017]eKLR where the court awarded Kshs. 6,500,000/= as general damages where the Plaintiff had sustained fractures to the right hand side collar bone, right hand metacarpals, complete paralysis of right limb, dislocation of the right shoulder, and compound fractures to the right tibia and fibula. The left femur was also fractured. Due to nerve injury on right hand, the hand cannot be used. The compound fractures in the right leg developed infection and was oozing pus two years since the accident. Despite many surgical interventions including K-nails implants his injured right hand and limbs have not been rehabilitated.
39. On special damages, it is trite law that the same must be pleaded and proven. The Court of Appeal in the case of Jogoo Kimakia Bus Services Ltd –vs- Electrocom International Ltd [1992]KLR 177 stated that:-
- “The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”
40. At Paragraph 9 of the Amended Plaint dated 12<sup>th</sup> October, 2022, the Plaintiff has particularised the following special damages she incurred as a result of this accident.
- a. Current medical expenses and ancillary costs of medical care in India -Kshs. 11,657,017/=



- b. Future medical expenses -Kshs. 8,720,000/=
  - c. Loss of income -Kshs. 6,400,000/=
  - d. Medical report -Kshs. 22,500/=
  - e. Motor vehicle search -Kshs. 550/=
  - f. Company search -Kshs. 650/=
  - g. Police abstract -Kshs. 1,000/=
- Total -Kshs. 26,801,717/=

41. In her submissions, the Plaintiff has urged the court to award the special damages as prayed since the same have been proven by receipts, invoices and or bills as produced in the list and bundle of documents dated 12<sup>th</sup> ay, 2022 and 28<sup>th</sup> arch, 2023 respectively. The Defendants on the other hand have submitted that out of the amount claimed by the Plaintiff for current medical expenses, the only receipts produced are for a sum of Kshs.7,670,310/= out of which Kshs.680,000/= was paid for by NHIF and hence she cannot benefit twice.
42. From a perusal and scrutiny of the list of documents produced by the Plaintiff, the court finds that no receipts for the company search, Motor Vehicle search and police abstract have been included therein. Therefore, the court finds the claim of Kshs.2,200/= though pleaded, has not been proven.
43. The court has also noted that included in the list of documents are claims under interim bills and invoices. It is worth noting that inter bills and invoices are not proof of payments. This was the position of the court in the case of Total (Kenya) Limited –vs- (Formerly Caltex Oil (Kenya) Limited) –vs- Janevams Limited [2015]eKLR which it held that:-
- “It is also a well settled principle of law that an invoice is not proof of payment and that special damages can only be proved by producing actual receipts or invoices endorsed with the word “Paid”
44. Having gone through the list of bundle of documents, the court finds that the only payments made were in respect of MP Shah Hospital, Coptic Hospital and India as per the attached receipts for a sum totalling Kshs.6,976,726.60 which is held as proven.
45. On the claim of loss of income, the Plaintiff holds that she was working in the beauty industry and would get numerous tips but now following the accident she has lost all that because she longer work. She proposed a sum of Kshs. 6,400,000/= as compensation. The Defendants argue that the sum has not been specifically pleaded, hence should not be awarded.
46. On the issue of loss of earning capacity, the court has placed reliance on the case of Mumias Sugar Company Limited Francis Wanalo [2007] eKLR cited in John Kipkemboi & Another –vs- Morris Kedolo [2019] eKLR, where the Court of Appeal stated:-

The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award when the plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning



capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing the loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account in order to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of the disability.

47. Guided by these above findings, the issue of claim on loss of income the court under this award shall exercise its discretion and owing to the fact that it is difficult to ascertain the financial loss that the Plaintiff suffered, this court in exercise of its discretion proceeds to find an award of Kshs.4,000,000/= reasonable.
48. On future expenses, the Plaintiff has claimed a sum of Kshs. 8,720,000/= which the Defendants have disputed for the reason that the same has not been proven. However, from the medical report, the court finds that the Doctor made several projections as follows:-
- a. Future surgeries -Kshs. 2,000,000/=
  - b. Pain killers and antibiotics at Kshs. 8,000/= per month for 5 years- -Kshs. 480,000/=
  - c. Skin and graft care medication  
Kshs.10,000/= per month for 3 years -Kshs. 360,000/=
  - d. Physiotherapy sessions for a minimum of 5 years at annual costs of 150,000/= -Kshs 750,000/=
  - e. Ambulatory aids at annual cost of Kshs. 70,000/= for 10 years -Kshs 700,000/=
  - f. Post trauma counselling for 3 years at annual costs of Kshs. 200,000/= -Kshs 600,000/=
  - g. Outpatient Orthopaedic Specialist follow-up for 5 years at annual costs of Kshs.50,000/= -  
Kshs.250,000/=
- Total Kshs 5,140,000/=
49. The court has taken into consideration the evidence by the Plaintiff and doctor as confirmed by the findings and recommendations in the medical report and also the physical examination of the Plaintiff, who appeared before it. This evidence has not been controverted by the defence. Therefore, the court has computed the proposed sums and finds they amount to Kshs.5,140,000/=.
50. In the resultant, the court finds the Plaintiff has proved her case on a balance of probabilities and proceeds to enter Judgment against the Defendants as follows:-
- a. The Defendants are hereby held wholly liable for the injuries the Plaintiff sustained as a result of the accident that occurred involving the Motor Vehicle Registration No.KBR 661B
  - b. The Plaintiff is entitled to compensation by the Defendants in the following terms:-
    - i) Liability at 100% in favour of the Plaintiffs.
    - ii) Special damages -Kshs. 6,976,726.60/=
    - iii) General damages -Kshs. 8,000,000/=
    - iv) Loss of income -Kshs. 4,000,000/=
    - v) Future medical expenses -Kshs. 5,140,000/=



Total -Kshs 26,116,726/=

It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10<sup>TH</sup> DAY OF JUNE, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr, Nyamagwa counsel holding brief for Mr. Okello counsel for Plaintiff

Court Assistant - martin

