



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kamau & another v Njuguna (Civil Appeal 140 of 2023)
[2025] KEHC 12528 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 140 OF 2023
RC RUTTO, J
SEPTEMBER 3, 2025**

BETWEEN

JOHN KIMANI KAMAU 1ST APPELLANT

NITNYARI EMMAH 2ND APPELLANT

AND

PETER KURIA NJUGUNA RESPONDENT

(An appeal from the judgment and decree of the Chief Magistrate's Court at Gatundu (H.M. Ng'ang'a, PM.) delivered on 2nd March 2022 in CMCC Case No. 185 of 2021)

JUDGMENT

1. This is an appeal on liability and quantum. The respondent filed suit against the appellants through a plaint dated 28th August 2020 following a road traffic accident that occurred on 21st February 2019. The case was heard in Gatundu CMCC No. 185 of 2021. The respondent, claimed that the 1st appellant was driving motor vehicle registration number KCR 476Z while the 2nd appellant was its registered owner at the time of the accident.
2. The respondent stated that he was a pillion passenger aboard motor cycle registration number KMDM 880Q travelling from Kanyoni towards Gakoe. While near Kianguni Catholic Church, the 1st appellant drove so negligently that he caused the suit vehicle to veer off its lane and collide with the suit motor cycle on the opposite lane. As a result of the accident, the respondent sustained serious injuries including; a dislocation of the midline pelvis (diastasis) and multiple fractures on the right femur, tibial plateau and tibial malleolus. He thus prayed for general damages, special damages of Kshs.2,550.00, costs and interest of the suit.
3. In its judgment dated 2nd March 2022, the court entered liability against the appellants at 100%. Flowing from that, the trial court awarded the respondent general damages of Kshs.2,200.000.00,



special damages of Kshs.2,550.00 and future medical expenses of Kshs.1,000,000.00 all totaling Kshs.3,202,550.00. The respondent was also awarded costs of the suit with interest at court rates from the date of the judgment.

4. The appellants were aggrieved and dissatisfied with the trial court's judgment filed their memorandum of appeal dated 28th March 2022 raising two key grounds as follows: the learned magistrate erred in awarding the respondent Kshs.1,000,000.00 for future medical expenses, which were not specifically pleaded for; and the learned trial magistrate failed to consider the appellants' submissions on future medical expenses and in so doing, arrived at an erroneous decision. For those reasons, the appellants urged this court to allow the appeal, set aside the impugned judgment on future medical expenses and determine the issue of future medical expenses finally. They further sought for costs of this appeal.
5. The appeal was canvassed by way of written submissions. However, only the appellants elected to file their written submissions, dated 17th August 2024. In their arguments, the appellants submitted that future medical expenses were, in their nature, neither pleaded nor proved by the respondent. They cited relevant case law to support their position and urged the court to interfere with that finding.
6. Upon reviewing the appellants' written submissions, the record of appeal and analyzed the law the court notes at the trial court judgment, this suit had been consolidated with Gatundu CMCC No. 184 of 2020, designated as the test suit, for purposes of determining liability. The test suit, already determined that the appellants were 100% liable a finding that was not contested in appeal. Therefore, much as the appellant appealed on liability, the only issue for determination is the award on quantum.
7. The role of a first appellate court in interfering with an award on quantum is well settled. The Court of Appeal in *Gitobu Imanyara & 2 others vs. Attorney General* [2016] KECA 557 (KLR) held as follows:

“Further, it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 ALL E.R. 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

8. It is not in dispute that the respondent suffered a dislocation on the midline of the pelvis (diastasis) and multiple fractures on the right leg; the femur, tibial plateau and malleolus. The circumstances of the accident were that the respondent's leg was caught by part of the motor vehicle and thrown to the footpath. He was admitted at Kenyatta National Hospital from 23rd February 2019 to 16th April 2019 for treatment.
9. The respondent was seen by Dr. Wokabi on 26th November 2019 who confirmed that he underwent surgery to fix the fractures using metal implant. He was mobilized and discharged with crutches which he was still using at the time of giving his testimony. His opinion was that the leg was short rotated stiff and deformed with disability assessed at 60%. The trial court considered the parties' proposals and



relied on comparable decisions including the decisions in Florence Hare Mkaha vs. Pwani Tawakal Mini Coach & another [2012] eKLR, Kennedy Oseur vs. Musa Locho & 2 others [2009] eKLR, Timo Kalevi Jappinen and another vs. Texxal House Services Station Limited & another HCCC No. 220 of 1997 and Edward Mzamili Katana vs. CMC Motors Group Ltd and another HCCC No. 70 of 1997 which I find were comparable. I therefore find that the award of Kshs. 2,200,000.00 in general damages was reasonable and fair in light of the injuries, the circumstances leading up to the accident and the degree of disability. I will therefore not disturb that findings.

10. The trial court then awarded special damages that were pleaded and proved in the sum of Kshs.2,550.00 that I confirm were indeed pleaded and proved and will also not set aside that finding.

11. The trial court further awarded kshs.1,000,000 for future medical expenses, The trial court then held:

“The plaintiff in his submission also pleads for future medical expenses of Ksh 1,000,000/-. According to Dr. Wokabi (as summarized above) the patient would require future medical attention failure to which the injuries sustained would lead to permanent disability. The plaintiff may also require an operation to remove the metal implants. I find the amount reasonable as expressed by the medical report as well as the plaintiff in his written submissions and award the same.”

12. It is that particular finding that forms the crux of this appeal. It is not disputed that the respondent did not plead future medical expenses in his plaint. He only raised the issue in his written submissions dated 14th December 2021. The law on future medical expenses has followed a well-trodden path in our jurisdiction. In the case of Kenya Bus Services Ltd. vs. Gituma, (2004) EA 91, the Court of Appeal 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 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”. Emphasis added

13. Turning to the facts of this case, the respondent did not plead future medical expenses. It therefore follows that the learned magistrate erred by awarding future medical expenses that were not pleaded.

14. Though the respondent raised it in his submissions, it is common ground that submissions are not pleadings but persuasive arguments and cannot take the place of pleadings.

15. Ultimately, it is my finding that the appeal on this ground is merited. Accordingly, the award by the trial court in the sum of Kshs.1,000,000.00, being future medical expenses, be and is hereby set aside and substituted with an order dismissing the award of future medical expenses. Given that the appellants partially succeeded in challenging the decree, as well as the fact that the appeal was unopposed, each party shall bear their own costs of the appeal.

16. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE



In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

