Omocha Enterprises Limited v Peter (Civil Appeal 34 of 2022)
[2024] KEHC 2959 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2959 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CIVIL APPEAL 34 OF 2022

DKN MAGARE, J

MARCH 7, 2024

BETWEEN

OMOCHA ENTERPRISES LIMITED ..... APPELLANT

AND

RONALD PETER ..... RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgement and Decree in Kisii CMCC No. 49 of 2015 delivered on 26th April 2022 by Hon. D.O MacAndere, Resident Magistrate in. The Court Awarded Damages as follows:

    i. Liability 80:20.

    ii. General Damages Kshs. 1,500,000/-

    iii. Special Damages Kshs. 6,500/-.

    iv. Total Kshs. 1,206,500/-.

    v. Costs of the suit and interest.

2. Aggrieved, the Appellant filed this Appeal. The Memorandum of Appeal, however, is a classical study on how not to write a Memorandum of Appeal. The Appellant filed a prolixious 8 - 8-paragraph argumentative Memorandum of Appeal. The grounds are argumentative, unseemly, and do not please the eye to read. It should be recalled that Order 42 Rule 1, requires that the memorandum of Appeal be concise. It provides as doth: -

    " 1. Form of appeal –

1. Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively."

3. The Court of Appeal had this to say regarding Rule 86 of the Court of Appeal Rules (which is pari materia with order 42 Rule 1) in the case of Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat [2020] eKLR: -

> " We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others [2013] eKLR) and Nasri Ibrahim v. IEBC & 2 Others [2018] eKLR. In the latter case, this Court lamented:
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> > "We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs." The 18 grounds of appeal presented by the appellant, Robinson Kiplagat Tuwei against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues..."

4. In the case of Kenya Ports Authority v Threeways Shipping Services (K) Limited [2019] eKLR, the Court of Appeal observed that: -

> " Our first observation is that the memorandum of appeal in this matter sets out repetitive grounds of appeal. The singular issue in this appeal is whether Section 62 of the *Kenya Ports Authority Act* ousts the jurisdiction of the High Court. We abhor repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the Court. In William Koross V. Hezekiah Kiptoo Kimue & 4 others, Civil Appeal No. 223 of 2013, this Court stated:
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> > "The memorandum of appeal contains some thirty-two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memoranda of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better."

5. The Memorandum of Appeal raises only one issue, that is, the quantum of damages. The rest of the issues are ancillary, repetitive, prolixious and a waste of judicial time.

Pleadings

6. The Plaint dated 8th January 2015 and Amended on 5th March 2019 claimed damages for an accident that occurred on 22/8/2012 involving Motor Vehicle Registration Number KBL 634Y owned and driven by the Appellant or his agent. The Respondent was a pillion passenger on Motorcycle Registration No. KMCT 899F. The Respondent set forth particulars of negligence for the vehicle. He pleaded injuries as follows:-

    i. Bruises to the face

    ii. Blunt trauma to the chest

    iii. Communited fracture of the humerus

    iv. Fracture of the tibia and fibula.

7. The Appellant filed a Defence and denied liability while also blaming the accident on the rider of the Motorcycle Registration No. KMCT 899F on which the Respondent was a passenger.

Evidence

8. The Respondent testified in Court as PW1 and produced documents as exhibits. It was his case that he was admitted to Kisii Referral Hospital for one month.

9. A police officer testified and produced a Police Abstract and noted the nature of the injuries was recorded as grievous harm. On cross-examination, he stated that he was not the investigating officer. He also confirmed that he testifying 9 years since the accident occurred.

10. Dr. Morebu Peter Momanyi produced the medical report in support of the Respondent's case. It was his case that he assessed the percentage of disability at 30%. On cross-examination, he testified that there would be not much difference in terms of healing. The Appellant closed its case without calling a witness.

Appellant's Submissions

11. The Appellant filed submissions on 25th January 2023. It was submitted that the award of general damages was inordinately high and negated the established principles. They submitted that the award of Ksh. 1,500,000/= in general damages did not correspond with the injuries suffered and was excessive.

12. They relied on the case of Rahima Tayab & Others vs Anna Mary Kinanu [1983] KLR 114 to submit that money could not renew a physical frame that was battered and shattered.

13. It was further submitted that the Medical Report by Dr. Morebu was not sufficient evidence that the Respondent had suffered the injuries. Reliance was placed on the case of Peter Migiro v Valley Bakery Limited [2015] eKLR to advance an argument that a medical report was of little importance and treatment notes were important to prove the injuries. I don't know what I am supposed to do with this kind of argument. I shall revert on this on the burden of proof.

14. The Appellant submitted that the award of Kshs. 1,500,000/- be set aside and substituted with a lesser amount. They did not propose any amount. They relied on the decision of Charles Oriwo Odeyo v Appollo Justus Andawa & Another (2017) eKLR where the court awarded Kshs. 800,000/= for injuries leading to amputation of the right leg near the knee, injuries to the head and bruises to the legs and hands.

15. It was also submitted that the court erred in awarding special damages without subjecting it to the agreed liability ratio of 80:20.

16. I was urged to allow the Appeal.

The Respondent's Submissions

17. On the part of the Respondent, it was submitted that the Court correctly applied the applicable law and principles and arrived at an award of damages that was not inordinately high.

18. They relied on the case of Leonard Njenga Nganga & Another v Lawrene Maingi Ndeti (2018) eKLR where it was submitted that Kshs. 1,500,000/- was awarded for similar injuries.

19. The court as was urged to dismiss the Appeal.

Analysis

20. This being a first appeal, the Court should re-evaluate the evidence, and consider arguments by parties and apply the law thereto, and, make its own determination of the issues in controversy. Except, however, it should give allowance to the fact that it neither saw nor heard the witnesses' testimonies.

21. In the case of Selle & Another vs. Associated Motor Board Company Ltd. [1968] EA 123, the Court stated as follows:

> " The Appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal form a lower by the High Court is by way of a relower and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the lower Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

22. In the case of Rahima Tayab & Others vs Anna Mary Kinanu [supra] the Court of Appeal Law, Potter & Hancox JJA stated as doth: -

> " I would commend to lower judges the following passage from the speech of Lord Morris of Borth-y-Gest in the case of West (H) & Son Ltd v Shephard [1964] AC 326 at 345:
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> > "But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional."

The approach of Lord Morris to the matter of compensatory damages was supported by Lord Denning MR in Lim Poh Choo v Camden and Islington Area Health Authority [1979] 1 All ER 332 at 339:

> "In considering damages in personal injury cases, it is often said: 'The defendants are wrongdoers, so make them pay up in full. They do not deserve any consideration.' That is a tendentious way of putting the case. The accident, like this one, may have been due to a pardonable error such as may befall any one of us. I stress this so as to remove the misapprehension, so often repeated, that the plaintiff is entitled to be fully compensated for all the loss and detriment she has suffered. That is not the law. She is only entitled to what is in the circumstances, a fair compensation, fair both to her and to the defendants. The defendants are not wrongdoers. They are simply the people who have to foot the bill. They are, as the lawyers say, only vicariously liable. In this case it is in the long run the tax payers who have to pay. It is worth recording the wise words of Parke B over a century ago.
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> 'Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life ... You are not to consider the value of existence as if you were bargaining with an annuity office ... I advise you to take a reasonable view of the case and give what you consider fair compensation'."

Later in his judgment, at 341, Lord Denning had this to say about extravagant awards:

> "I may add, too, that if these sums get too large, we are in danger of injuring the body politic, just as medical malpractice cases have done in the United States of America. As large sums are awarded, premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. By contrast, we have a national health service. But the health authorities cannot stand huge sums without impeding their service to the community. The funds available come out of the pockets of the taxpayers. They have to be carefully husbanded and spent on essential services. They should not be dissipated in paying more than fair compensation." It seems to me that we should keep in the forefront of our minds the wise directions of B

23. The foregoing is the correct exposition of the law as it is. It does not however answer the question of quantum before the court. The dispute oscillates on the correct injuries suffered by the respondent and the award of damages. It is not a question of what I could have awarded, but whether the award is inordinately excessive as to amount to an erroneous estimate of damages.

24. The Court of Appeal pronounced itself succinctly on the principles of disturbing awards of damages in Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) [1985] eKLR as follows:

    The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a lower Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, 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 the damage.

25. The foregoing statement had been ably elucidated by Sir Kenneth O'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Council, that is, Nance v British Columbia Electric Co Ltd, in the decision of Henry Hilanga v Manyoka 1961, 705, 713 at paragraph c, where the Learned Judge ably pronounced himself as follows regarding disturbing quantum of damages: -

> 'The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance.'

26. The words of Lord Denning in the West (H) & Son Ltd (1964) A.C. 326 at page 341 on excessive awards on damages are important to replicate herein thus:

> " I may add, too, that if these sums get too large, we are in danger of injuring the body politic, just as medical malpractice cases have done in the United States of America. As large sums are awarded, premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. By contrast we have a National Health Service. But the health authorities cannot stand huge sums without impending their service to the community.The funds available come out of the pockets of the taxpayers. They have to be carefully husbanded and spent on essential services. They should not be dissipated in paying more than fair compensation."

27. The words of Lord Denning were reiterated by Nyarangi, JA. in Kigaragari v Aya [1985] eKLR thus:

> " I would express firmly the opinion that awards made in this type of cases or in any other similar ones must be seen not only to be within the limits set by decided cases but also to be within what Kenya can afford. That must bear heavily upon the court. The largest application should be given to that approach. As large amounts are awarded, they are passed on to members of the public, the vast majority of whom cannot just afford the burden, in the form of increased costs for insurance cover (in the case of accident cases) or increased fees."

28. Further, in the case of Kilda Osbourne v George Barned and Metropolitan Management Transport Holdings Ltd & another Claim No. 2005 HCV 294 being guided by the principles enunciated by both Lord Morris and Lord Devlin in H. West & Sons Ltd v Shephard {1963} 2 ALL ER 625 Sykes J stated as follows:

> " The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite sometime is part of the subjective portion of the assessment. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant."

29. Astronomical awards may lead to increased insurance premiums thus hurting the insurance industry as well as the economy. See the case of H. West and Son Ltd v. Shepherd [1964] AC.326 (supra) where it was stated that:

> " ...but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.
>
> In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional....."

30. With the above guide, if the Award is inordinately high, then I will have to set it aside. If, however, it is just high but not inordinately high, I will not do so. For the Appellate Court to interfere with the Award, it is not enough to show that the Award is high or had I handled the case in the Lower Court I would have awarded a different figure.

31. Circumstances in which an Appellate court will interfere with the quantum of damages awarded by a Lower Court were clearly laid out in the case of Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000, where the Court of Appeal stated as follows:

> " ...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a lower court unless it is satisfied either that the lower court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages."

32. This Appeal being on quantum only, the principles guiding this Court as the first Appellate Court have crystallized. This is in recognition that the award of Damages is discretionary.

33. I now proceed to establish whether the Respondent was entitled to the reliefs awarded.

Burden of proof

34. The burden of proof is on whoever alleges. It is neither on the plaintiff nor the defendant in all issues. The Primary allegations are of, course made by the plaintiff. If, the defendant alleges other things, the burden is on them in respect of those allegations.

35. In the case of Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, the Court of Appeal held that:

> " As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act."

36. Further, in Evans Nyakwana –vs- Cleophas Bwana Ongaro [2015] eKLR it was held that:

> " As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purpose of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side."

37. The Respondent suffered a communated fracture of the humerus, fracture of the right tibia and fibula, bruises to the face and blunt trauma to the chest.

38. I understand the Appellant to submit that the injuries were not proved. I have reevaluated the evidence produced by the Respondent. I note that the injuries are what was stated in the Respondent's Doctor's Medical Report dated 15th October 2014. The testimony of Dr. Morebu Peter reiterated the Medical Report. I thus find that the injuries pleaded were the injuries proved.

39. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages. The Court of Appeal in Odinga Jactone Ouma v Moureen Achieng Odera [2016] eKLR, Justice D.S. Majanja stated as hereunder:

> " 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:
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> > 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.
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> > This point has been emphasized] by Lord Morris of Borth-y-Gest in West (H) & Son Ltd v Shepherd [1964] AC. 326,345, where he observed that:
> >
> > > But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.

(12) The principles were further summarised by the Court of Appeal in Jabane v Olenja [1986] KLR 661 as follows;

> "The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a lower judge.
>
> 1. Each case depends on its own facts;
> 2. awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);
> 3. comparable injuries should attract comparable awards.
> 4. inflation should be taken into account; and
> 5. unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone.

40. The Lower Court awarded Kshs. 1,500,000/-. The Appellant's contest is that the award was inordinately high.

41. I have analyzed the case of Leonard Njenga Nganga & Another v Lawrence Maingi Ndeti (2018) eKLR relied upon by the Lower Court. Therein, I note the Plaintiff suffered a deep cut wound on the face, fracture of the right collar bone, compound fracture of the right hand, fracture of the right femur, deep wound on the lower lip, loss of lower teeth denture and injury to the gum and fracture of the left foot at the ankle joint. I find that the injuries therein were more serious than the injuries suffered by the Respondent herein. The court in that case awarded general damages of Kshs. 2,150,000/= that was reduced to Kshs. 1,500,000/= on appeal. therefore, the Lower Court based its analysis on dissimilar injuries.

42. It should be understood that no single case is typically identical to the other. in Penina Waithira Kaburu v LP [2019] eKLR, the Court stated thus on the issue of award of general damages –

> " While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the lower court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award, must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar."

43. In Alphonza Wothaya Warutu & another v Joseph Muema [2017] eKLR, the Plaintiff sustained injuries of deep cut wound on the forehead, compound fracture on the midshaft of the right humerus,

compound fracture of the right tibia and deep cut wound on the right lower leg and the court upheld an award of Kshs. 800,000 as general damages in 2017.

44. In the case of Pocyline W. Kinuva Alias Roselyne Muthui Katee vs Ocharo Kibira & 3 Others Nakuru HCC No. 237 of 2002, the Plaintiff suffered a transverse fracture of the right tibia and fibula, compound segmental fractures of the left tibia and fibular bones and posterior dislocation of the left hip with an acetabulum fracture and was awarded Kshs. 1,500,000/= in 2009. The injuries herein are related but slightly more serious than the instant case.

45. In my view, the case Alphonza Wothaya Warutu (supra) would present a more comparable factual situation as far as the injuries herein are concerned. However, therein, the percentage of incapacity is 8% while herein the Respondent's Medical Doctor estimated 30% as the degree of permanent disability. On this basis, and regarding lapse of time and inflation, an award of Kshs. 1,000,000/- in General Damages would be adequate compensation to the Respondent. An award of Ksh 1,500,000/= is inordinately high as to amount to an erroneous estimate of damages.

46. Consequently, the decision of the lower court is inordinately high as to amount to an erroneous estimate of damages. interfere with the Judgment of the lower court.

47. The Appellant also appealed against the award of Special Damages on the ground that the Court did not subject the damages to the agreed liability of 80:20. This is not a serious ground of Appeal. Special damages were incurred. Only in material claims will the court subject the damages to contribution. In this case, the court exercised its discretion correctly.

48. The next aspect is Special damages. In David Bagine v Martin Bundi [1997] eKLR, the Court of Appeal cited the judgment by Lord Goddard CJ. in Bonham Carter v Hyde Park Hotel Limited (1948) 64 TLR 177), where he that:

> " [The] Plaintiffs must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying 'this is what I have lost', I ask you to give me these damages; they have to prove it.
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> in Attorney General of Jamaica v Clerke (Tanya) (nee Tyrell), Cooke, J.A. delivering the judgment of the court stated that special damages must be strictly proved; the court should be very wary to relax this principle; that what amounts to strict proof is to be determined by the court in the particular circumstance of the case and the court may consider the concept of reasonableness."

49. The court did not err in not subjecting special damages to contribution. I dismiss the claim for special damages to be subjected to contribution. In the case of Swalleh C. Kariuki & another v Viloet Owiso Okuyu [2021] eKLR, Justice Lkimaru as then he was stated as doth: -

> " In regard to special damages the law is quite clear on the head of damages called special damages. Special Damages must be both pleaded and proved, before they can be awarded by the Court. Suffice it to quote from the decision of the Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:
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> > "Special damages must not only be specifically claimed (pleaded) but also strictly proved.... 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 nature of the acts themselves." The special damages due to their specific nature and standards required to prove them, in my view should not be subjected to the apportionment. (See A.O Bayusuf &sons Limited v. Samuel Njoroge Kamau[2008]eKLR)

Turning to loss of income and/or future earnings, the Respondent in her cross appeal faulted the lower court for failing to award damages under this head.

Loss of income and/or future earnings must be pleaded and proved as they are in the nature of special damages, whereas loss of earning capacity is in the nature of general damages and need not be pleaded though it has to be proved on a balance of probability. See Cecilia W. Mwangi and Another vs Ruth W. Mwangi NYR CA Civil Appeal No. 251 of 1996 [1997] eKLR.

50. I do not find any merit in the special damages Appeal. The same is retained as ordered by the lower court with interest from the date of filing of the suit in the court below. The same will not be subject to contribution.

51. The upshot, I make the following orders: -

a. The Judgement and Decree of the Lower Court on General Damages for Ksh. 1,500,000/= is set aside and substituted with an Award of Kshs. 1,000,000/= subject to contribution with costs of the lower court to the Respondent

b. Appeal on Special Damages is dismissed for lack of merit.

c. Specials of Ksh 6,500/= was proved. It shall not be subjected to contribution. The interest on special Damages at court rates from the date of filing suit in the lower court.

d. 30 days stay.

e. Each party to bear their own costs.

DELIVERED, DATED AND SIGNED AT MOMBASA VIRTUALLY ON THIS 7TH DAY OF MARCH, 2024. JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

C.R. Sagwa & Company Advocates for the Respond

Omwenga and Company Advocates for the Appellant

Court clerk: Brian