



REPUBLIC OF KENYA



**Kenya Pipeline Co Ltd v Suleiman & 2 others (Civil Appeal E029 of 2021)  
[2023] KEHC 22439 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22439 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E029 OF 2021  
GMA DULU, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**KENYA PIPELINE CO LTD ..... APPELLANT**

**AND**

**DAMA SULEIMAN ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY OBUYA ..... 2<sup>ND</sup> RESPONDENT**

**JAPAN INTERNATIONAL CO-OPERATION AGENCY ..... 3<sup>RD</sup> RESPONDENT**

*(From the judgment delivered by Hon. F. M. Nyakundi  
(SRM) on 30th April 2021 in Voi CMCC No. 169 of 2018)*

**JUDGMENT**

1. In a judgment delivered on April 30, 2021, the learned Magistrate entered judgment for the plaintiff (now 1<sup>st</sup> respondent) with costs and interest against 1<sup>st</sup> defendant (now appellant) as follows:-

“For the avoidance of doubt, I award the plaintiff as follows:-

1. General damages Kshs. 3,800,000
  2. Loss of earning capacity Kshs. 3,120,000
  3. Special damages Kshs. 58,596
  4. Future medical costs Kshs. 300,000
- Total Kshs. 7,278,596



2. Dissatisfied with the decision of the trial court, the appellant Kenya Pipeline Co. Ltd who was the 1<sup>st</sup> defendant at the trial has come to this court on appeal through counsel Mogaka Omwenga & Company Advocates, on the following grounds: –
  1. The learned Magistrate erred in fact and in law in awarding the plaintiff Kshs. 3,800,000/= as general damages which amount is quite high with regard to the injuries sustained by the plaintiff.
  2. The learned trial Magistrate erred in fact and in law in awarding the plaintiff sum of Kshs. 3,120,000/= as loss of future earning capacity without subjecting the same to the degree of permanent incapacity sustained by the plaintiff.
  3. The learned Magistrate erred in law and in fact in awarding the plaintiff Kshs. 300,000/= as costs for future medical costs yet the same was never specifically pleaded as required by law.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mogaka Omwenga & Mabeya Advocates for the appellant, as well as the submissions filed by Otieno Otwere & Associates Advocates for the 1<sup>st</sup> respondent. Other parties neither filed submissions nor participated in the appeal.
4. This being a first appeal, I have a duty to reconsider and re-evaluate all the evidence on record and come to my own conclusions. Several court cases have emphasized this legal requirement – see [Selle v Associates Motor Boat Company Ltd](#) (1968) EA 123, and [Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Company Advocates](#) (2013) eKLR.
5. The appeal herein, is an appeal against the quantum of damages awarded by the trial court. I have thus to be guided by the principle stated in the case of [Butt v Khan](#) (1981) KLR 394 wherein Law J.A stated as follows:-

“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.”
6. At the hearing of the case before the trial court, the 1<sup>st</sup> respondent (plaintiff) called PW1 Dr. Mohamed Amin a medical doctor and general practitioner at Voi. His evidence was that he examined Dama (plaintiff) on February 8, 2019 following a road traffic accident on December 7, 2017.
7. According to the medical report Dama was unconscious for 21 days following the accident. She had fracture on right arm, bleeding in the brain and fracture of the jaw. Because of brain injury she lost hearing of right ear, and had right hand permanent incapacity, and function on right side of body and lack of function right side of hip and lower lip and right side of face hence loss of right ear. She had dislocation of lower right hand and right waist and there was permanent incapacity.
8. According to the witness, he was paid Kshs. 3,000/= for the medical report and Kshs. 7,000/= for court attendance. There was 70% partial disability. He produced the medical report as an exhibit. He said that he relied on medical notes from Coast General Hospital.
9. In cross-examination, he stated that the patient might have shown some improvement since examination.
10. PW2 was Damaris Suleiman (the plaintiff) who adopted her witness statement as evidence in chief, and stated that she did not remember what happened during the incident but found herself at Coast



- General Hospital. Before then she sold doughnuts at Voi and earned Kshs. 2,000/= to feed her 5 children and pay school fees.
11. After the incident, she was not able to wash her clothes nor walk well. She stated that she had employed a person to work for her at Kshs. 5,000/= per month.
  12. She now can hear only through one ear, and was paralyzed on one side. She relied on several documents, which were not challenged.
  13. In cross-examination, she stated that though she had taken a loan, she did not have documents. She said that she used to earn income, through sale of mitumba (second hand clothes). She stated also that she could now talk but not very well. At this point the matter was adjourned for preparation of a second medical report, on request of the defendants.
  14. On their part, the defendants called DW1 Dr. Sheikh an orthopedic surgeon at Aga Khan Hospital Mombasa who examined PW2 on March 18, 2020. The doctor narrated the history of the accident in the report, and treatment on the patient and assessed the permanent incapacity suffered at 30%. According to him, the injuries narrated in the P3 form showed 60% incapacity.
  15. In cross-examination, he stated that the injuries described in the P3 form would amount to 65% incapacity for worker's compensation. He stated that there was possibility of progressive improvement, but that the patient will never fully heal.
  16. The parties counsel then agreed to file written submissions which they did and the trial court then rendered its judgment, the subject of the present appeal.
  17. Having considered the pleadings, record of proceedings, evidence on record and submissions filed, in my view the only issue for determination herein is the parameters used in arriving at the quantum of damages under each head, bearing in mind that the quantum of damages have to be comparable in cases of similar injuries suffered, but that no two cases are exactly the same.
  18. With regard to the award of general damages. This award is for pain and suffering and loss of amenities. From the evidence on record, the 1<sup>st</sup> respondent became unconscious immediately after the accident for a period of 21 days, within which she did not experience pain. She became conscious at Coast General Hospital, and has felt pain and suffered inconveniences and loss of normal bodily functions to date. The said situation will continue as there is permanent incapacity recorded in the two medical reports, of a substantial nature.
  19. In my view, the exercise of the Magistrate's discretion in awarding general damages for pain, suffering and loss of amenities herein, even though the figure appears high, cannot be faulted. The discretion of the trial court, in my view, was exercised judiciously on the basis of 50% incapacity, and the amount awarded was not inordinately high in the circumstances I will uphold the award.
  20. With regard to loss of earnings, the trial court relied on the case of *Mumias Sugar Company Ltd v Francis Mwololo* (2007) eKLR, and the evidence of the 1<sup>st</sup> respondent that she was a business lady making a profit of Kshs. 2,500/= per day and pay school fees for her children and was 35 years old. The Magistrate substituted the alleged income of Kshs. 2,500/= with Kshs. 1,000/= per 26 working days per month, and multiplied this by 10 years.
  21. In my view, the figure of income of Kshs. 1,000/= profit per day for a business where no single document was exhibited to support the same was inordinately high and excessive. In my view, this is a case where a figure within or slightly above the minimum wage would be reasonable compensation.



I thus find that the trial court erred in this regard, and will substitute the Kshs. 1,000/= with Kshs. 500/= per day.

22. Consequently, the amount under this head will be  $500 \times 26 = 13,000 \times 12 \times 10 = 1,560,000/=$
23. As for the award for future medical costs, the trial Magistrate awarded a global figure of Kshs. 300,000/= for purchase of crutches, physiotherapy, occupational therapy and psychological counseling.
24. The appellant challenges this award on appeal because it was not specifically pleaded.
25. I agree that the cost of future medical costs was not pleaded. However the 1<sup>st</sup> respondent pleaded costs of Kshs. 5,000/= for employment of a physical helper. In my view given the nature of injuries suffered by the 1<sup>st</sup> respondent and the resultant incapacity, it was reasonable to award an amount under this item instead of future medical costs, for the determined period of 10 years. I would however think that the figure of Kshs. 5,000/= per month is on the higher side as it would come to Kshs. 840,000/= I will thus award the same global figure of Kshs. 300,000/= awarded by the Magistrate under this head.
26. I thus allow the appeal in part and enter judgment for the plaintiff (now 1<sup>st</sup> respondent), against the 1<sup>st</sup> defendant (now appellant) with costs and interest as follows:-
  1. General damages Kshs. 3,800,000/=
  2. Loss of earning capacity Kshs. 1,560,000/=
  3. Special damages Kshs. 58,596/=
  4. Cost of physical helper Kshs. 300,000/=Total Kshs.5,718,596/=

The appellant will pay 80% of the 1<sup>st</sup> respondent's costs of appeal.

**DATED, SIGNED AND DELIVERED THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2023 AT VOI.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Nusura/Alfred – court assistants

Mr. Obaja for the appellant

Mr. Otwere for the respondent

