



REPUBLIC OF KENYA



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

**Kumar v Ruto (Civil Appeal E022 of 2024)  
[2025] KEHC 14190 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E022 OF 2024  
JK NG'ARNG'AR, J  
OCTOBER 9, 2025**

**BETWEEN**

**VIJAY KUMAR ..... APPELLANT**

**AND**

**GILBERT KIPNGENO RUTO ..... RESPONDENT**

*(Being an Appeal from the Judgment of Principal Magistrate, Kwambai T.M.  
at the Principal Magistrate's Court at Sotik, Civil Suit Number E31 of 2023)*

**JUDGMENT**

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising from a road traffic accident on 11<sup>th</sup> November 2022. The Respondent stated that he was riding motorcycle registration number KMDA 971V along Kapkilaibai-Chemalal road when he was hit by motor vehicle registration number KBQ 540V (allegedly belonging to the Appellant) thereby occasioning him injuries. The Respondent blamed the Appellant for causing the accident.
2. The trial court conducted a hearing where the parties filed a Consent on liability and closed their respective cases without calling any witnesses.
3. In its Judgment dated 25<sup>th</sup> September 2024, the trial court awarded the Respondent Kshs 3,500,000/= as general damages, Kshs 500,000/= as loss of earning capacity and Kshs 350,000/= as future medical expenses.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 14<sup>th</sup> October 2024 appealing against quantum which he termed as excessive.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses



testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR.

6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

**The Plaintiff's/Respondent's case.**

7. Through his Amended Complaint dated 12<sup>th</sup> May 2023, the Respondent stated that he was riding motorcycle registration number KMDA 971V when he was hit by motor vehicle registration number KBQ 540V
8. The Respondent stated that the Appellant was the owner of motor vehicle registration number KBQ 540V and was negligent in causing the accident. The particulars of the negligence were listed in paragraph 4 of the Amended Complaint.
9. That as a result of the accident, he the following injuries: -
  - a. Head injury with loss of consciousness.
  - b. Depressed frontal bone fracture extending to the superior orbital margin, right orbital roof, medial and lateral walls with displaced fragments.
  - c. Base of skull fractures.
  - d. Basal frontal acute subarachnoid haemorrhage.
  - e. Left internal capsule haemorrhage.
  - f. Acute frontal subdural haematoma.
  - g. Brain oedema.
  - h. Pneumocephalus.
  - i. Bruises on the right upper limb and left upper limb
  - j. Blunt trauma to the right knee.
10. The Respondent's claim against the Appellant was for special damages, general damages and loss of earning capacity as a result of the accident.
11. In his written submissions dated 17<sup>th</sup> April 2025, the Respondent submitted that the award of Kshs 3,500,000/= was sufficient and reasonable. That the trial court did not err when it awarded Kshs 500,000/= as loss of earning capacity and he relied on Mumias Sugar Company Limited vs Francis Wanalo (2007) eKLR.
12. On the issue of future medical expenses, the Respondent submitted that he pleaded for the same and Dr. Morebu recommended the same in his Medical Report. That the trial court did not err when it awarded him Kshs 350,000/= as future medical expenses.

**The Defendant's/Appellant's case**

13. Through his statement of defence dated 26<sup>th</sup> April 2023, the Appellant denied that he was the motor vehicle registration number KBQ 540V.



14. The Appellant denied the particulars of negligence levelled against it. That if any accident happened, it was caused solely by the negligence of the Respondent. He particularized the negligence in paragraph 5 of his Defence.
15. The Appellant denied that the Respondent suffered any injuries.
16. Through his written submissions dated 6<sup>th</sup> March 2025, the Appellant submitted that according to the Radiology Report, the Respondent suffered a depressed frontal bone with displaced fragments, a small acute frontal subdural hematoma, basal frontal SAH, haemorrhage and brain oedema among others. That the Respondent did not require any operation procedure and that the extent of the injuries ought to be supported by medical evidence.
17. The Appellant proposed an award of Kshs 800,000/= as general damages and relied on Joseph Musee Mua vs Julius Mbogo Mugi & 3 others (2013) eKLR, Francis Ochieng & another vs Alice Kajimba (2015) eKLR, Julius Chelule & another vs Nathan Kinyanjui (2013) eKLR et.al.
18. It was the Appellant's submission that the trial court had no justification in awarding Kshs 500,000/= as loss of earning capacity. That there was no proof of earning or employment. He relied on Chege & another v Ngari (Civil Appeal E349 of 2023) [2024] KEHC 6121 (KLR) (30 May 2014) (Judgment).
19. On the issue of future medical expenses, the Respondent submitted that the Respondent failed to plead the specific amount he would require for the future medical expense. He relied on Ombeti & another v Muthuure (Civil Appeal E006 of 2023) [2024] KEHC 3377 (KLR) (4 April 2024) (Judgment).
20. I have gone through and carefully considered the Record of Appeal dated 10<sup>th</sup> February 2025, the Supplementary Record of Appeal dated 12<sup>th</sup> May 2025, the Appellant's written submissions dated 6<sup>th</sup> March 2025 and Respondent's written submissions dated 17<sup>th</sup> April 2025. The only issue for my determination therefore was whether the award on general damages was excessive.

## **Quantum**

21. The Plaintiff pleaded the following injuries: -
  - a. Head injury with loss of consciousness.
  - b. Depressed frontal bone fracture extending to the superior orbital margin, right orbital roof, medial and lateral walls with displaced fragments.
  - c. Base of skull fractures.
  - d. Basal frontal acute subarachnoid haemorrhage.
  - e. Left internal capsule haemorrhage.
  - f. Acute frontal subdural haematoma.
  - g. Brain oedema.
  - h. Pneumocephalus.
  - i. Bruises on the right upper limb and left upper limb
  - j. Blunt trauma to the right knee.



22. I have looked at the treatment notes, P3 Form and Medical Report produced as P. Exh 2, 3 and 6 respectively. I have confirmed that the Respondent suffered the injuries listed above which were head injuries and soft tissue injuries to the Respondent's limbs.
23. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Catholic Diocese of Kisumu vs Tete* (2004) eKLR.
24. In the present case, the Appellant submitted that the award of Kshs 3,500,000/= was inordinately high and he proposed an award of Kshs 800,000/=. On the other hand, the Respondent asked this court to uphold the award of Kshs 3,500,000/= as it represented a fair award.
25. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in *Stanley Maore vs Geoffrey Mwenda* (2004) eKLR, held: -
- “...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”
26. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison: -
- i. In *Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N* [2018] KEHC 1915 (KLR), the injuries sustained were head injury occasioning a depressed skull, fracture of the skull, loss of consciousness, scars of the left tempo-parietal area and bruises on the left leg. The court vacated the award of Kshs 950,000/= as general damages and substituted it with an award of Kshs 500,000/=.
  - ii. In *Duncan Mwenda & 2 others v Silas Kinyua Kithela* [2018] KEHC 6482 (KLR), the Respondent suffered severe blunt head injury with intracerebral hematoma, damage to the extensor tendon of the left middle finger and soft tissue injuries on the chest wall. The court reduced the award on general damages from Kshs 600,000/= to Kshs 350,000/=.
  - iii. In *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] KEHC 4895 (KLR), the Respondent suffered head injuries with cut wounds, chest injuries, injuries to the right leg with cut wounds and a fracture, injuries on the left lower ankle joint and injuries on the left thigh. The court reduced the award on general damages from Kshs 600,000/= to Kshs 400,000/=
27. I have considered the authorities above and the nature of the injuries suffered by the Appellant and the fact that his permanent disability was assessed at 20% by Dr. Peter Morebu. I have also considered the current inflation rates and I find that the award of Kshs 3,500,000/= was excessive. I hereby vacate the award of Kshs 3,500,000 and substitute it with an award of Kshs 800,000/=.



28. In regard to the award on loss of earning capacity, the Court of Appeal in Samuel Kariuki Nyangoti v Johaan Distelberger [2017] KECA 691 (KLR) held: -

“.....In personal injury cases, the loss of business profits and loss of future earning capacity are usually in the nature of general damages.....”

29. Similarly, in SJ v Francesco Di Nello & another [2015] KECA 606 (KLR), the Court of Appeal held: -

“Claims under the heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand loss of earning capacity is compensated by an award in general damages, once proved. This was the position enunciated in Fairley V John Thomson LTD [1973] 2 Llyod’s Law ReportS 40 at pg. 14 wherein Lord Denning M.R. said as follows:

“It is important to realize that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.”

30. I have gone through the exhibits produced by the Respondent and there was no proof that the Respondent worked. The Respondent merely pleaded in his Amended Plea that he earned as a businessman. As I stated earlier, both parties did not call any witnesses to testify and prove their averments. The Medical Report (P. Exh 6) was not evidence of earning as alluded to by the Respondent. In any event, had the Respondent proved that he earned prior to his accident, the award of loss of earning capacity would have been factored into the award on general damages. I therefore find that the trial court erred in awarding Kshs 500,000/= as loss of earning capacity as a separate award.

31. In regard to the future medical expenses, the Court of Appeal in Tracom Limited & another v Hassan Mohamed Adan [2016] KECA 150 (KLR) held: -

“...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 thereof 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 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...”

32. Flowing from the above, a prayer for future medical expenses was a special damage which had to be pleaded and proved. I have looked at the Amended Complaint dated 12<sup>th</sup> May 2023 and I have noted that the same was pleaded but not specifically. This being a special damage, the Respondent ought to have specifically pleaded the amount he needed as future medical expenses. That notwithstanding, I have noted from the exhibits produced by the Respondent that he was treated at Kericho County Referral Hospital on the material day and discharged. I have also noted from the Medical Report (P. Exh 6) that nothing indicated that the Respondent would need brain surgery to remove a clot. In my respectful view, this seemed like an overreach. It is my finding therefore that there was no evidence that suggested that the Respondent would require future medical expenses. I therefore vacate the award.
33. In the final analysis, I have found that there is need for this court to interfere with the award by the trial court. The final computation is as below: -
- i. General Damages Kshs 800,000/=
  - ii. Special Damages Kshs 37,180/=
- Total Kshs 837,180/=
- Less 20% liability Kshs 167,436/=
- Total Kshs 669,744/=
34. In the end, the Memorandum of Appeal dated 14<sup>th</sup> October 2024 is merited and succeeds. Each party shall bear their own costs in this Appeal while the costs and interest in the main suit remain as awarded by the trial court.
35. 30 days stay granted.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

Wambau for the Appellant

Mutiria for the Respondent

