



**Kyule v Prince Bus Services (Civil Case E134 of 2023)  
[2025] KEMC 4 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEMC 4 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL CASE E134 OF 2023  
PA NDEGE, SPM  
JANUARY 28, 2025**

**BETWEEN**

**AARON KASYOKI KYULE ..... PLAINTIFF**

**AND**

**PRINCE BUS SERVICES ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendant after he sustained injuries following a road traffic accident on or about 04<sup>th</sup> December 2021 along Nakuru – Eldoret Road Kaptembwa. In the plaint on record, the plaintiff avers he was a lawful passenger along the aforesaid road, when the defendant by its agent, drivers, employees and/or servants so recklessly, negligently and/or carelessly drove motor vehicle KBK 299J Isuzu Bus, thereby causing the accident herein as a result of which he sustained serious body injuries.
2. The Plaintiff blames the Defendant and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendant, his agents, servants and/or employees. The particulars of alleged negligence and injuries sustained by the Plaintiff are captured in the Plaint. The Plaintiff prays for general damages of Kshs. 114,160/-, special damages, costs of the suit, and interests.
3. Return of Service on Record shows that the defendant was served with the suit papers but failed to enter appearance or file defence. As a result, judgment in default of appearance was entered on 20<sup>th</sup> March 2024 against it. In my considered view therefore the claim in prayer (a) in the plaint are in the nature of a liquidated demand. And as the defendant failed to enter appearance within the required time, and also failed to file a defence, I hold and do therefore enter judgment for the plaintiff for a total of shs.114,160/= being the special damages pleaded and hence prayed for, with interest and costs. The same being liquidated needed not to be subjected to this formal proof.



4. The suit is thus undefended and proceeded to formal proof hearing for purposes of assessing the general damages payable as per payer no. (b) in the Plaint. In [\*Nyambati Nyaswabu Erick Vrs Toyota Kenya Ltd & 2 Others\*](#) (2019) eKLR, Justice D.S Majanja 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.

5. This court is however confounded to note that the plaintiff prayed for a liquidated general damages demand of Kshs. 114,160/-. PW1, the plaintiff, however went ahead. adopted and relied on his pleadings and statements on record as his evidence in chief. His learned counsel on record then filed submissions in which he sought to be awarded Kshs. 1,000,000/- general damages for pain and suffering and also costs of future medication which is a departure from his pleadings.
6. It is imperative at this time to point out that parties are bound by their pleadings. Parties must plead their case before proceeding to proof them. In [\*Daniel Otieno Migore Vrs South Nyanza Sugar Co. Ltd\*](#) [2018] eKLR, Justice A C Mrima stated as doth:

It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must align with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of *Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others* (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002* where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“.....it is now(settled) principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

7. Submissions are also not evidence and as such, however beautifully calligraphed, the submissions, concrete proof still stands as the goal of litigation. This aspect of pleadings was addressed by a Tanzanian court in the case of [\*Salim Said Mtomekela Vrs Mohamed Abdallah Mohamed\*](#), Dar-es-salaam Court Of Appeal Civil Appeal No. 149 of 2019(Mugasha. J.A. Kihwelq. J.A. Rumanyika. J.A p where it was held as doth: -

Pleading in law means, written presentation by a litigant in a law suit setting forth the facts upon which he/she claims legal relief or challenges the claims of his opponent. It includes claims and counterclaim but not the evidence by which the litigant intends to prove his case ... That said, since the pleading is a basis upon which the claim is found, it is settled law that, parties are bound by their own pleadings and that any evidence produced by any of



the parties which is not supportive or is at variance with what is stated in the pleadings must be ignored. See *Barclays Bank (T) Vs Jacob Muro*, Civil Appeal No. 357 of 2018 [where] the Court cited with approval a passage in an article by Sir Jack I.H. Jacob bearing the title, "The Present Importance of Pleadings", first published in *Current Legal Problems* (1960) at p. 174 whereby the author among other things said:

"As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadings... for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as well bound by the pleadings of the parties as they are themselves. It is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings..."

8. On submissions the position I hold is that the plaintiff cannot rely on submissions to do that which he should have been done by pleadings and evidence. In the case of *Robert Ngande Kathathu Vrs Francis Kivuva Kitonde* [2020] eKLR, justice G V Odunga as then he was stated as doth: -

It also relied on submissions of the parties to which no agreed documents were annexed. Submissions, with due respect, do not amount to evidence unless expressly adopted as such. Consequently, in legal proceedings, evidence ought not to be introduced by way of submissions.

9. I do therefore find that the only claims awardable are those pleaded in the plaint. The cost of future medical expenses is not one of them and is therefore unawardable. As to the General Damages, notwithstanding the evidence adduced, the same is awardable to the tune of Kshs. 114,160/- as prayed in the Plaint.

10. However, the exhibits and evidence on record proves that the plaintiff sustained the injuries pleaded. I would have relied on the reasoning of the High Court in Civil Appeal Number 21 of 2013 *Kyoga Hauliers (k) & Another Vrs Philip Mabihi Nyingi* [2017] eKLR where the court awarded general damages for comparable injuries. From the documents on record, the plaintiff in this instance suffered the injuries pleaded and I would have awarded Kshs. 1,000,000/= as proposed by the learned counsel herein, if not for the restrictive nature of the prayers as pleaded. I therefore have no option but to award Kshs. 114,160/- as general damages as prayed.

11. In conclusion, I enter judgement in favour of the plaintiff as follows:

- a. General damages KES 114,160/-
  - b. Special damages KES 114,160/-
- Total KES 228,320/=

12. The Plaintiff shall further have costs in this suit and interests

**DATED, SIGNED AND DELIVERED VIRTUALLY/ PHYSICALLY IN OPEN COURT AT NAKURU THIS 28<sup>TH</sup> DAY OF JANUARY, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of:



Court Assistant:

Counsel for the Plaintiff- Morara

Plaintiff:

