



REPUBLIC OF KENYA



**Kipronoh v Oloo (Civil Suit 867 of 2022) [2025] KEMC 50 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEMC 50 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL SUIT 867 OF 2022  
PA NDEGE, SPM  
MARCH 11, 2025**

**BETWEEN**

**ALEXANDER KIPRUTO KIPRONOH ..... PLAINTIFF**

**AND**

**DANCAN BROWN OLOO ..... DEFENDANT**

**JUDGMENT**

1. On or about 28/7/2022 along Gilgil- Naivasha road, the plaintiff was lawfully driving his motor vehicle registration no. KAS 365H, while at Kampi-Somali area, the defendant by himself, his driver, servant and/or agent so recklessly and/or negligently drove and or controlled m/v reg.no. KCD 642Z that he permitted the same to hit the plaintiff's vehicle as a result whereof an accident occurred and the plaintiff sustained very serious injuries and loss. The plaintiff is thus suing the defendant for: -
  - a. General and Special damages of Kshs. 1,402,135/-
  - b. Interest on (a) above at Court rates from the date of filing this suit until payment in full,
  - c. Future medical expenses, transport and loss of income estimated at Kshs. 3,177,500/-
  - d. Costs of this suit
  - e. Any such other or further relief as this Honourable Court may deem fit and just to grant.
2. The defendant has already agreed to be 90% liable for the accident and the resultant injuries and loss. The plaintiff in his Plaint dated 26/10/2022, pleaded special damages of Kshs. 1,402,135 /=-, being Kshs. 997,695/= for Medical bills/ expenses, Kshs. 940/= for online search for Motor Vehicle KCD 642Z, and Kshs. 403,500/- for motor vehicle repairs<sup>1</sup>. He further pleaded Kshs. 1,500,000/- as the estimated additional future medical expenses and costs for his treatment to ensure full recovery, and Kshs. 250,000/- cost of using public transport (taxi) due to the nature of injuries.

<sup>1</sup> Refer to paragraph 9 of the Plaint



3. The plaintiff further avers that the injuries have extensively hindered his career as a veterinary doctor and that he cannot be able to carry out his duties which require handling of animals. He has therefore additionally pleaded for professional losses at Kshs. 120,000/- per month, losses as a result of not consulting at Kshs. 60,000/- per month and losses in management of research projects at Kshs. 105,500/- per month.
4. When the matter came up before me for the hearing on 12/11/2024, the plaintiff was represented by Mr. Abdul, while the Defence was represented by Ms. Awuor. On that day, the parties herein entered an oral consent that was adopted to apply in this matter. The consent closed the hearing without calling any witness. Some of the plaintiff's documents as per his list filed on 26/10/2022 were admitted as exhibits herein without calling their makers. They are: -
  - i. Certificate of Examination and Test of Vehicle dated 28/07/2022
  - ii. Abstracts from Police on a Road Accident
  - iii. A Medical Report dated 19/09/2022 from Dr. Mark Lutomia
  - iv. Discharge Summary from Valley Hospital
  - v. Motor Vehicle Valuation and Inspection Certificate from AA Kenya dated 10/09/2022
  - vi. Motor Vehicle Copy of Records as at 15/09/2022
  - vii. Insurance invoices from Valley Hospital dated 07/08/2022
  - viii. Payment receipt for Kshs. 7,500/- from Automobile Association of Kenya dated 15/09/2022
  - ix. Receipts from Falley Medical Laboratory & Supplies, Gilgil sub-County Hospital and ABC Auto & Breakdown Services.
  - x. Bank statement from Standard Chartered Bank
  - xi. Demand letter dated 16/09/2022
  - xii. Statutory Notice dated 16/09/2022
5. The defendant was also allowed to have the medical examination report by Dr. Wambugu P. M., dated 29/02/2024, admitted herein as DEXH. No. 1. Of most importance, however, was the consent judgment on liability herein wherein the plaintiff agreed to a partial liability of 10%. Parties thereafter closed their cases and the submissions were confirmed filed and exchanged, and this judgment was fixed for the 11/03/2025. The issue remaining for determination is the quantum of damages awardable herein.
6. I however first need to analyse the documentary exhibits and evidence admitted herein with regards to the injuries sustained. Contrary to the learned counsel for the defence's submissions, I find that the two medical reports presented herein agree that the plaintiff sustained the injuries pleaded as a result of the accident herein. Those were the main evidence tendered herein as no statement of any witness was admitted as exhibit herein.
7. Whereas there were authorities cited by both counsels herein, I find the injuries herein not comparable to the ones sustained by the victims in any of the authorities cited. General damages are however damages at large whose purpose is to compensate the injured to the extent that such injury can be assuaged by a money award. It has repeatedly been stated that money cannot renew a physical frame that has been injured and crushed hence the courts can only award sums which must be viewed as



giving reasonable compensation. Awards ought to be reasonable and must be assessed with moderation bearing in mind that large and inordinate awards may injure the body politic. Furthermore, it is desirable that so far as possible comparable injuries should be compensated by comparable awards putting into consideration the current prevailing economic circumstances including inflation (see *Tayab Vrs Kinanu* [1983] KLR 114 and *WEST (H) & Son Ltd Vrs Shepherd* [1964] AC 326, 345). Damages must therefore be within limits set by decided cases and also within the limits that the Kenyan economy can afford (see *Nyota Tissue Products Vrs Lawrence Kuboka & 4 Others* [2020] eKLR)

8. There is however no one best formula of assessing damages in injury claims. Such assessment is an act of art rather than science. In HCCC NO. 752/1993 *Mutinda Matheka Vs Gulam Yusuf* that was cited by Warsame, Ag. J (as he then was) in *Jenipher Milay O. Okuku Vrs Kenya Bus Services Ltd* (kisumu Hc Misc. Civil Appl. 172/2001), *Wambilyangah J.*, held that the court will essentially consider the nature of the injuries suffered, the period of recuperation etc.<sup>2</sup>
9. I am also aware of the other guiding principles in awarding general damages such as: - damages should be within the limits set out by decided cases, within my pecuniary jurisdiction, within the limits that the Kenyan economy can afford and must be commensurate to the kind of injury, and extent of pain and suffering.
10. Guided by the above principles, I find that Kshs. 1,100,000/= awarded to the victim in 1986 in *Joseph Poko Ochieng' Vrs Kenya Bus Services (msa) Limited, Mombasa HCCC No. 705 OF 1986*, as cited in *Denshire Muteti Wambua Vrs Kenya Power & Lighting Co. Ltd* [2013] e KLR, where the victim suffered a fracture of the right femur, compound fracture of the left femur, a massive laceration of the left thigh and a cut over the proximal medial of his right leg, to be relevant and therefore applicable herein. It is however common knowledge that the cost of living has since increased in Kenya and further because of the 10% permanent disability as confirmed in the medical report herein, I do therefore increase the figure to Kshs. 2,420,000/= which I do feel shall adequately compensate the plaintiff herein. I do therefore award the same subject to his 10% contribution in liability as consented to herein.
11. As to general damages for loss of earning and earning capacity, I do agree with the learned counsel for the defence that apart from the pleadings, there was no evidence tendered to prove that the plaintiff was or is a veterinary doctor. It has further not been confirmed that he was incapacitated to an extent that he could not work after the accident.
12. The Court of Appeal in *S J VRS Francesco Di Nello & Another* [2015] eKLR while making a distinction between loss of future earnings and loss of earning capacity stated that: -

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 or 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 Vrs John Thomson Ltd* [1973] 2 Lloyd'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.

<sup>2</sup> See *Simon Taveta Vrs Mercy Mutitu Njeru* [2014] eKLR, as cited in *James Okongo Vrs Elmat Sagwe Ogega* [2021] eKLR



13. The court proceeded to state that: -

The correct position as in the Fairley case (supra) was restated by this court in the case of Cecilia Mwangi & Another v Ruth W. Mwangi [\*CA No. 251 of 1996\*](#) as hereunder:

Loss of earnings is a special damage claim. It must be specifically pleaded and strictly proved. “In the authority of *Butler v Butler* [1984] KLR 225, the issue of awarding damages for loss of earning capacity was carefully considered and Chesoni Ag. JA (as he then was) said: “Whilst loss of earning capacity or earning power should be included as an item of general damages, it is not improper to award it under its own heading ... Once it is in principle accepted that the victim of personal injuries who has lost his earning capacity is entitled to compensation in the form of damages it is of little materiality whether the award is under the composite head of general damages or as an item on its own, as a loss of earning capacity. At any rate, what is in a name if damages are payable.”

14. Thus, the claim in respect of lost, or loss of, income is a special damage claim requiring strict proof. No evidence was led by the plaintiff in respect of these alleged losses and expenses. The plaintiff had to prove that he was a veterinary professional and that he was earning the amounts claimed in the actual sense and not estimations.

15. The Court of Appeal in the case of *KARANI VRS NCHEDU* (1995-1998)1 EA 87 stated:

The claim for loss of earning is a special damage. It must be pleaded and proved. That is the law. The plaintiff gave some evidence in which she said she used to operate a kiosk of some sort at Kasarani, near Nairobi, from which she made Kshs. 50,000/= per month.

16. The above decision was in a case where there was an attempt to prove loss of earnings. Here, there was no attempt at all. It was merely pleaded and left to the court to determine the same. This award is therefore unproved and is therefore hereby disallowed in its entirety.

17. As to Costs of Future Medical expenses, the issue herein is whether the claim for future medical expenses is awardable. The issue of future medical expenses was considered in the case of *Tracom Limited & Another Vrs Hassan Mohamed Adan* [2009] eKLR where the Court of Appeal pronounced stated as follows: -

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 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 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.

18. However, the Court of Appeal in *Kenya Power & Lighting Company Limited Vrs Amk (suing As The Mother And Next Friend Of Jmk - Minor)* [2021] KECA 52 (KLR) (8 October 2021) (Judgment) stated as follows:

28. As has been held above, in as much as future medical expenses are in the realm of special damages, it may not be practical for the parties to be able to fully ascertain the exact amount that will be required in the future, it therefore suffices to give an estimate as the respondents did during their testimony.

32. On the challenge to the award on future medical expenses which the appellant says had not been specifically pleaded and proved, this does not turn on much as the respondent had in their plaint stated that the minor requires additional and medical care. In our view, the functional prosthesis (artificial limbs) and their maintenance costs are covered under that prayer and as held in *Tracom Limited & another v Hasssan Mohamed Adan (supra)* it was not mandatory for the respondent to delve into detail of the future expenses at that stage thus that ground of appeal fails.

19. Similarly, in the case of, *Forwarding Company Limited & Another Vrs Kisilu; Gladwell (third Party)* [2022] KECA 96 (KLR) (4 February 2022) (Judgment) the Court of Appeal in overturning the decision of the High Court declining to award future medical expenses on the ground that the plaintiff had pleaded generally on the same but had failed to attach a specific figure thus lacked specificity, stated as follows: -

62. In the instant case, we do not agree with the finding of the learned judge that failure to plead future medical expenses would fatally affect this specific claim. To demand a specific sum to be proved specifically like special damages would be unreasonable. This is a claim for money not yet spent, for money estimated to be spent depending on how the claimant's body is responding to treatment, among other things. It is not always clear at the time of filing a case what these future costs may be. The prognosis could change for better or for worse depending on various circumstances.

20. Based on the aforementioned decisions which are binding on this court, the argument that the future medical expenses were not specifically pleaded and proved is neither here nor there, it is not a correct argument under the law as was settled in the above cited cases.

21. In the instant case, however, the plaintiff stated in the plaint that he was claiming Kshs. 1,500,000/- for costs of additional future medical expenses and costs of treatment as estimated by medical practitioners. There was no oral testimony herein whether from himself or from any medical practitioner confirming that he was to undergo further medication or treatment. I have also gone through the medical evidence adduced herein, i.e. the medical reports and neither Dr. Mark Lutomia nor Dr Wambugu's reports has confirmed that the plaintiff shall need some additional future medical attention or treatment and as such there is no estimation of the value thereof as pleaded. The reports confirmed that the plaintiff had healed and that he may continue with his work. I thus find this claim unproven. There is thus no proof of the future medical expense, transport and loss of income estimated at Kshs. 3,177,500/- and I do therefore dismiss the claim for the same in its entirety.



22. On Special Damages, I find proof from the assessor's report which estimated the plaintiff's motor vehicle repair costs at Kshs. 380,000/- and as conceded to by the learned counsel for the defence, I do award the amount as the costs of the repair of the motor vehicle.
23. There is however an issue as to whether the invoices issued from the hospital are sufficient to prove that the plaintiff incurred those expenses for his treatment and medication? It is a well settled principle of law that an invoice is not proof of payment. Special damages can only be proved by producing actual receipts or invoices endorsed with the word 'Paid' (See: Total Kenya Ltd Vrs Janevams Ltd [2015]). The plaintiff has therefore only been able to prove Kshs. 37,300/- vide PEXH. NO. 9A (receipt dated 08/08/2022 from Falley Medical Laboratory Services & Supplies); and Kshs. 500/- vide official receipt from Gilgil sub-County Hospital dated 16/09/2022 – PEXH. NO. 9B; hence Kshs. 37, 800/- as costs of treatment or medical expenses. All the other claims were not supported by evidence while some of the receipts produced herein are for claims that were not pleaded as required. The plaintiff is therefore only awarded special damages of Kshs. 417, 800/= which is also subject to his 10% contribution as consented to herein.

### **Conclusion and Disposal Orders**

24. Judgment is hereby therefore entered for the plaintiff against the defendants herein as follows:
- i. General damages for pain and suffering of Kshs. 2,178,000/=
  - ii. Special damages of Kshs. 376,020/=
  - iii. Costs of the suit and interest at court rates.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 11<sup>TH</sup> DAY OF MARCH, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

**Plaintiff's counsel: Otieno**

Defence counsel: Awuor

Plaintiff: n/a

Defendant: n/a

Awuor: Praying for 30 days stay of execution and a copy of the judgment

Otieno: No objection

CT: 30 days stay granted, Judgment shall be available in the CTS.

