



REPUBLIC OF KENYA



KENYA LAW
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**Muiruri v Mwilu & another (Civil Case E046 of 2022)
[2025] KEMC 59 (KLR) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEMC 59 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE E046 OF 2022
YA SHIKANDA, SPM
MARCH 24, 2025**

BETWEEN

SHEILA MUTHONI MUIRURI PLAINTIFF

AND

DAVID MUTINDA MWILU 1ST DEFENDANT

GL WILLIAMS CONSULTING LIMITED 2ND DEFENDANT

JUDGMENT

The Claim

1. Sheila Muthoni Muiruri (hereinafter referred to as the plaintiff) filed this suit on 14/4/2022 vide a plaint dated 12/4/2022. The plaint was later amended twice, the latest being a further amended plaint dated 15/2/2024 and filed on 22/2/2024. The plaintiff sued David Mutinda Mwilu and GL Williams Consulting Limited (hereinafter referred to as the 1st and 2nd defendants respectively) on account of a road traffic accident that allegedly occurred on 31/10/2020 at Wayani area along Mombasa-Nairobi Highway. The plaintiff averred that on the material day she was a lawful passenger aboard motor vehicle registration number KBX 007S when the driver of the said motor vehicle so carelessly and negligently drove the said motor vehicle motor vehicle that it lost control and hit motor vehicle registration number KBT 402D/ZD 7010 from the rear thereby causing an accident and occasioning serious injuries to the plaintiff.
2. The 1st defendant was sued as the driver and/or the beneficial owner of motor vehicle registration number KBX 007S whereas the 2nd defendant was sued as the registered owner thereof. The plaintiff relied on the doctrine of vicarious liability and pleaded several particulars of negligence against the 1st defendant and/or their driver. I will not reproduce the particulars of negligence as the parties recorded a consent on liability. The plaintiff averred that as a result of the accident, she sustained injuries and



suffered loss and damage. The particulars of the same were listed in the plaint. The plaintiff thus prayed for judgment against the defendants jointly and severally for:

1. General damages;
2. Special damages of Ksh. 54,720/=;
3. Loss of earning capacity or diminished earning capacity;
4. Loss of earnings;
5. Cost of hiring a domestic help;
6. Costs of the suit;
7. Interest on the above at court rates.

The Defendants' Defence

3. The defendants filed a further amended statement of defence on 1/3/2024. The defendants denied the allegations that were made by the plaintiff. In the alternative, the defendants alleged that if there was an accident, the same was solely and/or substantially contributed to by the negligence of the Plaintiff and the driver of motor vehicle registration number KBT 402D/ZD 7010. The defendants pleaded the particulars of negligence against the aforementioned persons and prayed that the plaintiff's suit against them be dismissed with costs.

Liability

4. The parties filed a consent on 20/9/2023 on both liability and evidence. The consent was adopted as an order of the court on 24/1/2024. It was agreed that liability be apportioned in the ratio of 10% against the plaintiff and 90% against the defendants.

The Evidence

The Plaintiff's Case

5. As already indicated, the consent allowed the plaintiff's documents filed in court to be produced in evidence without calling witnesses, save for the medical report. The Plaintiff adopted her witness statement as part of her evidence in-chief. The plaintiff testified that as a result of the accident, she sustained serious injuries on the left shoulder, chest, neck, left upper limb, lower back and left elbow. That she was a hair-dresser but since the time of accident, she has been unable to use her left hand and therefore unable to work. The plaintiff stated that she used to earn Ksh. 1,000/= per day from hair-dressing and Ksh. 3,000/= a day from her hotel business. That she had to hire a house help for Ksh. 7,000/= per month. PW 2 Doctor Washington Wokabi testified that he examined the plaintiff and prepared a medical report. He assessed disability to the extent of 65%. He produced his report in evidence.

The Defence Case

6. The Defence called Doctor Peter Wambush. The witness testified that he also examined the plaintiff. He assessed her disability at 25%. The witness produced his medical report in evidence.

MAIN ISSUES FOR DETERMINATION

7. In my opinion, the main issues for determination are as follows:



- i. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

The Plaintiff's Submissions

8. On quantum, the plaintiff submitted a sum of Ksh. 15,000,000/= in general damages for pain and suffering and relied on the following authorities:

1. Patrick Kithaka Kivuti v John Mwangi [2018] eKLR.

The plaintiff and appellant in the appeal sustained lacerations on the left side of the face, loss of use of the right upper arm due to severed nerves with dislocated right shoulder joint (severe brachial plexus), de-gloving wound injury of the right upper limb that required skin grafting and laceration right knee joint anteriorly. The appellant suffered paralysis of the upper limb, dysuse atrophy of the muscles and loss of sensation distal to the elbow joint. The doctor concluded that there was permanent functional loss of the right limb. On appeal, the award for general damages was enhanced to Ksh. 2,000,000/= on 2/10/2017.

2. H.K.N v Kenafric Bakery Ltd & another [2010] eKLR.

The plaintiff herein sustained severe brain concussion leading to edema and loss of consciousness, fracture of left mandible (chewing bone), fracture of left fore-arm bones (ulna and radius) at distal third zone, fracture of left collar bone (clavicle) between middle and outer third, traction injury of left brachial plexus, laceration wound on the left cheek, severe contusion of right thigh quadriceps muscles (upper third), de-gloving injury of the skin that covered the right thigh muscle, laceration of right saphenous and anterior cutaneous vein of the thigh compromising the venous return of lower limb. The court awarded Ksh. 2,500,000/= in general damages on 21/5/2010.

3. JPS (A minor suing through his father and next friend PS) *v Aga Khan Health Service Kenya t/a The Aga Khan Hospital & 2 others (Civil Appeal 28 of 2012)* [2023] KECA 459 (KLR) (20 April 2023) (Judgment).

This was a case of medical negligence. The 1st respondent's employees, servants or agents, without conducting a scan or any requisite examination whatsoever, proceeded to negligently and recklessly induce labour to facilitate spontaneous vaginal delivery and thereafter proceeded to forcefully pull out the appellant from the birth canal, as a result of which he sustained injuries culminating in a condition known as Erb's palsy. It was stated that the appellant was born with damaged nerves of the right-hand side, as a result of which the right hand did not move at all. The trial court awarded Ksh. 800,000/= on 6/4/2006. On appeal, the Court of Appeal awarded Ksh. 15,000,000/= on 20/4/2023.

9. On damages for loss of earnings, the plaintiff submitted a sum of Ksh. 112,000/= per month. This was based on the testimony of the plaintiff that she was a hair dresser and operated a hotel business. The plaintiff calculated loss of earnings from the time of accident to the time the plaintiff testified and submitted a sum of Ksh. 4,368,000/=. She relied on the following authorities:

- a. James Gathirwa Ngungi v Multiple Hauliers (EA) Limited & another [2015] eKLR.

It was held that it was not mandatory to produce certificates or documents to prove one's profession and earnings.



b. Eric Ndambuki Ndemange v Jackline Kakuvi Mutua [2020] eKLR.

Ksh. 1,500,000/= was awarded to a hair dresser as loss of earning capacity on 11/11/2020.

10. The plaintiff also submitted on damages for diminished earning capacity. She relied on the report by Doctor Wokabi which assessed her permanent disability at 65%. That the plaintiff was 46 years at the time of accident and was expected to work past the age of 70 years. The plaintiff proposed a multiplier of 20 years. The plaintiff tabulated the damages as follows:

$$112,000 \times 20 \times 12 \times 65/100 = 17,472,000/=.$$

11. On the cost of hiring a domestic help, the plaintiff submitted that she will need a house help all her life. That she paid her house help Ksh. 7,000/= per month and urged the court to adopt a multiplier of 24 years. However, when she tabulated the damages, she used a multiplier of 20 years as follows:

$$7,000 \times 12 \times 20 = 1,680,000/=.$$

12. The plaintiff relied on the case of Grace Beldina Adhiambo v Bowers Okelo & another [2017] eKLR.

13. The plaintiff also prayed for special damages as pleaded and proved plus costs of the suit and interest.

Submissions On Behalf Of The Defence.

14. The defendants submitted that the plaintiff did not produce any documents to show her earnings nor that she operated a hotel. That the plaintiff confirmed that the salon did not belong to her. The defendants further submitted that Dr. Wokabi confirmed in cross-examination that there was a possibility that the permanent disability percentage could go lower. That Doctor Wambugu assessed permanent disability at 25%. The defendants urged the court to go by Doctor Wambugu's report and submitted an award of Ksh. 1,000,000/= in general damages. The defendants relied on the authorities of Jason Kevin Dias v Keya Orengo & 3 others [2020] eKLR, wherein Ksh. 2,000,000/= was awarded on 16/7/2020 and Edward Muiruri Gatete Mburu v Susan Kitheka [2018] eKLR wherein an award of Ksh. 2,000,000/= was upheld on appeal on 16/11/2018.

15. On loss of earning capacity, the defendants submitted that there was no evidence to show that the plaintiff completely lost employment. The defendants urged the court not to make an award under this head. The defendant argued that the cost of hiring a house help was in the nature of special damages. That the plaintiff had failed to prove the same. The defendants urged the court to dismiss the claim. The defendants argued that the plaintiff had proven special damages of Ksh. 49,700/= only.

Analysis And Determination

16. I have carefully considered the evidence on record and given due regard to the submissions made by the parties as well as the authorities relied upon.

Quantum

17. It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts, although comparable injuries should receive similar awards. This Court has to bear in mind the



principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd* [1964] AC 326 where Lord Morris said:

“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 constant, 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”.

18. I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington Area Health Authority*, [1979] 1, ALL ER 332 which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School* [2011] eKLR where Wendoh, J stated that:

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

19. The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;
- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;
- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

20. Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

21. The medical evidence on record indicates that the plaintiff sustained the following injuries following the accident:

- i. Left brachial plexus root avulsion af C7, C8 and T1;
- ii. Loss of sensation motor power of the left upper limb (paralysis);
- iii. Bruises and blunt trauma to the back and chest.

22. There are two medical reports in respect of the plaintiff. Dr. Wokabi assessed permanent disability at 65% whereas Dr. Wambugu assessed at 25%. Both Doctors are said to be consultant surgeons. Dr. Wokabi stated that he adopted the WIBA scale to arrive at the assessment. On the other hand, Dr. Wambugu stated that he relied on the scale provided for under the Insurance (Motor Vehicle Third Party Risks) Act to arrive at the assessment of permanent disability. Dr. Wambugu further stated that



the plaintiff had made significant improvement as at the time of her examination. Dr. Wokabi assessed the plaintiff on 22/2/2022 whereas Dr. Wambugu assessed her on 14/9/2022.

23. The Schedule to the Insurance (Motor Vehicle Third Party Risks) Act does not provide a guideline on assessment of permanent disability but a structured compensation liability schedule. In that case, Dr. Wambugu must have relied on a wrong basis for assessment. The schedule under the [Work Injury Benefits Act](#) provides better guidance. Doctor Wokabi confirmed that the assessment was at the time of examination and that it was possible for the plaintiff's situation to improve over time but she could not regain 100% use of her upper limb. The plaintiff confirmed in evidence that her situation had improved.
24. On my part, I have considered the following authorities:
1. *Mwaura Muiruri v Suera Flowers Limited & another* [2014] KEHC 6761 (KLR).
The victim herein sustained multiple lacerations on the face, soft tissue injuries on the chest cage (mainly left subaxillary area), comminuted fractures of the right humerus upper and lower thirds of the tibia and compound double fractures of the right leg upper and lower 1/3rd tibia fibula. The victim suffered permanent injuries as paralysis of the right hand, deformation of the right leg which was angulated medially and reduced ankle joints. Permanent disability was assessed at 70%. The court awarded Ksh. 1,750,000/= on 28/2/2014.
 2. *Beatrice Khamede v Erick Wanunu & another* [2019] KEHC 12042 (KLR).
The victim herein sustained fracture of the left shoulder blade, injury of the left brachial plexus (network of nerves originating from the neck) and puncture wound on the left ankle joint. Permanent disability was assessed at 35%. The trial court awarded Ksh. 800,000/= on 8/12/2017. On appeal, the award was affirmed.
 3. *Simon Taveta v Mercy Mutitu Njeru* [2014] KECA 755 (KLR).
The victim herein suffered total paralysis of the lower limbs and she had no voluntary movement of any part of the lower limbs. She had an injury to the spinal cord which had disturbed the bladder and bowel function and had to wear diapers which needed to be changed twice daily. Assessed degree of permanent disability was given as 100%. An award of Ksh. 3,500,000/= was made by the Court of Appeal on 5/2/2014.
25. Given the nature of the injuries sustained by the plaintiff herein and the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 3,500,000/= in general damages would suffice. I award the same.

Damages for loss of earning capacity

26. The Court of Appeal enumerated the principles to be considered in respect of a claim for loss of earning capacity in the case *William J Butler v Maura Kathleen Butler* [1984] KECA 34 (KLR) as follows: -
- a. A person's loss of earning capacity occurs where as a result of injury, his chances in the future of any work in the labour market or work, as well paid as before the accident are lessened by his injury;
 - b. Loss of earning capacity is a different head of damages from actual loss of future earnings. The difference is that compensation for loss of future earnings is awarded for real assessable loss proved by evidence whereas compensation for diminution of earning capacity is awarded as part of general damages;



- c. Damages under the heads of loss of earning capacity and loss of future earnings, which in English law were formerly included as an unspecified part of the award for pain, suffering and loss of amenity, are now quantified separately and no interest is recoverable on them;
 - d. Loss of earning capacity can be a claim on its own, as where a claimant has not worked before the accident giving rise to the incapacity, or a claim in addition to another, as where the claimant was in employment then and/or at the date of the trial;
 - e. Loss of earning capacity or earning power may and should be included as an item within general damages but where it is not so included it is not improper to award it under its own heading; and
 - f. The factors to be taken into account in considering damages under the head of loss of earning capacity will vary with the circumstances of the case, and they include such factors as the age and qualifications of the claimant; his remaining length of working life; his disabilities and previous service, if any.
27. In the authority of *S J v Francesco Di Nello & another* [2015] KECA 606 (KLR), the Court of Appeal observed that the assessment of damages for loss of earning capacity is not an easy one as there is no possible mathematical calculation because it is impossible to suggest any formula for determination of the extent to which a plaintiff would be handicapped by his disability if he is thrown on the open labour market. Case law reveals that some Judges adopt a global award approach whereas others adopt a multiplier approach in awarding damages under this head. In the *SJ* case (*supra*), the court adopted a global sum whereas in *Tile & Carpet Center Warehouse v Okello* [2022] KECA 5 (KLR), the Court of Appeal adopted a multiplier approach.
28. In the authority of *Mumias Sugar Company Limited v Francis Wanalo* [2007] KECA 485 (KLR), the Court of Appeal observed;
- “The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award when plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account in order to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability.”
29. In the above authority, the court was of the view that it was inappropriate to assess the loss of earning capacity on the multiplicand/multiplier basis. That such approach would amount to an award for loss of future earnings.



30. In *James Mukatui Mavia v M. A. Bayusuf & Sons Limited* [2013] KECA 49 (KLR), the Court of Appeal held:

“The method evolved by the courts for assessing loss of earning capacity, for arriving at the amount which the claimant has been prevented by the injury from earning in the future is by taking the figure of the claimant’s present annual earnings less the amount, if any, which he can now earn annually, and multiplying this by a figure which, while based upon the number of years during which the loss of earning power will last, [the multiplier] is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. Adjustments may be made to the resulting amount on account of other contingencies of life. (see *McGrogor* on paragraph, 18th edition paragraph 35-065).”

31. However, the court in its final orders, referred to the award as damages for loss of future earnings. This appears to be a confusion since the two are different.

32. My analysis of the above authorities is that given the nature of the claim for loss of earning capacity, the multiplier approach would be inappropriate. The approach is more applicable in awarding damages for loss of future earnings, as opposed to loss of earning capacity. I will thus adopt a global sum approach. The plaintiff was said to have been 39 years at the time of accident. She was a hair-dresser and also worked in a hotel. Her testimony was that she used to cook in the hotel. In cross-examination, the plaintiff testified that she was not the owner of the salon. This implies that she was an employee. At the time of testimony, the plaintiff stated that she had not gone back to work as she was unable to use her left hand.

33. There is medical evidence to show that the plaintiff was unlikely to actively do hair dressing and hotel chores. There is no contrary evidence. I am convinced that the plaintiff is entitled to damages for loss of earning capacity. In *Benuel Bosire v Lydia Kemunto Mokora* [2019] KEHC 8146 (KLR), the victim’s permanent disability was assessed at 40%. An award of Ksh. 300,000/= was made on 25/4/2019. In *Nyatogo v Mini Bakeries Limited* [2023] KEHC 1593 (KLR), permanent disability of the victim was assessed between 15% and 50%. The court awarded Ksh. 800,000/= under this head on 10/3/2023. In the instant case, permanent disability was assessed between 20% and 65%. Being guided by the above authorities, I award Ksh. 1,000,000/=.

Damages for loss of earnings.

34. The plaintiff pleaded and prayed for damages for loss of earnings. She pleaded that she used to earn Ksh. 1,000/= from hair dressing and Ksh. 3,000/= per day from the hotel business. In her submissions, the plaintiff appears to have confused loss of earning capacity and loss of earnings. In *Kibet v Alunda* [2024] KECA 64 (KLR), the Court of Appeal held:

“.....it is clear that a court will accept an invitation to make an award for “loss of earning capacity” once it is established that there is a risk that the level of disability suffered by a plaintiff diminishes his chances of returning to work at the same level, working the same hours or that the disability may be long-term. This, in other words, can be equated to a diminished earning capacity which decreases an individual’s earning ability as a result of the disability. It is, however, distinguishable from “loss of earnings” which ordinarily is an assessment of the actual loss of earnings as a result of the accident. In this regard, the current known earnings of the claimant are used to determine what the plaintiff is awarded. This is a special loss because it is a known loss which can be calculated. The claim must therefore be specifically pleaded and proved as special damages. It does not matter whether a party



infuses the word “future” into the two distinct claims as either way, the end result is that “loss of earning capacity” concerns the estimated loss that the plaintiff is likely to suffer in future while “loss of earnings” is actual and determinable as it is tied to the plaintiff’s current earnings.”

35. Similarly, in *Douglas Kalafa Ombeva v David Ngama* [2013] KECA 538 (KLR), the Court of Appeal stated:

“While loss of earnings fall under the head of special damages, which must be specifically pleaded and proved, loss of earning capacity on the other hand, falls under the head of general damages and would need to be proved on a balance of probabilities. See *Cecilia W. Mwangi & Another v Ruth W. Mwangi* [1997] eKLR where this court stated that:

Loss of earnings is a special damage claim. It must be specifically pleaded and strictly proved. The damages under the head of “loss of earning capacity” can be classified as general damages but these have also to be proved on a balance of probability.”

36. Apart from mere testimony, there is nothing else that the plaintiff produced to prove her earnings. This being a claim in the nature of special damage, I find that the plaintiff has failed to prove the same. I thus dismiss the claim and make no award under this head.

Cost of hiring a domestic help

37. In her plaint, the plaintiff stated that she had to hire a house help to assist her owing to her condition. The plaintiff did not plead how much she was paying or was to pay the house help. In her evidence, she testified that she was paying her house help Ksh. 7,000/= per month. No documentary evidence was adduced to confirm the position. In the case of *Kenya Power & Lighting Company Limited v Kassim Wekhoba Tolo & another* [2019] KEELRC 2454 (KLR), the court set aside an award of domestic help on the basis that no evidence was adduced by the Plaintiff at all to support his claim.

38. In the authority of *Salim S. Zein T/a Eastern Bus Service & Another V Rose Mulee Mutua* [1997] KECA 94 (KLR), the Court of Appeal held:

“There is no evidence at all upon which the awards of Shs.50, 000/- and Shs.120, 000/-, for future medical expenses and the hire of domestic help can be sustained. The plaintiff did not give evidence in support of her claim for these expenses. So the awards were based on no evidence. That is a serious transgression of principle on the part of the Judge which this Court has a duty to correct. Accordingly, these awards are set aside in their entirety.”

39. In *Mwangi ((Suing as the Administrator of the Estate of Beatrice Njeri Kamau - Deceased)) v Ngige & another* [2023] KEHC 23311 (KLR), the court held:

“As regards the claims for nursing and domestic care, and future treatment, I do concur with the respondent’s submissions, once a party claims an identifiable and/or specific amount of money, it supposes that figure is certain, ascertainable and is capable of proof. It is indeed a matter of special damages. Therefore the same should be specifically pleaded and strictly proved. Further, I note from the amended plaint that no single paragraph makes reference to those claims, save for the sums in the final prayers. I therefore find that the respondent’s submissions to that effect are valid.”

40. In *Peninah Mboje Mwabili v Kenya Power & Lighting Company Limited* [2016] KEHC 3434 (KLR), the court observed that the claim for hire of domestic help was not proven as no documentary evidence



was adduced. That an assertion that house help earned the said sum or that she was the Plaintiff's employee without any proof remained just a mere assertion. Case law suggests that the claim for domestic help is in the nature of special damages which must be specifically pleaded and strictly proved. Given the circumstances of this case, I am inclined to dismiss the claim.

Special Damages

41. The plaintiff pleaded special damages as follows:

- a. Medical expenses.....Ksh. 51,670/=
- b. Medical report.....Ksh. 2,500/=
- c. Motor vehicle search certificate.....Ksh. 550/=
- Total.....Ksh. 54,720/=

42. It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* the court said: -

“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”

43. In *Ouma v Nairobi City Council* [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L. J's Judgment on page 532 and 533 in *Ratcliffe v Evans* [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

44. The plaintiff produced a receipt for Ksh. 3,000/= for the medical report but pleaded Ksh. 2,500/=. I award what was pleaded. A receipt for Ksh. 550/= for the copy of records was produced in evidence. Some receipts allegedly for medical expenses are not legible. I will disregard them for that reason. The legible receipts for medical expenses amount to Ksh. 41,650/=. Consequently, the total award under this head is Ksh. 44,700/=.

Disposition

45. In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the defendants. Consequently, I make the following awards:

- 1. General damages for pain, suffering and loss of amenities... Ksh. 3,500,000/=
- 2. Loss of earning capacity..... Ksh. 1,000,000/=
- 3. Special damages..... Ksh. 44,700/=
- Total.....Ksh. 4,544,700/=
- Less 10% contribution..... Ksh. 454,470/=



Balance due to the plaintiff..... Ksh. 4,090,230/=

46. The plaintiff is also awarded interest on the damages as well as costs of the suit. The guiding principles in respect of interest are set out in section 26 of the *Civil Procedure Act* which provides that:

- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
- (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

47. In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated that:

First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.

48. Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely:

- a. The period from the date the suit is filed to the date when the Court gives its judgment; and
- b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”

49. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omuniyokol Akol Johnson v Attorney General* (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)

50. From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see *Jane Ovuyanzi Raphael* (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR)). Consequently, interest on general damages shall accrue at court rates from the date of judgment/decree until payment in full. This shall be limited to general damages for pain, suffering and loss of amenities. No interest is recoverable on



damages for loss of earning capacity. Interest on Special damages shall accrue from the date of filing suit to the date of judgment/decree.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 24TH DAY OF MARCH, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

