Letore v Mwangi & another (Civil Case E018 of 2020)
[2025] KEMC 186 (KLR) (29 July 2025) (Judgment)

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REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

CIVIL CASE E018 OF 2020

YA SHIKANDA, SPM

JULY 29, 2025

BETWEEN

NOAH MUMEITA LETORE ..... PLAINTIFF

AND

JOEL NDURUHU MWANGI ..... 1ST DEFENDANT

CHANIA GENESIS SACCO ..... 2ND DEFENDANT

JUDGMENT

The Claim

1. Noah Mumeita Letore (hereinafter referred to as the plaintiff) filed this suit on 5/10/2020 vide a plaint dated 16/9/2020. He sued Joel Nduruhu Mwangi and Chania Genesis Sacco (hereinafter referred to as the 1st and 2nd defendants respectively) on account of a road traffic accident that allegedly occurred on 6/12/2019 along Nairobi-Mombasa road. The plaintiff averred that on 6/12/2019, he was lawfully and carefully riding a motor cycle along the aforementioned road when motor vehicle registration number KBN 040V knocked him down, thereby occasioning him severe bodily injuries, loss and damage. The defendants were sued as the registered and beneficial owners of motor vehicle registration number KBN 040V.

2. The plaintiff relied on the doctrine of Res ipsa loquitor and pleaded the following particulars of negligence against the driver of KBN 040V:

    a. Driving the said motor vehicle at an excessive speed in the circumstances;

    b. Driving the said motor vehicle without due care and attention;

    c. Driving the said motor vehicle so dangerously and/or negligently and without regard to other road users and particularly the plaintiff;

d. Driving the said motor vehicle recklessly and in total violation of the Traffic Rules;

e. Failure to slow down, stop, brake, swerve and/or take any other reasonable step to avoid the said accident;

f. Driving a defective motor vehicle;

g. Causing the accident.

3. The plaintiff thus prayed for judgment against the defendants for:

1. General damages;

2. Special damages of Ksh. 6,380/=;

3. Costs of this suit;

4. Interest from the date of filing this suit.

The 1st Defendant's Defence

4. The 1st defendant entered appearance on 13/2/2021 and filed a written statement of defence on the same day. The 1st defendant denied being the registered owner of motor vehicle registration number KBN 040V, denied that the plaintiff was lawfully and carefully riding a motor cycle along Nairobi-Mombasa road, denied the occurrence of the accident and denied the particulars of negligence pleaded by the plaintiff. The 1st defendant pleaded the following particulars of negligence as against the plaintiff:

a. Failing to take any or any adequate precaution for her (ought to be his) own safety;

b. Failing to wear any or any adequate protective apparel as designed by law;

c. Overtaking in a dangerous and careless manner;

d. Riding without due regard to other road users;

e. Riding at an excessive speed in the circumstances;

f. Failing to properly steer and control her (ought to be his) motor cycle;

g. Ramming into the defendant's motor vehicle;

h. Failing to give way to traffic that had the right of way.

5. The 1st defendant denied the particulars of injury and loss pleaded by the plaintiff as well as the applicability of the doctrine of res ipsa loquitor, and instead, pleaded the doctrine of volenti non fit injuria. The 1st defendant averred in the alternative that if the accident occurred, then the same was beyond his control. The 1st defendant prayed that the plaintiff's suit be dismissed with costs.

The 2nd Defendant

6. The record indicates that the 2nd defendant failed to enter appearance and file a defence. The plaintiff requested for interlocutory judgment and the same was entered on 12/8/2021.

The Evidence

The Plaintiff's Case

7. Two witnesses were called on behalf of the plaintiff. PW 1 was the plaintiff himself. He adopted his statement filed in court as part of his testimony. The evidence of the plaintiff was that on 6/12/2019 he was lawfully and carefully riding a motor cycle along Nairobi-Mombasa road and when he was at Masimba area, he was knocked down from the rear by motor vehicle registration number KBN 040V. The plaintiff alleged that the said motor vehicle was driven recklessly and carelessly. That the driver of the motor vehicle drove at a high speed and lost control of the same. The plaintiff stated that he was injured. That he was rushed to Makindu Sub-county hospital where he was treated. He later visited Makindu Police station where he was issued with a P3 form and police abstract on the accident. The plaintiff produced several documents in support of his case. PW 2 Police Constable Joseph Mugo testified that he was based at Makindu Traffic Base. The witness confirmed that a report on the accident was made at the police station. The witness produced the police abstract in evidence.

The Defence Case

8. The 1st defendant did not call any witness.

Main Issues for Determination

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

    i. Whether an accident occurred on 6/12/2019 at Masimba area along Nairobi-Mombasa highway involving motor vehicle registration number KBN 040V and the plaintiff herein;

    ii. Whether the said motor vehicle belonged to the defendants at the material time;

    iii. Who was to blame for the accident;

    iv. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;

    v. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;

    vi. Who should bear the costs of this suit?

The Plaintiff's Submissions

10. The plaintiff relied on the evidence on record and urged the court to find the defendants 100% vicariously liable in negligence and for the accident. He contended that his evidence was unchallenged as the defence did not call any witness. The plaintiff relied on the authority of Linus Nganga Kiongo & 3 Others V Town Council Of Kikuyu [2012] eKLR. On quantum, the plaintiff submitted a sum of Ksh. 500,000/= in general damages for pain and suffering and relied on the following authorities:

    a. Oluoch Eric Gogo v Universal Corporation Limited [2015] eKLR in which the victim sustained crushed injury to the left thumb with fracture of the mid phalanx. The lower court proposed Ksh. 250,000/= in general damages on 24/3/2006. On appeal, the court awarded Ksh. 200,000/= on 7/5/2015;

    b. Barry Proudfoot v Coast Broadway Company Limited & another [2001] eKLR, in which the victim sustained fractured ribs and permanent paralysis of his left hand as a result of nerve damage. Ksh. 800,000/= was awarded in general damages on 23/1/2001.

11. For special damages, the plaintiff urged the court to award Ksh. 6,380/= as pleaded and proved. The plaintiff also prayed for costs and interest.

The 1st Defendant's Submissions

12. The 1st defendant did not file submissions despite being given sufficient time to do so.

Analysis and Determination

13. I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff as well as the authorities relied upon. From the unrebutted testimony of the plaintiff and that of PW 2 together with the documents produced in evidence, I am convinced that the accident occurred as was alleged. There is also sufficient evidence in the form of a copy of records from the registrar of motor vehicles as well as the police abstract on the accident, to prove that the defendants were the owners of the accident motor vehicle at the material time. The defendants did not attend court to dispute the fact.

Liability

14. There is only one version as to how the accident occurred. According to the plaintiff's uncontroverted evidence, he was riding a motor cycle when the accident motor vehicle rammed into him from the rear. It is the duty of the plaintiff to establish or prove negligence on the part of the defendants. It is trite law that it is not enough to adorn the plaint with particulars of negligence. The plaintiff must adduce evidence to prove such particulars of negligence and it is from the evidence that the court can make a finding on liability. The above position appears to be anchored on the provisions of sections 107 and 109 of the *Evidence Act* which basically provide that the burden of proof lies on the person who alleges the existence of facts upon which he desires the court to give judgment in his favour. In the case of Kirugi & Another v Kabiya & 3 Others [1987] KLR 347, the Court of Appeal held thus:

> " The burden was always on the plaintiff to prove his case on the balance of probabilities even if the case was heard on formal proof."

15. Ordinarily, where interlocutory judgment has been entered, the issue of liability becomes settled. This position has been confirmed by various judicial pronouncements. In the case of Abdullahi Ibrahim Ahmed (Suing as The Personal Representative of The Estate Of Anisa Sheikh Hassan (Deceased)) v Lem Lem Teklue Muzolo [2013] eKLR, the Court of Appeal stated thus:

> " .....save to reiterate what is now settled law that once interlocutory judgment has been entered the question of liability becomes a foregone conclusion.....we can do no better than to repeat what was said by this court in the case of Felix Mathenge v Kenya Power & Lighting Co. Ltd. Civil Appeal No. 215 of 2002 that:-
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> > The role of the Court after entering the interlocutory judgment was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to the quantum of damages."

16. As already indicated, there is interlocutory judgment as against the 2nd defendant. The plaintiff relied on the doctrine of Res Ipsa Loquitor. Is the doctrine applicable in this case? In the leading case of Scott v London and St Katherine Docks Co (1865) 3 H & C 596, Erle CJ at page 600 held as follows:

> " There must be reasonable evidence of negligence. But, where the thing is shown to be under the management of the defendant, or his servants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care".

17. In Black's Law Dictionary 9th Edition page 1424, the principle is defined as follows:

> " [Latin "the thing speaks for itself"] Torts. The doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a prima facie case. Often shortened to res ipsa."

18. The Dictionary goes further to explain the circumstances the Court will infer negligence as follows:

> " The phrase 'res ipsa loquitur' is a symbol for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for the defendant to meet with an explanation. It is merely a short way of saying that the circumstances attendant on the accident are of such a nature as to justify a jury, in light of common sense and past experience, in inferring that the accident was probably the result of the defendant's negligence, in the absence of explanation or other evidence which the jury believes."
>
> > "It is said that res ipsa loquitur does not apply if the cause of the harm is known. This is a dark saying. The application of the principle nearly always presupposes that some part of the causal process is known, but what is lacking is evidence of its connection with the defendant's act or inference that the defendant's negligence was responsible. It must of course be shown that the thing in his control in fact caused the harm. In a sense, therefore, the cause of the harm must be known before the maxim can apply."
> >
> > > 'Res ipsa loquitur is an appropriate form of circumstantial evidence enabling the plaintiff in particular cases to establish the defendant's likely negligence. Hence the res ipsa loquitur doctrine, properly applied, does not entail any covert form of strict liability ... The doctrine implies that the court does not know, and cannot find out, what actually happened in the individual case. Instead, the finding of likely negligence is derived from knowledge of the causes of the type or category of accidents involved."

19. Kennedy L.J. in Russel v. L. & S. W. Ry [1908] 24 T.L.R. 548 at p. 551 as follows:

> " ....that there is, in the circumstances of the particular case, some evidence which, viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown and undisputed, than that the occurrence took place without. The res speaks because the facts stand unexplained, and therefore the natural

and reasonable, not conjectural, inference from the facts shows that what has happened is reasonably to be attributed to some act of negligence on the part of somebody; that is some want of reasonable care under the circumstances."

20. The Learned Judge then continued:

> " Res ipsa loquitur does not mean, as I understand it, that merely because at the end of a journey a horse is found hurt, or somebody is hurt in the streets, the mere fact that he is hurt implies negligence. That is absurd. It means that the circumstances are, so to speak, eloquent of the negligence of somebody who brought about the state of things which is complained of."

21. In Henderson v Henry E Jenkins & Sons [1970] AC 282 at 301 Lord Pearson stated:

> " In an action for negligence the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge had to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants, and if he is not so satisfied the plaintiff's action fails. The formal burden of proof does not shift. But if in the course of the trial there is proved a set of facts which raises a prima facie inference that the accident was caused by negligence on the part of the defendants, the issue will be decided in the plaintiff's favour unless the defendants by their evidence provide some answer which is adequate to displace the prima facie inference. In this situation there is said to be an evidential of proof resting on the defendants..."

22. In the case of Embu Public Roads Services Ltd v Riimi (1968) EALR 22, the Court of Appeal held as follows:

> " The doctrine of res ipsa loquitor is one which a plaintiff, by proving that an accident occurred, in the circumstances in which an accident should not have occurred thereby discharges in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident".

23. From the foregoing, it is clear that the doctrine of res ipsa loquitor applies only where circumstances are established which afford reasonable evidence, in the absence of explanation by the defendant, that the incident leading to the injuries arose from their negligence. In an appropriate case, the plaintiff establishes a prima facie case by relying upon the fact of the incident. If the defendant adduces no evidence there is nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the incident. Loosely speaking, this may be referred to as a burden on the defendant to show he was not negligent, but that only means that faced with a prima facie case of negligence the defendant will be found negligent unless he produces evidence that is capable of rebutting the prima facie case. On the basis of the evidence on record, a prima facie case of negligence has been established as there is a causal link between the driver of the accident motor vehicle and the injuries that were sustained by the plaintiff. The doctrine, in my view, will thus apply.

24. The uncontroverted evidence of the plaintiff clearly shows that the driver of the accident motor vehicle was at fault. He was reckless in his manner of driving. It does not show that the plaintiff was to blame. There is clear and uncontroverted evidence on how the accident herein occurred. I find that the evidence of the plaintiff as to how the accident occurred was consistent and was not shaken in cross-

examination. In view of the evidence on record, there is a sufficiently high degree of probability, that, but for the acts of omission and commission by the driver of the motor vehicle, the accident would have been prevented. I find that the driver of the motor vehicle was solely culpable as far as the accident is concerned. In my view, there are concrete facts on which a finding would be made that the said driver was solely negligent. A prudent driver who drives with due care and attention cannot just lose control of the motor vehicle and ram into another motor vehicle ahead of them. Consequently, I find the driver of motor vehicle registration number KBN 040V 100% liable in negligence.

25. As already found, there is sufficient evidence to prove that the accident motor vehicle belonged to the defendants at the material time. There is no contrary evidence. Vicarious liability is a form of secondary liability that arises under the common law doctrine of agency, respondeat superior, the responsibility of the superior for the acts of their subordinate or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. The owner of a motor vehicle can be held vicariously liable for negligence committed by a person to whom the car has been lent, as if the owner was a principal and the driver his or her agent, if the driver is using the car primarily for the purpose of performing a task for the owner.

26. In the case of Morgan v Launchbury [1972] ALL ER 606, it was held, inter alia, that:

> " To establish agency relationship it is necessary to show that the driver was using the car at the owner's request express or implied or in its instruction and was doing so in the performance of the task or duty thereby delegated to him by the owner."

27. Similarly, In Kaburu Okelo & Partners v Stella Karimi Kobia & 2 Others [2012] eKLR the Court of Appeal held that:

> " Vicarious liability arises when the tortious act is done in the scope of or during the course of one's employment or authority."

28. Where a motor vehicle is driven by a person other than the owner, there is a rebuttable presumption that the driver was acting as an agent of the owner of the motor vehicle. In the case of Kenya Bus Services Ltd v Humphrey [2003] KLR 665; [2003] 2 EA 519, the Court of Appeal cited Kansa v Solanki [1969] EA 318 wherein it was held that:

> " Where it is proved that a car has caused damage by negligence, then in the absence of evidence to the contrary, a presumption arises that it was driven by a person for whose negligence the owner is responsible (See Bernard V Sully [1931] 47 TLK 557. This presumption is made stronger or weaker by the surrounding circumstances and it is not necessarily disturbed by the evidence that the car was lent to the driver by the owner as the mere fact of lending does not of itself dispel the possibility that it was still being driven for the joint benefit of the owner and the driver."

29. It has not been denied in evidence that the driver of motor vehicle registration number KBN 040V was driving in the course of his employment with the defendants. Consequently, I find the defendants 100% vicariously liable for the accident.

Quantum

30. The medical evidence on record indicates that the deceased sustained the following injuries following the accident:

    i. Fracture of the left thumb;

ii. Soft tissue injuries to the left leg.

31. The doctor who filled the P3 form was the same one who examined the plaintiff and prepared the medical report. However, it is interesting to note that in the P3 form, the doctor classified the injuries as harm whereas in the medical report, she classified the same injuries as grievous harm. Nevertheless, I find that there is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the finding on liability, the plaintiff is thus entitled to damages as against the defendants.

32. 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".

33. I am also guided by Lord Denning's decision in Kim Pho Choo v Camden & Islingtom 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."

34. The Court of Appeal in Southern Engineering Company Ltd v Musingi Mutia [1985] KLR 730 held that:

> " It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated...The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same,

> either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

35. 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.

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

General Damages for pain, suffering and loss of amenities

37. I have considered the injuries sustained by the plaintiff. In my opinion, only the first authority relied upon by the plaintiff is comparable. The second authority relates to more severe injuries. On my part, I have further considered the following authority:

    1. Nyamai Petronilla & another v Monicah Musyoki [2020] KEHC 1979 (KLR)

38. The plaintiff and respondent in the appeal sustained a fracture of the right thumb and degloving injury to the left lower leg. The trial court awarded Ksh. 350,000/= in general damages on 29/1/2019. On appeal, the award was reduced to Ksh. 200,000/= on 3/11/2020.

39. Given the nature of the injuries sustained by the plaintiff herein, and the age of some of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 300,000/= in general damages would suffice. I award the same.

Special Damages

40. The plaintiff pleaded special damages as follows:

    a. Motor vehicle search.....Ksh. 550/=

    b. Medical report.....Ksh. 5,000/=

c. Medical expenses.....Ksh. 830/=

Total.....Ksh. 6,380/=

41. 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"

42. 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."

43. The special damages were sufficiently proven to the tune of Ksh. 6,380/=. I award the same.

Disposition

44. 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. 300,000/=
2. Special damages.....Ksh. 6,380/=

Total.....Ksh. 306,380/=

45. 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."

46. 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.

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."

47. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of Omunyokol 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)

48. 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 and on Special damages, from the date of filing suit to the date of judgment/decree.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 29TH DAY OF JULY, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.