



REPUBLIC OF KENYA



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**Kamau v China Road and Bridge Corporation (Civil Case 314 of 2017)
[2025] KEMC 228 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEMC 228 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 314 OF 2017
YA SHIKANDA, SPM
SEPTEMBER 16, 2025**

BETWEEN

PETER MOITALEL KAMAU PLAINTIFF

AND

CHINA ROAD AND BRIDGE CORPORATION DEFENDANT

JUDGMENT

1. Peter Moitalel Kamau (hereinafter referred to as the plaintiff) filed this suit on 3/10/2017 vide a plaint of even date. The plaintiff sued China Road and Bridge Corporation (hereinafter referred to as the defendant) on account of an industrial accident that allegedly occurred on 7/12/2015 at Mtito Andei. The plaintiff averred that on the material day, he was working in the course of his employment with the defendant when a piece of timber hit him on the right hand after it was thrown off by a tyre burst. That the accident occurred due to the negligence and/or breach of employment terms by the defendant. The plaintiff pleaded the following particulars of negligence against the defendant:
 - a. Failing to provide a safe place and/or system of work at the premises;
 - b. Failing to take adequate precautions towards the plaintiff's safety while he was engaged in his employment;
 - c. Exposing the plaintiff to a risk of injury, failing to put and/or construct a safety cage at the tyre repair and pressure area;
 - d. Failing to provide the plaintiff with proper protective wears and proper working tools like helmet;
 - e. Failing to provide properly maintained working tools.
2. The plaintiff further pleaded the particulars of injuries sustained as well as those of special damages and prayed for judgment against the defendant for:



- a. General damages;
- b. Special damages fof Ksh. 9,000/=;
- c. Costs and interest of the suit.

Interlocutory Judgment

3. The record indicates that the defendant was served with summons to enter appearance and plead but failed to enter appearance and file a statement of defence. Consequently, upon request by the plaintiff, the court entered interlocutory judgment against the defendant on 1/12/2017.

The Evidence

4. Upon entry of interlocutory judgment, the matter was set down for assessment of damages or what other like to call formal proof. At the hearing, only the plaintiff testified. The plaintiff adopted his statement filed in court as part of his testimony. It was the evidence of the plaintiff that at the material time he was an employee of the defendant, working as a tyre repair attendant. That on 7/12/2015 he was on duty and was adding pressure to a tyre belonging to one of the defendant's Lorries. The plaintiff stated that he was attending to other tyres when the initial tyre burst due to a puncture. In the process, and owing to the pressure upon the tyre burst, a piece of timber which was below the tyre was thrown towards the plaintiff. That the piece of timber hit the plaintiff's right hand and caused a fracture. The plaintiff stated that there was no safety cage although he had proposed to the defendant to have it constructed. The plaintiff adopted the documents filed in evidence.

Main Issues for Determination

5. In my view, the main issues for determination are as follows:
 - i. Whether the plaintiff was an employee of the defendant at the material time;
 - ii. Whether the plaintiff was involved in an industrial accident on 7/12/2015 while in the course of his employment with the defendant;
 - iii. Whether the defendant is liable in negligence 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

6. The plaintiff filed submissions at the close of the case. On liability, he submitted that his evidence was unchallenged and urged the court to find the defendant 100% liable. On quantum, the plaintiff submitted a sum of Ksh. 800,000/= in general damages and Ksh. 1,000,000/= for what he called general damages for diminished earning capacity. The plaintiff also urged the court to award Ksh. 9,000/= as special damages. He relied on the following authorities:
 - a. Kago & another v Karoki & another [2024] KEHC 5828 (KLR);
 - b. Hussein & another v Sigei [2024] KEHC 10977 (KLR);



- c. James Musau Kimweli v Bernard Ndegwa Kireru & another-Machakos HCCC No. 133 of 1999.

Analysis and Determination

7. I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff. There is uncontroverted evidence to show that the plaintiff was an employee of the defendant at the material time and that on 7/12/2015 he was involved in an industrial accident while in the course of his employment with the defendant.

Liability

8. 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:-

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.”

9. In the circumstances, I find the defendant 100% liable.

Quantum

10. I have considered the medical evidence on record. It shows that the plaintiff sustained a mid-shaft fracture of the right humerus. The same injuries were pleaded in the plaint. There is no contrary evidence with respect to the plaintiff's injuries. The doctor who examined the plaintiff was of the opinion that he sustained permanent functional disability of 20%. There is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the fact that the defendant has been held 100% liable for the accident, the plaintiff is thus entitled to damages as against the defendant.
11. 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”.

12. 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.”

13. 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.
14. Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

15. I have considered the injuries sustained by the plaintiff. I have further considered the submissions made by the plaintiff on quantum as well as the authorities relied upon. The authorities relied upon by the plaintiff are relevant. On my part, I have considered the following authorities:

1. *Gitathi v Kinyua & another* [2023] KEHC 18357 (KLR)

The plaintiff and appellant in the appeal herein sustained a fracture of the right humerus bone with a resultant wrist drop (radial nerve damage). The trial court awarded Ksh. 200,000/= in general damages on 15/9/2017. On appeal, the award was enhanced to Ksh. 600,000/= on 31/5/2023.

2. *Philip Mwago v Lilian Njeri Thuo* [2019] KEHC 1381 (KLR).

The plaintiff and respondent in the appeal sustained a fracture of the left humerus with a permanent disability of 8%. The trial court awarded Ksh. 500,000/= in 2017. On appeal, the award was affirmed on 29/11/2019.

16. Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 800,000/= in general damages, as proposed by the plaintiff, would suffice. I award the same.

Special Damages

17. The plaintiff pleaded special damages as follows:



- a. Medical expenses.....Ksh. 3,000/=
 - b. Medical report.....Ksh. 6,000/=
18. 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”
19. 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.”
20. Only Ksh. 6,000/= for the medical report was proven as per the law. I award the same.

Damages for diminished earning capacity

21. The plaintiff did not plead in the plaint for these damages. He only raised the issue in his submissions. The plaintiff relied on the authority of *Hussein & another v Sigei* [2024] KEHC 10977 (KLR), where the High court held that diminished earning capacity need not be specifically pleaded and proved. In the authority of *William J Butler v Maura Kathleen Butler* [1984] KECA 34 (KLR), the Court of Appeal held:
- “A plaintiff’s loss of earning capacity occurs where, as a result of his 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. The English Court of Appeal made an award under this head in *Ashcroft v Curtin* [1971] 1 WLR 1731, and by now, it is not a new principle in that jurisdiction.....It is a different head of damages from an actual loss of future earnings which can readily be proved at the time of the trial. The difference was explained in this way:
- ‘... compensation for loss of future earnings, is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of the general damages.’- Lord Denning MR in *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd’s Rep 40, 42 (CA).
22. These sums used to be included as an unspecified part of the award of damages for pain and suffering and loss of amenity. The figures were ‘plucked from the air’. Later, in England, damages under this head had to be separately quantified: *Jefford v Goe* [1970] 2 QB 130, and no interest is recoverable on them: *Clark v Rotax Aircraft Equipment Ltd* [1975] 1 WLR 1570. (Emphasis supplied)
23. In the case of *Tile & Carpet Center Warehouse v Okello* [2022] KECA 5 (KLR), the Court of Appeal held that loss of earning capacity, as opposed to loss of earning which must be specifically pleaded and



strictly proved, falls within the category of general damages but must also be proved on a balance of probabilities. The court further rejected the argument that it was improper for the lower court to award damages for loss of earning capacity which damages were neither pleaded nor prayed for. In as much as it is not mandatory to specifically plead for such damages, there must be a basis for the award.

24. The medical report by Dr. Dino Aaron Kyalo indicates that the plaintiff suffered 20% permanent functional disability. That owing to the injuries, the plaintiff could not resume his Tyreman duties at all. The doctor further observed that the fracture site, even after healing, would remain a weak point, prone to possible fractures. The fact that the plaintiff's injuries had an impact on his earning capacity cannot be overlooked, especially considering the nature of his work. However, the medical report indicates that the plaintiff later resumed light duties. There is no evidence to show that the plaintiff was completely locked out of earning any income as a result of the injuries. The figure of Ksh. 1,000,000/= proposed by the plaintiff is on the higher side. The evidence does not show that the plaintiff could not use his right hand at all.
25. In *Mumias Sugar Company Limited v Francis Wanalo* [2007] KECA 485 (KLR), the Court of Appeal held:

“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.” (Emphasis supplied)

26. Having regard to the degree of incapacity that the plaintiff suffered, the risk of the plaintiff not being able to find employment in the labour market was not substantial. It was minimal. Consequently, I find an award of Ksh. 400,000/= under this head to be reasonable. I award the same. As already indicated, this amount will not attract any interest.

Disposition

27. In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the defendant. Consequently, I make the following awards:
1. General damages for pain, suffering and loss of amenities.....Ksh. 800,000/=
 2. Special damages.....Ksh. 6,000/=
 3. Damages for diminished earning capacity.....Ksh. 400,000/=
- Total.....Ksh. 1,206,000/=
28. The plaintiff is also awarded interest on the general damages as well as costs of the suit.



29. 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.”

30. 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.”

31. 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)

32. 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/decreed until payment in full whereas interest on special damages shall accrue from the date of filing suit to the date of judgment.

DATED, SIGNED AND DELIVERED VIA CTS THIS 16TH DAY OF SEPTEMBER, 2025.



Y.A SHIKANDA
SENIOR PRINCIPAL MAGISTRATE.

