



REPUBLIC OF KENYA



**Priscah v Executive Bus Services & 2 others (Civil Case 178 of 2020)
[2025] KEMC 233 (KLR) (8 September 2025) (Judgment)**

Neutral citation: [2025] KEMC 233 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 178 OF 2020
YA SHIKANDA, SPM
SEPTEMBER 8, 2025**

BETWEEN

ROBERT KIOKO PRISCAH PLAINTIFF

AND

EXECUTIVE BUS SERVICES 1ST DEFENDANT

SIMON CHEGE NGUGI 2ND DEFENDANT

LETSHEGO KENYA LIMITED 3RD DEFENDANT

JUDGMENT

1. Robert Kioko Priscah (hereinafter referred to as the plaintiff) initially filed this suit on 2772020 vide a plaint dated 2752020. He sued Executive Bus Services. The plaint was later amended on 2772021 and filed on 682021. In the amended plaint, the plaintiff sued Executive Bus Services, Simon Chege Ngugi and Letshego Kenya Limited (hereinafter referred to as the 1st, 2nd and 3rd defendants respectively) on account of a road traffic accident that allegedly occurred on 342019 at B.P area along Nairobi-Mombasa Highway. The plaintiff averred that he was a lawful pillion passenger on motor cycle registration number KMEJ 884X Skygo along Nairobi-Mombasa Highway when at B.P area, motor vehicle registration number KBQ 200U was so carelessly, negligently and/or recklessly driven that it rammed into the motor cycle thereby occasioning the plaintiff serious injuries.
2. The defendants were sued as the registered/beneficial/legal owners of motor vehicle registration number KBQ 200U Nissan Bus. The plaintiff averred that the accident was caused by the sole negligence of the driver or employee of the defendants and as such, he holds the defendants vicariously liable. The plaintiff pleaded the following particulars of negligence against the driver of KBQ 200U:
 - a. Driving carelessly and negligently;
 - b. Driving without due care and attention;



- c. Failing to slow down while approaching a visible junction;
 - d. Failing to slow down, swerve, stop or in any way do whatsoever to control the said motor vehicle to avoid the said accident;
 - e. Deliberately and recklessly driving the motor vehicle at a high speed;
 - f. Failing to keep any sufficient look out;
 - g. Maintaining the through way while indicating to enter left;
 - h. Hitting the plaintiff while he was on Mombasa to Nairobi lane;
 - i. Maintaining the through way when it was unsafe;
 - j. Failing to observe highway code, traffic rules and regulations;
 - k. Failing to take necessary precautions for the safety of other road users and specifically the plaintiff;
 - l. Driving very fast and rough in the circumstances;
 - m. Causing the accident.
3. The plaintiff pleaded particulars of injuries and special damages and prayed for judgment against the defendants jointly and severally for:
1. General damages;
 2. Special damages of Ksh. 20,060=;
 3. Costs and interest.

The 1st and 2nd Defendants' Defence

4. Following the amendment of the plaint, the 1st and 2nd defendants entered appearance and filed what was referred to as a reply to amended plaint on 5102021. The 1st and 2nd defendants denied being the owners of motor vehicle registration number KBQ 200U, denied that the plaintiff was a pillion passenger on motor cycle registration number KMEJ 884X, denied the occurrence of the accident, denied that the plaintiff sustained severe injuries and denied the particulars of negligence pleaded by the plaintiff. In the alternative, the 1st and 2nd defendants averred that if the accident occurred, as the plaintiff may prove, then the same was caused solely and/or substantially contributed to by the negligence of the plaintiff.
5. The 1st and 2nd defendants pleaded the following particulars of negligence as against the plaintiff:
- a. Failing to take any or any adequate precaution for his own safety;
 - b. Failing to heed the instructions on safety precautions when travelling;
 - c. Causing the accident;
 - d. Failure to keep distance and ramming into the rear of motor vehicle KBQ 200U;
 - e. Riding on unroadworthy motor cycle KMEJ 884X Skygo;
 - f. Failing to heed the traffic rules and regulations when travelling.



6. The 1st and 2nd defendants further averred in the alternative that if the alleged accident occurred, then the same was beyond the control of the defendants. The 1st and 2nd defendants prayed that the plaintiff's suit be dismissed with costs.

The Evidence

The Plaintiff's Case

7. Two witnesses were called on behalf of the plaintiff. PW 1 Police Constable Edwin Cheruiyot testified that he was a traffic police officer based at Makindu Police station. The witness confirmed that the accident involving the motor vehicle and motor cycle was reported at Makindu Police station and that following investigations, the motor cycle rider was blamed for the accident. The witness produced the police abstract on the accident. He stated that the plaintiff was a pillion passenger on the motor cycle and that the bus belonged to the 1st defendant herein. PW 2 was the plaintiff himself. He adopted his statement filed in court as part of his testimony.
8. The testimony of the plaintiff was that on 342019 he was aboard a motor cycle registration number KMEJ 884X and was travelling from Kibwezi to Wayani area. That when they reached B.P junction, the motorcyclist stopped to give way to other motor vehicles. Motor vehicle registration number KBQ 200U appeared from Makindu direction heading towards Mtito Andei direction. That the driver of the motor vehicle indicated that he was branching towards Kibwezi town and at that juncture, the motorcyclist joined the Mombasa-Nairobi Highway. However, the bus which was at a high speed maintained the highway and in the process, rammed into the motorcycle. The plaintiff stated that he was injured. He produced his claim supporting documents in evidence.

The 1st and 2nd Defendants' Case

9. The 1st and 2nd defendants called one witness. Quite interestingly, it was the same witness who testified as PW 1. He produced a police abstract in evidence.

Facts not in Dispute

10. From the evidence of both the plaintiff and the 1st and 2nd defendants, the following facts are not in dispute:
 - a. An accident occurred on 342019 at B.P area along Mombasa-Nairobi highway;
 - b. The accident involved motor vehicle registration number KBQ 200U and motor cycle registration number KMEJ 884X;
 - c. The plaintiff was a pillion passenger on motor cycle registration number KMEJ 884X at the time of accident;
 - d. Motor vehicle registration number KBQ 200U belonged to the 1st defendant.

Main Issues for Determination

11. In my opinion, the main issues for determination are as follows:
 - i. Whether motor vehicle registration number KBQ 200U belonged to the 2nd and 3rd defendants at the material time;
 - ii. Who was to blame for the accident?



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

The Plaintiff's Submissions

12. The plaintiff relied on the police abstract and motor vehicle copy if records and submitted that the defendants were the owners of the accident motor vehicle at the material time. The plaintiff further relied on the evidence on record and submitted that he was a pillion passenger who could not be blamed for the accident. That the defendants did not call for evidence nor take out third party proceedings. The plaintiff urged the court to find the defendants 100% liable for the accident. On quantum, the plaintiff proposed a sum of Ksh. 450,000= in general damages and Ksh. 20,060= for special damages. The plaintiff also prayed for costs of the suit and interest. The plaintiff mentioned several authorities but did not bother to annex copies of the same.

The Defendant's Submissions

13. The 1st and 2nd defendants did not file submissions despite being given sufficient time to do so.

Analysis and Determination

14. I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff.

Liability

15. There is only one version as to how the accident occurred. According to the plaintiff's uncontroverted evidence, he was a pillion passenger on motor cycle registration number KMEJ 884X. The evidence of the plaintiff indicates that it was the bus that rammed into the motor cycle. That they were knocked down while waiting for the bus to pass. 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.”

16. The uncontroverted evidence of the plaintiff 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. The police abstract produced in evidence merely shows that the rider of the motor cycle was to blame. Whoever made the remark on the police abstract was not called to testify and as such, it is not known why the blame was laid on the rider of the motor cycle. Coincidentally, the police abstract still indicates that the matter was pending under investigations. There is no evidence to show that the motor cyclist was even charged with a traffic offence arising out of the accident. Furthermore, the defendants did not take out third party proceedings against the motorcyclist. The court cannot apportion blame to a



- third party unless and until they are joined to the suit. Given the circumstances, I have no option but to find the driver of motor vehicle registration number KBQ 200U 100% liable in negligence.
17. 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.
 18. 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.”
 19. 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.”
 20. 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.”
 21. It has not been denied in evidence that the driver of motor vehicle registration number KBQ 200U was driving in the course of his employment with the 1st and 2nd defendants. Consequently, I find the 1st and 2nd defendants 100% vicariously liable for the accident. I have specifically mentioned the 1st and 2nd defendants and deliberately avoided the 3rd defendant. This is because there is no evidence to show that the 3rd defendant was served and equally no evidence to show that interlocutory judgment was entered against the said defendant. In the circumstances, despite there being evidence to show that the 3rd defendant was a co-registered owner of motor vehicle registration number KBQ 200U, there would be no basis for finding it liable in negligence.

Quantum

22. The medical evidence on record indicates that the plaintiff sustained the following injuries following the accident:
 - i. Degloving injury to the left leg around the ankle joint anteriorly;



23. The doctor who filled the P3 form classified the injury as harm whereas the doctor who prepared the medical report classified the injury as main and indicated that the plaintiff sustained 10% permanent disability. There is no contrary evidence with respect to the injuries. 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 1st and 2nd defendants.
24. 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”.
25. 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.”
26. 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 be 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.”

27. 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.
28. Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

29. I have considered the injuries sustained by the plaintiff. On my part, I have further considered the following authorities:
1. H. Young Construction Company Ltd v Richard Kyule Ndolo [2014]eKLR.
The plaintiff and respondent in the appeal sustained a degloving injury to the left leg with loss of skin over the muscles and a blunt injury to the left ankle joint. The trial court awarded Ksh. 350,000= in general damages on 3092009. On appeal, the award was reduced to Ksh. 250,000= on 1872014.
 2. Martin Mutuku & another v SN (Suing through his mother and next friend DC) [2021] KEHC 2650 (KLR)
The plaintiff and respondent in the appeal sustained abrasions on the scalp, blunt injuries to the chest, blunt injuries to the abdomen and degloving injuries on the left foot. The trial court awarded Ksh. 600,000= as general damages on 16112018. On appeal, the award was reduced to Ksh. 300,000= on 22102021.
 3. Kabutia & another v PK (Suing as the Guardian and Next Friend of DM – Minor) [2023] KEHC 413 (KLR)
30. The plaintiff and respondent in the appeal sustained soft tissues injuries comprising of degloving injury on the left thenar region, a deep cut on the right hypothenar region, pain and swelling on the right



knee and abrasion injury on the right knee region about 3CM in diameter. The trial court awarded Ksh. 300,000= in general damages on 21102021. On appeal, the award was affirmed on 3012023.

31. 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. 350,000= in general damages would suffice. I award the same.

Special Damages

32. The plaintiff pleaded special damages as follows:

- a. Makindu Sub-county patient card.....Ksh. 100=
 - b. Kibwezi Sub-county medical receipts..Ksh. 16,410=
 - c. Medical receipt.....Ksh. 3,000=
 - d. Motor vehicle search.....Ksh. 550=
- Total.....Ksh. 20,060=

33. It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani ta 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”

34. 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.”

35. The special damages were sufficiently proven to the tune of Ksh.19, 960=. I award the same.

Disposition

36. In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the 1st and 2nd defendants. Consequently, I make the following awards:

- 1. General damages for pain, suffering and loss of amenities.....Ksh. 350,000=
 - 2. Special damages.....Ksh. 19,960=
- Total.....Ksh. 369,960

37. 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.”
38. In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated that:
39. 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.
40. 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.”
- 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)
41. 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 judgmentdecree until payment in full and on Special damages, from the date of filing suit to the date of judgmentdecree. For avoidance of doubt, the case against the 3rd defendant is dismissed.

DATED, SIGNED AND DELIVERED VIA CTS THIS 8TH DAY OF SEPTEMBER, 2025.

Y.A SHIKANDA



SENIOR PRINCIPAL MAGISTRATE.

