



**Ouma v Karanja & another (Civil Appeal E781 of 2024)
[2025] KEHC 15351 (KLR) (Civ) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E781 OF 2024

AN ONGERI, J

OCTOBER 24, 2025

BETWEEN

DOROTHY ACHIENG' OUMA APPELLANT

AND

DAVID KUNGU KARANJA 1ST DEFENDANT

JOSEPH NGARUIA WAMBUI 2ND DEFENDANT

*(Being an appeal from the Judgment of Hon. Lucy
Njora (SPM) in Milimani CMCC No. E2795 of 2022)*

JUDGMENT

1. The Appellant in this appeal, Dorothy Achieng' Ouma filed Milimani CMCC No. E2795 of 2022 against the two Respondents David Kungu Karanja And Joseph Ngaruia Wambui.
2. The cause of action arose out of an accident that occurred in 2013. The suit was filed vide plaint dated 17th May 2022. The Appellant obtained leave of the court to file suit out of time since she was out of the country.
3. The Appellant said that on 10th June 2013 at about 6:45a.m she was a lawful passenger in motor vehicle registration No. KBF 953H Isuzu Bus along Ring Road Ngara when the driver of the bus negligently and recklessly drove the bus after getting into a heated argument with the conductor causing the bus to roll out of the road.
4. The Respondents denied the Appellant's claim.
5. The court found the Respondents 100% liable but dismissed the claim in respect of general damages for reasons that the same were not particularized in the plaint.



6. The trial court only awarded special damages of Kshs. 35,990/= together with costs of the suit.
7. The Appellant has appealed to this court on the following grounds:-
 - i. That the Learned Magistrate in the Court below erred in fact and in Law in failing to award the Appellant herein General Damages.
 - ii. That the Learned Magistrate in the Court below erred in fact and in Law in finding that the Appellant herein failed to plead for General Damages.
 - iii. That the Learned Magistrate in the Court below erred in Law and in fact in finding that the injuries sustained by the Appellant herein were not adequately particularized in the evidence.
 - iv. That the Learned Magistrate in the Court below erred in fact and in Law in finding that failure to include particulars of the injuries sustained by the Plaintiff in the Plaintiff's case.
8. The parties filed written submissions as follows:- the appellant submitted that the trial court failed to award the appellant general damages on the ground that the plaintiff never pleaded the particulars of injuries.
9. The appellant further argued that this was contrary to the respondents document dated 12/7/2018 which indicated that the appellant sustained injuries together with the other passengers. Apart from testifying in court as to the injuries she sustained she also produced documents and the medical report which particularized the injuries sustained.
10. The appellant argued that the trial court should have interpreted the evidence adduced in the case in a way that would promote substantive justice, fairness and the purpose of the constitution.
11. That the failure to plead though unfortunate was not fatal to the plaintiff's claim. In light of this the appellant urged this court to set aside the order dismissing the prayer for general damages.
12. The respondent alternatively submitted that it is trite law that parties are bound by their pleadings.
13. That Order 2 Rule 4 of the Civil Procedure Rules 2010 requires that one must specifically plead and prove amongst others injuries suffered.
14. The appellant's failure to adhere to order 2 rule 4 of the Civil Procedure is not a procedural technicality that can be cured by the overriding objective principle.
15. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and come to its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
16. The issues for determination in this appeal are as follows:
 - i. Whether the trial court was right in dismissing the Appellant's claim in respect of general damages.
 - ii. Whether the appeal should be allowed.
 - iii. Who pays the costs of the appeal?
17. The court finds that the learned trial magistrate erred in law and in fact by dismissing the Appellant's claim for general damages on the sole ground that the injuries were not specifically particularized in the body of the plaintiff.



18. While it is a cardinal principle of Kenyan civil procedure that parties are bound by their pleadings, the circumstances of this case demonstrate that a strict, formalistic application of this rule would lead to an injustice.
19. The record reveals that the Appellant, in her testimony, described the injuries she sustained, including pieces of glass being removed from her forehead and both legs, and that she continued to suffer pain on the left side of her body.
20. Crucially, she also produced in evidence a P3 Form dated 1st July 2013 and a medical report from The Nairobi Hospital dated 15th July 2013, both of which particularized the nature of the injuries she suffered.
21. These documents were produced without objection from the Respondents and thus formed part of the evidence for the trial court's consideration.
22. The Respondents were also put on notice by the plaint that the Appellant was claiming for "serious bodily harm," and they had in their possession, prior to the trial, the very medical documents that detailed the injuries.
23. The Respondents were therefore not taken by surprise, and they had a full opportunity to challenge this evidence, including by subjecting the Appellant to their own medical examination, which they did not do.
24. The trial court's failure to consider this substantive evidence in its entirety was a misdirection.
25. Furthermore, the spirit of *the Constitution* of Kenya, 2010, and the overriding objective of the Civil Procedure Rules as encapsulated in Sections 1A and 1B, command courts to administer justice expeditiously, proportionately, and without undue regard to procedural technicalities.
26. The Court of Appeal in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR emphasized that the overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.
27. To dismiss a meritorious claim for compensation for bodily injuries purely on the basis of a pleading technicality, where the substance of the claim was fully ventilated through evidence, runs contrary to this objective.
28. The trial court had a duty to do substantive justice between the parties, which it failed to do by ignoring the medical evidence that was properly adduced.
29. The finding of the trial court dismissing the claim for general damages is hereby set aside.
30. It now falls upon this court to assess the quantum of general damages since the trial court did not assess the damages which would have been payable.
31. . Having considered the nature of the injuries as particularized in the medical report and the submissions on comparable awards, and guided by principles espoused in cases such as *Butler v Butler* [1984] KLR 225, where the court stated that comparable injuries should attract comparable awards, this court awards the Appellant general damages in the sum of Kshs. 700,000.
32. This award is deemed to be fair and commensurate with the injuries sustained. The special damages of Kshs. 35,990 awarded by the trial court are upheld.
33. The Appeal is allowed and the judgment of the trial court in Milimani CMCC No. E2795 of 2022 is set aside and substituted with a judgment in favour of the Appellant as follows:



- i. General Damages: Kshs. 700,000
 - ii. Special Damages: Kshs. 35,990
 - iii. The total award of Kshs. 735,990 shall attract interest at court rates from the date of the judgment in the lower court until payment in full.
 - iv. The Appellant shall have the costs of the suit in the subordinate court.
34. Each party to bear its own costs of this appeal.
35. Orders to issue accordingly.
36. I have considered the submissions by parties on the issue of assessment of general damages.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF OCTOBER, 2025 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for Appellant

.....for Defendants

