



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO 362 OF 2015

JOSEPHAT MAGARE KAYAGO.....PLAINTIFF

VERSUS

**CHINA ROAD AND BRIDGE CORPORATION (K)
.....DEFENDANT**

JUDGMENT

THE CLAIM

Josephat Magare Kayago (hereinafter referred to as the plaintiff) filed this suit on 19/8/2015 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 5/8/2015 at an undisclosed place, while the plaintiff was in the course of his employment with the defendant as a labourer. The plaintiff averred that on the material day he was assigned duties of making a culvert when an iron sheet fell on his left leg below the knee, thereby occasioning him injuries. The plaintiff averred that the accident was wholly caused by the negligence and/or breach of employment and terms thereof, on the part of the defendant and or its agent/servant. The plaintiff pleaded particulars of negligence and breach of terms of the employment contract against the defendant but owing to the consent on liability entered herein, I will not reproduce the said particulars.

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 for Ksh. 3,000/=;
- c) Costs and interest of the suit.

THE DEFENDANT'S DEFENCE

The defendant entered appearance on 24/11/2015 and filed a statement of defence on the same day. The defendant denied the allegations contained in the plaint and in particular denied that it negligently assigned duties to the plaintiff and contended that it was the plaintiff who negligently carried out duties not assigned to him. The defendant further denied breach of contractual and/or statutory obligations and pleaded several particulars of negligence against the plaintiff. The defendant denied that the plaintiff sustained injuries and averred that if such injuries were sustained, the plaintiff is solely to blame. The defendant prayed that the plaintiff's suit be dismissed with costs.

CONSENT ON LIABILITY AND EVIDENCE

On 22/7/2025 the parties herein recorded a consent which was adopted as an order of the court in the following terms:

- a) Judgment on liability be entered in the ratio of 20% against the plaintiff and 80% against the defendant;
- b) The documents filed by the parties be admitted in evidence without calling the makers thereof;
- c) Parties to file submissions on quantum.

THE EVIDENCE

Following the consent, the following documents were admitted in evidence in favour of the plaintiff:

- i. Demand letter;
- ii. Treatment notes from Makindu Sub-county hospital;

- iii. Medical report by Dr. Titus Ndeti;
- iv. Payment receipt for the medical report.

No documents were filed and admitted in evidence on the part of the defendant.

MAIN ISSUES FOR DETERMINATION

In view of the consent, 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

On quantum, the plaintiff submitted a sum of Ksh. 250,000/= in general damages and relied on the following authority:

1) *Channan Agricultural Contractors Ltd v Fred Barasa Mutayi [2013] eKLR*

The plaintiff and respondent in the appeal herein sustained blunt injury to the chest and cut wounds to the head and left leg. The trial court awarded Ksh. 250,000/= on 20/2/2012. On appeal, the award was reduced to Ksh. 150,000/= on 30/10/2013.

The plaintiff further prayed for special damages of Ksh. 3,000/= as well as costs of the suit and interest.

THE DEFENDANT'S SUBMISSIONS

The defendant proposed a sum of Ksh. 90,000/= in general damages and relied on the following authorities:

1) *George Mugo & another v AKM (Minor suing through next friend and mother AMK [2018] eKLR.*

The plaintiff and respondent in the appeal sustained blunt injuries to the left shoulder, chest, left wrist and left arm. The trial court awarded Ksh. 300,000/= in general damages on 5/9/2013. On appeal, the award was reduced to Ksh. 90,000/= on 11/6/2018.

2) *Godwin Ileri v Franklin Gitoonga Pascal v Ouko [2023] KEHC 24463 (KLR).*

The plaintiff and respondent in the appeal sustained a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee. The trial court awarded Ksh. 300,000/= in general damages on 16/9/2015. On appeal, the award was reduced to Ksh. 90,000/= on 30/5/2018.

On special damages, the defendant urged the court to award what had been proven.

ANALYSIS AND DETERMINATION

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

Quantum

I have considered the medical evidence on record. The same reveals that the plaintiff sustained a deep cut wound on the left lower limb. The same injury was pleaded in the plaint. There is no contrary evidence with respect to the plaintiff's injury. The injury was classified as harm in the medical report. There is sufficient evidence to prove that the plaintiff sustained an injury as a result of the accident. Given the fact that the defendant has been held 80% liable for the accident, the plaintiff is thus entitled to damages as against the defendant. 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 (H) 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”.

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.”

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.

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

General Damages for pain, suffering and loss of amenities

I have considered the injuries sustained by the plaintiff. The medical evidence produced by the plaintiff indicates that the plaintiff was treated as an outpatient. I have further considered the submissions made by the parties on quantum as well as the authorities relied upon. The authorities relied upon by the parties are relevant. On my part, I have considered the following authority:

3) **Kenblest Limited v John Mutisya Wambua [2016] eKLR.**

The plaintiff and respondent in the appeal sustained cut wounds on the head and left forearm. The trial court awarded Ksh. 220,000/= in general damages in 2010. On appeal, the award was reduced to Ksh. 150,000/= on 2/3/2016.

Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 200,000/= in general damages would suffice. I award the same.

Special Damages

The plaintiff pleaded special damages as follows:

- a) Medical report.....Ksh. 3,000/=
- b) Medical expenses.....Ksh. 40,000/=

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"

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."

The special damages were proven as pleaded. Consequently, I award **Ksh. 3,000/=** as special damages.

DISPOSITION

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. 200,000/=
- 2) Special damages.....Ksh. 3,000/=
- Total.....Ksh. 203,000/=
- Less 20% liability.....Ksh. 40,600/=
- Balance due to the plaintiff.....**Ksh. 162,400/=**

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.”

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.”*

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)

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 whereas interest on special damages shall accrue from the date of filing suit to the date of judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 18TH DAY OF
NOVEMBER, 2025.**

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

