



REPUBLIC OF KENYA



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**Ontiri v Mombo & 2 others (Civil Case E139 of 2022)  
[2025] KEMC 282 (KLR) (4 November 2025) (Judgment)**

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**REPUBLIC OF KENYA  
IN THE MAKINDU LAW COURTS  
CIVIL CASE E139 OF 2022  
YA SHIKANDA, SPM  
NOVEMBER 4, 2025**

**BETWEEN**

**HEZEKIAH MAKORI ONTIRI ..... PLAINTIFF**

**AND**

**ANDREW MUSUNGU MOMBO ..... 1<sup>ST</sup> DEFENDANT**

**DREAMLINE EXPRESS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**SAS FREIGHTWAYS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**The Claim**

1. Hezekiah Makori Ontiri (hereinafter referred to as the plaintiff) filed this suit on 12/9/2022 vide a plaint dated 3/8/2022. He sued Andrew Musungu Mombo, Dreamline Express Limited and SAS Freightways Limited (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively) on account of a road traffic accident that allegedly occurred on 4/11/2021 at Smart Future Academy along Nairobi-Mombasa Highway. The plaintiff averred that he was lawfully driving motor vehicle registration number KCR 527U when motor vehicle registration number KCB 290P was carelessly and negligently driven that it overtook when it was not safe to do so and as a result, it caused an accident and occasioned the plaintiff serious injuries.
2. The 1<sup>st</sup> defendant was sued as the driver of motor vehicle registration number KCB 290P at the material time whereas the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were sued as the beneficial and registered owners, respectively, of motor vehicle registration number KCB 290P. The plaintiff pleaded the following particulars of negligence against the defendant, without specifying which defendant it was:
  - a. Driving at an excessive speed in the circumstances;
  - b. Driving without due care and attention;



- c. Failing to keep a proper lookout and sufficient regard for other road users, the plaintiff being one of them;
  - d. Failing to break, stop, swerve and/or slow down so as to keep the motor vehicle registration number KCB 290P in control;
  - e. Causing the accident herein and occasioning the plaintiff serious injuries;
  - f. Overtaking motor vehicle registration number KCR 572U when it was not safe to overtake;
  - g. Hitting motor vehicle registration number KCR 572U when it was on its lane;
  - h. Veering off the road and causing an accident;
  - i. Dangerously and/or recklessly overtaking;
  - j. Occasioning the plaintiff serious injuries;
  - k. Generally being negligent.
2. The plaintiff pleaded particulars of injuries and special damages and prayed for judgment against the defendant for:
1. General damages;
  2. Special damages of Ksh. 4,550/=;
  3. Costs and interest.

#### **The 1<sup>st</sup> And 2<sup>nd</sup> Defendants' Defence**

3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants entered appearance and filed a statement of defence on 8/11/2022. The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied being the driver and beneficial owner respectively, of motor vehicle registration number KCB 290P, denied that the plaintiff was lawfully driving motor vehicle registration number KCR 572U along the Nairobi-Mombasa Highway, denied the occurrence of the accident, denied that the plaintiff sustained injuries and denied the particulars of negligence pleaded by the plaintiff. In the alternative, the 1<sup>st</sup> and 2<sup>nd</sup> 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 (wrongly indicated as deceased).
4. The 1<sup>st</sup> and 2<sup>nd</sup> 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. Failing to heed the traffic rules and regulations when travelling;
  - d. Failing to wear a seatbelt while travelling.
5. The 1<sup>st</sup> and 2<sup>nd</sup> defendants further separately pleaded particulars of negligence against the driver of motor vehicle registration number KCR 572U, forgetting that the plaintiff had pleaded that he was the one driving the said motor vehicle. It was pleaded by the 1<sup>st</sup> and 2<sup>nd</sup> defendants that if the alleged accident occurred, then the same was beyond their control. The 1<sup>st</sup> and 2<sup>nd</sup> defendants prayed that the plaintiff's suit be dismissed with costs.



### **Non-appearance By The 3<sup>rd</sup> Defendant**

6. The record indicates that the 3<sup>rd</sup> defendant was served but failed to enter appearance nor file a defence. Consequently, upon request by the plaintiff, interlocutory judgment was entered against the 3<sup>rd</sup> defendant on 9/3/2023.

### **The Evidence**

#### **The Plaintiff's Case**

7. Three witnesses were called on behalf of the plaintiff. PW 1 Police Sergeant Benson Muema testified that he was a traffic police officer based at Makindu Police station. The witness confirmed that the accident was reported at Makindu Police station and that following investigations, the driver of KCB 290P was charged with the offence of driving without due care and attention and was convicted and fined Ksh. 25,000/= . The witness produced the police abstract on the accident. 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 4/11/2021 he was driving from Nairobi general direction heading towards Mombasa general direction and that when he reached the area near Smart Future Academy, motor vehicle registration number KCB 290P which was being driven from the opposite direction overtook when it was not safe to do so and in the process, it veered to the plaintiff's rightful lane and rammed into the plaintiff's motor vehicle registration number KCR 572U. The plaintiff testified that he sustained injuries and was taken to hospital. The plaintiff blamed the driver of motor vehicle registration number KCB 290P for the accident. He stated that he swerved to the left to avoid the accident and that he did not contribute to it. The plaintiff produced the documents filed in court in evidence. PW 3 Doctor Woshington Wokabi testified that he examined the plaintiff and prepared a medical report. He produced the report in evidence.

#### **The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Case**

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

### **Main Issues For Determination**

10. In my opinion, the main issues for determination are as follows:
  - i. Whether an accident occurred on 4/11/2021 at Smart Future Academy area along Mombasa-Nairobi Highway involving motor vehicles registration numbers KCR 572U and KCB 290P;
  - ii. Whether the plaintiff was the driver of motor vehicle registration number KCR 572U at the material time and was thus involved in the accident;
  - iii. Whether the 1<sup>st</sup> defendant was the driver of motor vehicle registration number KCB 290P at the material time;
  - iv. Whether motor vehicle registration number KCB 290P belonged to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants at the material time;
  - v. Who was to blame for the accident?
  - vi. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;
  - vii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;



viii. Who should bear the costs of this suit?

### **The Plaintiff's Submissions**

11. The plaintiff relied on the evidence on record and submitted that the defendants did not call any evidence in rebuttal. He urged the court to find the defendants 100% liable for the accident. He relied on the following authorities:
  - a. Mohamed Muyunga v Vinoth Abwolet Eshepet [2020] eKLR;
  - b. David v Teacher Service Commission [2023] KEHC 1850 (KLR);
  - c. Mwenda v Mutembei [2023] KEHC 20889 (KLR);
  - d. Peter Ngigi Kuria & another (Suing as the legal representatives of the Estate of Joan Wambui Ngigi) v Thomas Ondili Oduol & another [2019] eKLR.
12. On quantum, the plaintiff proposed a sum of Ksh. 1,000,000/= in general damages and relied on the following authorities:
  1. Easy Coach Limited v Emily Nyangasi [2017] eKLR- The plaintiff and respondent in the appeal sustained facial injuries, injury to chest, injury to back, injury to right hand with cut wound and injury to right leg with cut wounds. The most serious injuries were on the right hand which healed with a 10 cm scar with keloid formation on the elbow, and on the right leg which was treated through grafting and healed with healed 18cm scar right thigh, 26 cm scar right leg, 28 cm scar right leg below the knee and 12 cm scar right foot with keloid formation. The trial court awarded Ksh. 700,000/= in general damages on 13/5/2015. On appeal, the award was affirmed on 6/4/2017;
  2. Lilian Wanja v Cyprian Mugendi Igonga & 2 others [2016] eKLR- The plaintiff and appellant in the appeal injuries to the head, face, left side of the chest; right wrist and elbows, both knees left hip and the dislocation of the pelvis/hip. She was admitted in hospital for four (4) days. The trial court awarded Ksh. 200,000/= in general damages on 14/2/2012. On appeal, the award was enhanced to Ksh. 500,000/= on 1/9/2016;
  3. Habiba Abdi Mohamed v Peter Maleve [2000] eKLR- The plaintiff suffered injuries on her left arm and her head and face. The court awarded Ksh. 400,000/= in general damages on 21/7/2000;
  4. Francis Ochieng & another v Alice Kajimba [2015] eKLR- The plaintiff and respondent in the appeal sustained multiple soft tissue injuries. The trial court awarded Ksh. 500,000/= in general damages on 18/2/2014. On appeal, the award was reduced to Ksh. 350,000/= on 2/6/2015;
  5. Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] eKLR- The plaintiff and respondent in the appeal sustained blunt injury to the chest, bruises of the lower abdomen, bruises of the right hip joint, bruises of the thigh and bruises on the knee. The trial court awarded Ksh. 350,000/= in general damages on 28/12/2018. On appeal, the award was affirmed on 10/3/2021.
13. The plaintiff proposed a sum of Ksh. 24,550/= for special damages. The plaintiff also prayed for costs of the suit and interest.



## The 1<sup>st</sup> And 2<sup>nd</sup> Defendant's Submissions

14. The 1<sup>st</sup> and 2<sup>nd</sup> defendants did not file submissions despite being given sufficient time to do so.

## Analysis And Determination

15. I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff. There is sufficient and uncontroverted evidence to prove that an accident occurred on 4/11/2021 at Smart Future Academy area along Mombasa-Nairobi Highway involving motor vehicles registration numbers KCR 572U and KCB 290P. The evidence also proves that the plaintiff was the driver of motor vehicle registration number KCR 572U and that he was involved in the accident. The police abstract produced in evidence indicates that the 1<sup>st</sup> defendant was the driver of motor vehicle registration number KCB 290P at the material time. From the contents of the police abstract and the copy of records from the Registrar of motor vehicles, there is an indication that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were the owners of motor vehicle registration number KCB 290P. The defendants did not attend court to deny that fact or adduce contrary evidence.

## Liability

16. There is only one version as to how the accident occurred. According to the plaintiff's uncontroverted evidence, he was driving motor vehicle registration number KCR 572U when motor vehicle registration number KCB 290P which was from the opposite direction attempted to overtake another motor vehicle and in the process, it veered to the rightful lane of the plaintiff and collided with his motor vehicle. The plaintiff stated that he veered to his left in a bid to avoid the accident. The police abstract indicates that the 1<sup>st</sup> defendant was blamed for the accident. That he was charged with the offence of careless driving (ought to be driving without due care and attention) and was fined Ksh. 25,000/= upon conviction. There is no contrary evidence.

17. 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.”

18. The uncontroverted evidence of the plaintiff shows that the 1<sup>st</sup> defendant was at fault. He was careless and reckless in his manner of driving. It does not show that the plaintiff was to blame. Given the circumstances, I have no option but to find the 1<sup>st</sup> defendant 100% liable in negligence. 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.



19. 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.”
20. 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.”
21. 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.”
22. It has not been denied in evidence that the 1<sup>st</sup> defendant was driving in the course of his employment with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Consequently, I find the 2<sup>nd</sup> and 3<sup>rd</sup> defendants 100% vicariously liable for the accident.

### **Quantum**

23. The medical evidence on record indicates that the plaintiff sustained the following injuries following the accident:
- i. Extensive skin and muscle degloving injuries on the right arm, elbow and forearm;
  - ii. Cut extensor tendon to the right middle finger; and
  - iii. Deep abrasions on the right side of the head.
24. The doctor who filled the P3 form classified the injuries as maim. 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 defendants.
25. 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”.

26. 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.”

27. 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.”

28. 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

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 30/9/2009. On appeal, the award was reduced to Ksh. 250,000/= on 18/7/2014.
  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 16/11/2018. On appeal, the award was reduced to Ksh. 300,000/= on 22/10/2021.
  3. Kabutia & another v PK (Suing as the Guardian and Next Friend of DM – Minor) [2023] KEHC 413 (KLR)  
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 21/10/2021. On appeal, the award was affirmed on 30/1/2023.
30. 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. 450,000/= in general damages would suffice. I award the same.

### Special Damages

31. The plaintiff pleaded special damages as follows:



- a. Motor vehicle copy of records.....Ksh. 550/=
- b. Medical expenses.....Ksh. 1,000/=
- c. Medical report.....Ksh. 3,000/=
- Total.....Ksh. 4,550/=
32. 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”
33. 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.”
34. The plaintiff made a frail attempt to introduce further special damages of Ksh. 10,000/= for the doctor’s attendance and another Ksh. 10,000/= for the attendance of the police officer. The plaintiff attached to his submissions copies of a voucher and receipt for the amount claimed. To begin with, the claims were not pleaded as required by law. Secondly, the plaintiff attempted to adduce evidence by way of submissions. Submissions cannot take the place of evidence. Thirdly, costs for attendance of witnesses in court cannot be termed as special damages in the same suit. They can only be claimed later after judgment by way of costs of the suit. I will thus disregard the claim of Ksh. 20,000/= by way of special damages and award Ksh. 4,550/= as pleaded and proved.

### Disposition

35. 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. 450,000/=
2. Special damages.....Ksh. 4,550/=
- Total.....Ksh. 454,550/=
36. 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.”
37. 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.
38. 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.”
39. 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 )
40. 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 VIA CTS THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**

