



**Njagi v Karimi & 2 others (Civil Appeal E066 of 2024)  
[2025] KEHC 17634 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E066 OF 2024  
EM MURIITHI, J  
NOVEMBER 28, 2025**

**BETWEEN**

**TIMOTHY WAMBUGU NJAGI ..... APPELLANT**

**AND**

**EZRA KARIMI ..... 1<sup>ST</sup> RESPONDENT**

**PETER MUTHEE ..... 2<sup>ND</sup> RESPONDENT**

**JULIUS KAECHA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. Martha Opanga  
(P.M) in Wang'uru PMCC No. 49 of 2022 delivered on 21/5/2024)*

**JUDGMENT**

1. By an amended plaint dated 28/2/2023, the Appellant sued the Respondents seeking general damages for pain, suffering and loss of amenities, special damages and costs of the suit plus interest. The Appellant pleaded that on or about 3/2/2022, he was lawfully riding motor cycle registration No. KMDU 607 J along Mwea - Embu road at Nice City, when the 3<sup>rd</sup> Respondent so negligently drove, managed and/or controlled Motor Vehicle Registration No. KCZ 179 J as a result of which it knocked him down, occasioning him serious injuries.
2. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents denied the claim vide their statement of defence dated 20/5/2022 and prayed for the Appellant's suit to be dismissed with costs.
3. Upon full hearing of the case, the trial court apportioned liability at 50% against the Respondents and awarded general damages of Ksh. 1,500,000 and special damages of Ksh. 540,444 together with costs and interest.



## The appeal

4. On appeal, the Appellant vide his memorandum of appeal dated 19/6/2024 set out 5 grounds as follows:
  1. The learned trial magistrate erred in law and fact in failing to appreciate that the appellant had indeed pleaded for and requested for the court to award him future medical expenses of ksh. 200,000/=.
  2. The learned trial magistrate erred in law and fact in determining that the appellant had not pleaded and proved future medical expenses yet the same were pleaded and proved in evidence.
  3. The learned trial magistrate erred in law and fact by departing from case law precedent binding upon the Magistrate's court as relate to the award of future medical expenses.
  4. The learned trial magistrate erred in law and in fact by departing from the appellant's leading evidence and submissions on future medical expenses.
  5. The learned trial magistrate erred in law and fact in failing to find that as the appellant had pleaded future medical expenses in the plaint then the same should have been awarded as prayed for.

## Duty of the Court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123)

## Oral Evidence

6. PW1 Timothy Wambugu Njagi, the Appellant herein produced his ID, P3 form, discharge summary, medical report and receipt, the 2<sup>nd</sup> medical report and its receipt, copy of records and its receipt, invoice from MP Shah hospital, deduction to Equity life Assurance, demand letter, statutory notice and CT Scan. He testified that, "I wrote witness statement which I rely on as testimony in chief. On 3/2/2022 I was involved in a road traffic accident. I was going to fuel at Nice petrol station when a pick up ferrying miraa hit me. Accident was reported. Police abstract was issued to me. I was treated at Our lady of Lourdes. I was given first aid. I was admitted at MP Shah Hospital Nairobi. I have discharge summary. I suffered fractures injury on my left tibia and fibula and scapula. Later on I was examined at Ngurubani services limited who compiled medical report. I paid the doctor ksh 8000/=. On 16/2/2023 the same doctor re-examined me. I have 2<sup>nd</sup> medical examination report. I paid ksh 8,000. I was on my side of the road when the motor vehicle hit me when I was about to get into the petrol station. The driver was over speeding with the help of eye witness the motor vehicle was traced. Copy of records was obtained. I paid for copy of records. Medical bill at Mp Shah 523194/=. My insurance paid the bill. I work with Equity Bank. I pay premiums 2500/= monthly. I have print out statements showing deduction to Equity life Assurance. I had to fill a claim form 22638 is my policy number. Demand letter was written to defendant. Statutory notice was issued. Scans were done. I pray for General Damages, Special Damages, Cost of suit with interest Motor vehicle registration no KCZ 179J hit me."
7. On cross examination, he stated that, "My hand still swells. It was fixed using nails. It swells occasionally. I was riding a motor cycle registration no KMDU 607. It was my motor cycle. I do not have a DL in



- court. It was not insured at the time of the accident. The matter is still pending under investigation. I was on my left side of the road. Bill was paid by my insurance. I pay monthly premiums.”
8. In re-examination, he stated that, “I pay monthly premiums. Matter is pending under investigation. Motor vehicle hit me on my side of the road.”
  9. PW2 Denis Muriithi Mithamo adopted his witness statement as his evidence in chief.
  10. On cross examination, he stated that, “I am an eye witness. I was at Top green. I saw motor vehicle registration no KCZ 179 J hit a motor cycle and rider. The motor vehicle was overtaking. The rider was entering the petrol station. Police interrogated me.”
  11. In re-examination, he stated that, “Matter is still pending under investigation.”
  12. PW3 CPL Simon Njau of Wanguru police station, produced the police abstract as exhibit 6. He testified that, “Captain Ann was the investigating officer. She left on transfer. It was reported under OB 37/3/2/2012. I am in court through witness. The accident was reported. Matter is still pending under investigation. I was paid ksh. 5000/= for court attendance.”
  13. On cross examination, he stated that, “Matter is pending under investigation. Mine was to produce abstract.”
  14. Anguru Coc Suit No FA49 DF 7022  
 DW1 Julius Mungathia Kaeti, the 3<sup>rd</sup> Respondent herein adopted his statement as his evidence in chief and produced the list of documents s exhibits. He went on to state that, “12494090 is my ID no. I am a driver of motor vehicle registration KCZ 179 J. I blame the plaintiff for the accident. He emerged from between motor vehicles and entered nice city. He did not ascertain safety on the road. A head of me we no motor vehicles. On his lane there were many motor vehicles. He emerged from between the Motor vehicles. One passed then he came behind the first. They shocked me. I have been a driver for over 20 years. I have not been sued with any traffic offence.” PARAGRAPH 15.  
 On cross examination, he stated that, “Accident occurred on 3/2/2022. I was from Meru heading to Nairobi. I was carrying sacks of miraa. I had stopped at nice and offloaded one sack at nice. I did not stop. I feared the boda boda riders would attack me. I went. On reaching makutano. The radiator burst. I was pulled by another motor vehicle to Nairobi. I left the motor vehicle and came back to report. My motor vehicle was damaged on the right front. I don’t recall the date I reported. I didn’t hide evidence. The matter is pending under investigation. I was at a speed of 60 kmph. I came from Maua at 10.00 am. Accident occurred at 2.00 pm. In my statement I wrote 10.00 hours. Maua is 300 kmph. I have been a driver for 20 years. I have not produced my driving licence. I gave it to police.”

### Submissions

16. The Appellant faults the trial court for failing to award future medical expenses, and cites *Mary Maina v Joseph Maingi Wambua* (2020) eKLR, *Ibrahim Ndungu Gikonyo v Geoffrey Nyamweya Omae* (2021) eKLR and *Geoffrey Kamuki & Another v RKN* (Minor suing through her late father and next friend ZKN (2020) eKLR.
17. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents urge that future medical costs were not specifically pleaded and the trial court had no power to make an order, unless by consent, which was outside the pleadings. They cite *Dakianga Distributors Limited (k) v Kenya seed Company Limited* (2015) eKLR, *MNM v DNMK and 13 others* (2017) eKLR, *Kenya Commercial Bank Ltd v Sheikh Osman Mohammed* [2013] KECA 61 (KLR) and *Joshua Batisi Makomere v Lubao Jaggery Factory Limited* (2015) eKLR for the proposition that parties are bound by their pleadings.



## Analysis and determination

18. From the grounds of appeal as framed, the singular issue for determination is whether the trial court erred in failing to award future medical expenses.
19. The trial court's refusal to make an award for future medical expenses was anchored on the Appellant's failure to specifically plead it.
20. At paragraph 8 of his amended pleadings, the Appellant particularized special damages to include future medical expenses of Ksh. 200,000.
21. In *Peter Kamau Gathoro v David Waweru Nganga* [2020] KEHC 9856 (KLR), the court (Ruth N. Sitati J.) encapsulated that;

“ 18. Clearly the issue of future medical expenses was specifically pleaded in the body of the pleadings and I do not agree with the submissions of the respondent that the same ought to have been raised under the prayers' head for the issue to be regarded as pleaded or for it to be awardable by the court. Such an approach would be against the principle of substantive justice under Article 159 (2) of *the Constitution* of Kenya in that our jurisprudence and decisional law no longer countenances this kind of technical and formalistic justice (See Civil Appeal No. 19 of 2016, Anchor Limited Vs. Sports Kenya) The issue of future medical expenses was plainly before the trial court both in the pleadings and in evidence and the court had a duty to decide on it even though it was not under the prayers' head of the pleadings as the appellant had specifically prayed for it in the body of the pleadings. The learned trial magistrate was therefore in error in holding that the claim for future medical expenses was not pleaded in the pleadings.”

22. Comparatively in *Karin Anne Challis v The Hon. Attorney General 7 6 Others* (2002) eKLR, the court (D.A Onyancha J.) said:

“ It is a cardinal principle of the court that it will only grant reliefs sought by a party. Indeed where a court has proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs. Using the same principle, I do hold that in a case where a party requires a cancellation or rectification or an amendment of a title, such a party must specifically plead such relief before a court of law can grant it.”

23. The two doctors concurred in their respective medical reports that the Appellant would require between Ksh.75,000 to Ksh. 200,000 for the removal of the metal implants. Even on cross examination, the Appellant affirmed that, “My hand still swells. It was fixed using nails. It swells occasionally.”
24. This court thus finds that the Appellant specifically prayed for future medical expenses of Ksh.200,000 in the body of his pleadings, and the trial court fell into error when it declined to award it. There is therefore a justification for this court to interfere.

## Orders

25. Accordingly, for the reasons set out above, the court finds the Appellant's appeal to be merited and it is allowed in the following terms:



1. The Appellant is awarded future medical expenses of Ksh.200,000.
2. The other awards remain unchanged.
3. There shall be no orders as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Momanyi for Ms. Wangechi for the Appellant.

Ms. Angwenyi for the Respondent.

