REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO E195 OF 2024

HANNAH WANGARI MUIRURI.....PLAINTIFF

VERSUS

SAMUEL KARANJA WANYUMBA.....DEFENDANT

JUDGMENT

THE CLAIM

Hannah Wangari Muiruri (hereinafter referred to as the plaintiff) filed this suit on 22/8/2024 vide a plaint dated 16/8/2024. The plaintiff sued Samuel Karanja Wanyumba (hereinafter referred to as the defendant) on account of a road traffic accident that allegedly occurred on 18/10/2023 at Kalulu area along Mombasa-Nairobi highway. The plaintiff averred that she was a lawful passenger aboard motor vehicle registration number KDC 361X when the driver of the said motor vehicle drove so carelessly and negligently that he overtook when it was not safe to do so, hence ramming into tractor registration number KTCA 032E from the rear, and further hit motor vehicle registration number KDB 465P/ZG 4750, thereby causing serious injuries to the plaintiff.

The defendant was sued as the registered owner of motor vehicle registration number KDC 361X at the material time. The plaintiff pleaded the following particulars of negligence against the defendant and his agent:

a) Driving without due care and attention;
b) Driving at an excessive speed in the circumstances;
c) Overtaking when it was not safe to overtake;
d) Overtaking carelessly and negligently;
e) Failing to stop, slow down, brake, swerve in any way to control motor vehicle registration number KDC 361X;
f) Driving carelessly and negligently in the circumstances;
g) Hitting Tractor registration number KTCA 032E from the rear;
h) Hitting Trailer registration number KDB 465P/ZG 4750 while it was on its lane;
i) Losing control and getting into the lane of motor vehicle registration number KDB 465P/ZG 4750;
j) Causing an accident and occasioning the plaintiff serious injuries;
k) Generally being negligent.

The plaintiff further pleaded particulars of injuries sustained as well as those of loss and damage. She relied on the doctrine of *Res ipsa loquitor* and Vicarious liability and prayed for judgment against the defendant for:

a) General damages;
b) Special damages for Ksh. 5,050/=;
c) Costs of the suit and interest.

THE DEFENDANT'S DEFENCE

The defendant entered appearance on 4/11/2024 and filed a statement of defence on the same day. The defendant denied that he was the registered owner of motor vehicle registration number KDC 361X, denied that the plaintiff was a lawful passenger in the said motor vehicle, denied that the motor vehicle was driven by his driver, denied the occurrence of the accident, denied that the motor vehicle was recklessly and carelessly driven and denied that the plaintiff sustained injuries. The defendant denied the particulars of negligence pleaded in the plaint and averred in the alternative that if the accident occurred, then the same was solely caused and/or substantially contributed to by the plaintiff's own negligence.

The defendant pleaded the following particulars of negligence 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;

The defendant further pleaded the following particulars of negligence as against the driver of motor vehicle registration number KTCA 032E:

a) Driving at an excessive speed in the circumstances;
b) Failing to have any or any sufficient regard for the safety of the users of the said road by driving without due care and attention;
c) Failing to keep any or any proper look out for other vehicles that might reasonably have been on the said road;
d) Endangering the lives of other road users in his manner of driving and overtaking;
e) Having total disregard for the traffic rules;
f) Failing to stop, slow down, swerve or in any way to manage the said motor vehicle so as to avoid the collision;
g) Failing to have due care and skill expected of a competent driver.

The defendant further averred in the alternative that if indeed the alleged accident occurred, the same was beyond the control of the defendant. He denied the applicability of the doctrine of *Res ipsa loquitor* and relied on the doctrine of *volenti non fit injuria*. The defendant denied the particulars of injuries and those of loss and damage and prayed that the plaintiff's suit be dismissed with costs.

THE EVIDENCE

The plaintiff's Case

The Plaintiff testified and called two other witnesses in support of her case. She adopted her statement filed in court as part of her testimony. The plaintiff testified that on 18/10/2023 she was a lawful passenger in motor vehicle registration number KDC 361X along Mombasa-Nairobi Highway. That when they reached Kalulu area, the motor vehicle was being driven at a high speed and the driver overtook when it was not safe to do so. In

the process, the motor vehicle rammed into Tractor registration number KTCA 032E from the rear and as a result, the driver lost control and collided with motor vehicle registration number KDB 465/ZG 4750, which was on its rightful lane.

The plaintiff further testified that she was injured as a result of the accident and was taken to a dispensary for first aid then to Makindu Sub-county hospital where she was admitted for three days. That she also visited other hospitals. The plaintiff blamed the driver of motor vehicle registration number KDC 361X for causing the accident by overtaking dangerously and losing control of the motor vehicle. She indicated that she had not healed. The plaintiff produced documents in support of her case. PW 2 Police Constable Isaac Wambugu testified and confirmed the occurrence of the accident. He further confirmed that the plaintiff was a passenger in motor vehicle registration number KDC 361X at the material time. PW 2 stated that upon investigations, the driver of KDC 361X was blamed. He produced the police abstract in evidence. PW 3 Doctor Washington Wokabi testified that he examined the plaintiff following the accident and prepared a medical report. He produced the report in evidence.

The Defendant's Case

The defendant did not call any witness.

MAIN ISSUES FOR DETERMINATION

In my opinion, the main issues for determination are as follows:

i. Whether an accident occurred on 18/10/2023 at Kalulu area along Mombasa-Nairobi highway involving motor vehicle registration number KDC 361X;

ii. Whether the plaintiff was a passenger in motor vehicle registration number KDC 361X at the material time;

iii. Whether the defendant was the owner of the said motor vehicle at the material time;

iv. Whether the driver of motor vehicle registration number KDC 361X was to blame for the accident;

v. Whether the defendant is vicariously liable for the accident;

vi. Whether the plaintiff sustained injuries and suffered loss as a result of the alleged 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

On liability, the plaintiff relied on her testimony and that of the police officer and submitted that the defendant did not call any witness nor produce any documents to controvert the plaintiff's evidence on liability. She urged the court to find the defendant 100% liable. The plaintiff relied on several authorities whose copies were annexed. On quantum, the plaintiff submitted a sum of Ksh. 500,000/= in general damages and relied on the following authorities:

1) ***Habiba Abdi Mohamed v Peter Maleve [2000]eKLR***

The plaintiff suffered injuries on her left arm and her head and face. An award of Ksh. 400,000/= was made on 21/7/2000.

2) ***Francis Ochieng & another v Alice Kajimba [2015] eKLR.***

The plaintiff and respondent in the appeal sustained head injuries, sub-conjuctival haemorrhage, periorbital sccymosis on both eyes and cut wounds to the right hand and knee. An award of Ksh. 350,000/= was made on 2/6/2015.

3) ***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. An award of Ksh. 350,000/= made on 28/12/2018 was affirmed on appeal on 10/3/2021.

The plaintiff further urged the court to award special damages of Ksh. 23,550/=, which included court attendance charges for the doctor and the police officer at Ksh. 10,000/= each, fees for motor vehicle search and for the medical report. The plaintiff also prayed for costs of the suit and interest.

THE DEFENDANT'S SUBMISSIONS

The defendant did not file submissions despite being given sufficient time to do so.

ANALYSIS AND DETERMINATION

I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff. From the testimony of the plaintiff and the police officer as well as the documents produced in evidence, I have no doubt that an accident occurred on 18/10/2023 at Kalulu area along Mombasa-Nairobi road involving motor vehicle registration number KDC 361X. There is also sufficient evidence to show that the plaintiff was a passenger in motor vehicle registration number KDC 361X at the time of accident. The police abstract produced in evidence confirmed the position. In any event, the plaintiff's evidence was not controverted by the defence.

The plaintiff produced in evidence a copy of records from the Registrar of motor vehicles which indicates that the defendant was the registered owner of motor vehicle registration number KDC 361X as at 21/12/2023. The police abstract produced in evidence also indicates that the defendant was the owner of motor vehicle registration number KDC 361X at the time of the accident. The defendant did not attend court to deny that he was the owner of the said motor vehicle. I am satisfied that the defendant was the owner of motor vehicle registration No. KDC 361X at the time of accident.

Liability

There is only one version as to how the accident occurred. This was the version that was given by the plaintiff. 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 as 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."

The evidence of the plaintiff is that the driver of motor vehicle registration number KDC 361X drove at a high speed and attempted to overtake while it was not safe to do so. That he lost control of the motor vehicle and caused it to ram into a Tractor and later collided with another motor vehicle. The uncontroverted evidence of the plaintiff clearly shows that the driver of the defendant's motor vehicle was at fault. He was reckless in his manner of driving. There is clear and uncontroverted evidence on how the accident herein occurred. I find that the evidence of the plaintiff as to how the accident occurred was consistent and was not shaken in cross-examination. In view of the evidence on record, there is a sufficiently high degree of probability, that, but for the acts of omission and commission by the driver of motor vehicle registration No. KDC 361X, the accident would have been prevented. I find that the said driver was solely culpable as far as the accident is concerned. In my view, there are concrete facts on which a finding would be made that the driver of motor vehicle registration No. KDC 361X was solely negligent.

The plaintiff was a mere passenger in the motor vehicle. The condition of the motor vehicle was in the control and management of the defendant's driver. It was the driver who was in control of the motor vehicle, and not the plaintiff. In the ordinary course of things, a prudent driver exercising due care and attention cannot just lose control of a motor vehicle and cause it to ram into another motor vehicle. The plaintiff relied on the doctrine of *Res ipsa loquitor*. In the leading case of ***Scott v London and St Katherine Docks Co (1865) 3 H & C 596***, Erle CJ at page 600 held as follows:

"There must be reasonable evidence of negligence. But, where the thing is shown to be under the management of the defendant, or his servants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use

proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care".

In Black's Law Dictionary 9th Edition page 1424, the principle is defined as follows:

"[Latin "the thing speaks for itself"] Torts. The doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a prima facie case. Often shortened to res ipsa."

The Dictionary goes further to explain the circumstances the Court will infer negligence as follows:

"The phrase 'res ipsa loquitur' is a symbol for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for the defendant to meet with an explanation. It is merely a short way of saying that the circumstances attendant on the accident are of such a nature as to justify a jury, in light of common sense and past experience, in inferring that the accident was probably the result of the defendant's negligence, in the absence of explanation or other evidence which the jury believes."

"It is said that res ipsa loquitur does not apply if the cause of the harm is known. This is a dark saying. The application of the principle nearly always presupposes that some part of the causal process is known, but what is lacking is evidence of its connection with the defendant's act or inference that the defendant's negligence was responsible. It must of course be shown that the thing in his control in fact caused the harm. In a sense, therefore, the cause of the harm must be known before the maxim can apply."

'Res ipsa loquitur is an appropriate form of circumstantial evidence enabling the plaintiff in particular cases to establish the defendant's likely negligence. Hence the res ipsa loquitur doctrine, properly applied, does not entail any covert form of strict liability … The doctrine implies that the court does not know, and cannot find out, what actually happened in the individual case. Instead, the finding of likely negligence is derived from knowledge of the causes of the type or category of accidents involved."

Kennedy L.J. in ***Russel v. L. & S. W. Ry [1908] 24 T.L.R. 548*** at p. 551 as follows:

"....that there is, in the circumstances of the particular case, some evidence which, viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown and undisputed, than that the occurrence took place without. The res speaks because the facts stand unexplained, and therefore the natural and reasonable, not conjectural, inference from the facts shows that what has happened is reasonably to be attributed to some act of negligence on the part of somebody; that is some want of reasonable care under the circumstances."

The Learned Judge then continued:

"Res ipsa loquitur does not mean, as I understand it, that merely because at the end of a journey a horse is found hurt, or somebody is hurt in the streets, the mere fact that he is hurt implies negligence. That is absurd. It means that the circumstances are, so to speak, eloquent of the negligence of somebody who brought about the state of things which is complained of."

In ***Henderson v Henry E Jenkins & Sons [1970] AC 282*** at 301 Lord Pearson stated:

"In an action for negligence the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge had to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants, and if he is not so satisfied the plaintiff's action fails. The formal burden of proof does not shift. But if in the course of the trial there is proved a set of facts which raises a prima facie inference that the accident was caused by negligence on the part of the defendants, the issue will be decided in the plaintiff's favour unless the defendants by their evidence provide some answer which is adequate to displace the prima facie inference. In this situation there is said to be an evidential of proof resting on the defendants..."

In the case of ***Embu Public Roads Services Ltd v Riimi (1968) EALR 22,*** the Court of Appeal held as follows:

"The doctrine of res ipsa loquitor is one which a plaintiff, by proving that an accident occurred, in the circumstances in which an accident should not have occurred thereby discharges in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident".

From the foregoing, it is clear that the doctrine of res *ipsa loquitor* applies only where circumstances are established which afford reasonable evidence (in the absence of explanation by the defendant) that the incident leading to the injuries arose from their negligence. In an appropriate case, the plaintiff establishes a *prima facie* case by relying upon the fact of the incident. If the defendant adduces no evidence there is nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the incident.

Loosely speaking, this may be referred to as a burden on the defendant to show he was not negligent, but that only means that faced with a *prima facie* case of negligence the defendant will be found negligent unless he produces evidence that is capable of rebutting the *prima facie* case. On the basis of the evidence on record, a *prima facie* case of negligence has been established as there is a causal link between the driver of the accident motor vehicle and the injuries that were sustained by the plaintiff. The doctrine, in my view, will thus apply. It is reasonably possible to decide on the evidence on record as to who is to blame for the accident. I find the driver of motor vehicle registration number KDC 361X **100% liable** for the accident.

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.

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."

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."

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."

It has not been denied in evidence that the driver of motor vehicle registration number KDC 361X was driving in the course of his employment with the defendant. Consequently, I find the defendant **100% vicariously liable** for the accident.

Quantum

The medical evidence on record indicates that the plaintiff sustained the following injuries:

a) Blunt and abrasion injuries on the right leg;
b) Injury to both knees;
c) Nose bleeding;
d) Injury to the chest; and
e) Injury to both hands.

There is no contrary evidence. I find that there is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the fact that the defendant has been held 100% vicariously 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 (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".

I am also guided by Lord Denning's decision in ***Kim Pho Choo v Camden & Islingtom 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 both as an outpatient and inpatient at various hospitals. I have further considered the submissions made by the plaintiff on quantum as well as the authorities relied upon. The authorities relied upon by the plaintiff are comparable. On my part, I have considered the following authorities:

1) ***Anthony Nyamwaya v Jackline Moraa Nyandemo [2022] eKLR.***

The plaintiff and respondent in the appeal sustained rugged cut wounds on the temporal region of the head, soft tissue injuries to the neck, anterior chest, lower back, shoulders, right hand as well as swelling and bruises on the right index finger and both legs. The trial court awarded Ksh. 250,000/= in general damages on 26/5/2021. On appeal, the award was affirmed on 3/3/2022.

2) ***Ochola v Owuor [2024] KEHC 7689 (KLR).***

The plaintiff and respondent in the appeal sustained soft tissue injuries to the right shoulder joint, soft tissue injuries to the anterior chest wall, soft tissue injuries to the neck, back and both knees. The trial court awarded Ksh. 250,000/= on 12/5/2022. On appeal, the award was reduced to Ksh. 150,000/= on 25/6/2024.

3) ***Pascal v Ouko [2023] KEHC 24463 (KLR).***

The plaintiff and respondent in the appeal sustained chest contusion, blunt injuries to the back, scalp, neck, upper limbs and lower limbs and lacerations to the right knee. The trial court awarded Ksh. 200,000/= in general damages on 21/12/2021. On appeal, the award was reduced to Ksh. 150,000/= on 18/10/2023.

Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. **300,000/=** in general damages would suffice. I award the same.

Special Damages

The plaintiff pleaded special damages as follows:

a) Motor vehicle search certificate……Ksh. 550/=
b) Medical report……Ksh. 3,000/=
c) Medical expenses……Ksh. 1,500/=

Total……Ksh. 5,050/=

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 pleaded were sufficiently proven. The plaintiff made a frail attempt to introduce further special damages of Ksh. 20,000/= being attendance costs for the doctor and the police officer. These were not pleaded and in any event, they cannot be properly claimed as special damages. They ought to be claimed as part of the costs of the suit upon success. I will thus disregard them. Consequently, I award special damages of **Ksh. 5,050/=** as pleaded and proved.

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. 300,000/=
2) Special damages.....Ksh. 5,050/=

Total.....**Ksh. 305,050/=**

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 <u>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</u>……..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 9TH DAY OF DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.