



**Otieno & another v LA (Minor Suing through her Father Next Friend JOO) & another
(Civil Appeal E002 of 2025) [2026] KEHC 120 (KLR) (19 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E002 OF 2025
DK KEMEL, J
JANUARY 19, 2026**

BETWEEN

KENNEDY ONYANGO OTIENO 1ST APPELLANT

KENNEDY OCHIENG ODIYO 2ND APPELLANT

AND

**LA (MINOR SUING THROUGH HER FATHER NEXT FRIEND
JOO) 1ST RESPONDENT**

AYAN AUTO MOBILES LIMITED 2ND RESPONDENT

*(Being an appeal from the judgment of Ho. JP Nandi (SPM)
in Bondo PMCC No. E100 of 2022 delivered on 20/11/2024)*

JUDGMENT

1. The appeal arises from the judgment and order of Hon. JP Nandi (SPM) in Bondo PMCC No. E100 of 2022 wherein he held the 2nd Appellant liable in damages to the 1st Respondent at 100 % as well as general damages of kshs500,000/=, special damages of Ksh9040/= and future medical expenses of ksh285,000/= plus costs of the suit and interest regarding injuries sustained in a road traffic accident which took place on 7/7/2022 involving the Appellants vehicle registration number KDE 994T make Ragius Ace and motorcycle registration number KMFE 702N make Boxer within Bondo township.
2. Aggrieved by the aforesaid judgment, the Appellants filed their Memorandum of appeal dated 16/12/2024 wherein they raised the following grounds of appeal namely:
 1. That the learned trial magistrate erred in law and fact in awarding future medical expenses of Ksh285,000/= which award was not proved.



2. That the learned trial magistrate erred in law and fact in awarding future medical expenses of Ksh285,000/= which award was excessive.
3. That the learned trial magistrate erred in law and fact in failing to consider the medical report by the Appellants' doctor.
4. That the learned trial magistrate's exercise of discretion in assessment of liability and quantum was injudicious.
5. That the learned trial magistrate erred in law and fact in failing to consider the Appellant's submissions on the award on future medical expenses and as a result arrived at an unjustified decision on future medical expenses.

The Appellants therefore prayed that the appeal be allowed and the judgment of the trial court be set aside and that the court do re-assess the award on future medical expenses and come up with its own award.

3. This being the first appellate court, its duty is well cut out namely to re-evaluate the evidence and come up with its own independent conclusion as to whether or not to uphold the decision of the trial court. The court must also take into account the fact that it did not get the opportunity to see the witnesses testify and thus to make due allowance for that. See *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123.
4. The record of the trial court indicates that the 1st Respondent had lodged suit vide a plaint dated 21/9/2022 wherein she had prayed for several reliefs inter alia; general damages; future medical expenses; special damages and costs in respect of injuries sustained in a traffic accident which took place on 7/7/2022 involving the Appellants and 2nd Respondents' motor vehicle registration No. KDE 994 T make White Regius Ace and motor cycle registration No. KMFE 702N Boxer wherein the 1st Respondent was a pillion passenger aboard the said motor cycle when the driver or agent in control of motor vehicle KDE 994T carelessly and recklessly controlled the same and which hit the motor cycle as a result of which she sustained injuries. She blamed the Appellants' driver for the accident. The Appellants filed a defence dated 11/10/2022 and denied the claim and contended that the accident occurred due to the negligence of the 1st Respondent and the rider of the motor cycle.
5. The parties agreed that orders in Bondo PMCC No. E097 of 2022 do apply in the matter and that the evidence of PW1 and PW2 therein do apply in the matter as evidence of PW1 and PW2 respectively.
6. The 1st Respondent herein testified as PW3. She adopted her statement dated 21/9/2022 as her evidence in chief which was a reiteration of her averments in the plaint. That she sustained a fracture on the right leg as well as cut wounds on the forehead and that she also sustained a back injury. She presented several exhibits such as police abstract, P3 form, birth certificate, court proceedings, discharge summary, receipts and copy of records.

On cross examination, she stated that she was in form one. That she usually goes for further treatment whenever money is available at Acela Medical Centre. That the police abstract showed the owner of the vehicle as Kennedy Odiyo.

7. JOO (PW4) adopted his statement dated 21/9/2022 as his evidence in chief. He stated that he seeks that his child should be compensated for the injuries sustained.

On cross examination, he stated that he took his daughter to Acela hospital for check up where drugs were prescribed for which he bought. That the driver of the suit vehicle was not known to him.



8. John Okidi Bunde (PW5) produced the discharge summary and X-ray report as exhibits 8 and 9. He stated that the 1st Respondent was admitted on 7/7/2022 and discharged on 11/7/2022 with diagnosis of fracture of the tibia fibula. That the patient complained of right lower limb, bruised wound and cut wound on the face. That plaster was applied.

On cross examination, he stated that he did not have any proof that he had come from Bondo Sub County Hospital. That loss of consciousness is not mentioned in the discharge summary. That the fracture of tibia fibula will take between 3-9 months to heal. That the fracture had by then united and that once the same has taken place then there would be no need for ORIF. That he is not certain about the charges for physiotherapy.

9. Dr. Paul Aloo (PW6) testified that he is a medical officer at Acela Medical Hospital. That he examined the 1st Respondent who had pain on right leg and was walking with a limping gait. That the x-ray showed poor healing with non-union and that the patient needed to undergo surgery to fix the fracture and also undergo physiotherapy. He produced his medical report as exhibit 10.

On cross examination, he stated inter alia; that there was no loss of consciousness indicated in the discharge summary; that there was no joint stiffness; that there is need for physiotherapy; that he does not know the charges per session; that fracture heals from 6-8 weeks; that a cast was applied at the time of examination; that ORIF had not been done; that if the fracture had healed then there would be no need for ORIF.

10. The 1st Respondent closed her case. The Appellants and 2nd Respondent opted to rely on the evidence and judgment in Bondo PMCC No. E097 of 2022 and in which the 1st Respondent's second medical report by Dr. Steve Ochieng was produced in evidence.

11. The appeal was canvassed by way of written submissions.

12. I have considered the record of the trial court and the submissions filed. It is not in dispute that from the Appellants' Memorandum of Appeal, their grievances are in regard to the trial court's determination on two issues namely liability and assessment of future medical expenses. I find the issue for determination is whether the appeal has merit.

13. As regards the aspect of liability, parties agreed that the judgment and orders in Bondo PMCC No. E097 of 2022 regarding liability and adoption of evidence of PW1 and PW2 as well as the 1st Respondent's second medical report be adopted. As liability was apportioned against the Appellants herein then the same applies to the present circumstances mutatis mutandis. It is instructive that the Appellants' driver was subsequently charged with a traffic offence of careless driving vide Bondo Traffic Case No. E093 of 2022 wherein he was fined Kshs100,000/= and in default to serve six months imprisonment. From the facts as stated by the prosecutor, it is clear that the Appellants' motor vehicle registration No. KDE 994T had smashed onto the motor cycle forcing the rider and pillion passengers to fall down and sustain injuries. The rider had already indicated his intention to enter Shell petrol station and thus the Appellants' driver (1st Appellant) ought to have had proper lookout and to observe the Highway Code of traffic and to give way to the motor cyclist but instead threw caution to the wind and drove onto and smashed the motorcycle. It is noted that the 1st Respondent was a pillion passenger and thus had no control over the manner in which the motor cycle was being controlled and likewise the Appellants' vehicle. I find that the 1st Respondent did not contribute to the accident in any way. In any event, the Appellants' driver was later found to be responsible and was duly charged with a traffic offence. I find the apportionment of liability at 100% against both Appellants herein by the trial court was quite sound and must be upheld. Hence, the appeal on liability lacks merit and is dismissed.



14. As regards the award of future medical expenses, it is noted that the 1st Respondent specifically pleaded for the same in her amended plaint dated 11/1/2023. The trial court upon consideration of the evidence and documents allowed the claim of Kshs285,000/= to cater for surgery to fix the fracture on the right leg and regain full function of the limb (open fixation of the fracture as well as ten (10) physiotherapy sessions). The Appellants have urged this court to interfere with the said award as it is excessive in the circumstances. In the case of *Kemfro Africa Ltd t/a Meru Express Services & Another v. Lubia & Another* [1985] KECA 137 (KLR) the Court of Appeal held as follows:

“The principles to be observed by an appellate court in deciding whether it is justified in distributing the quantum of damages awarded by the trial judge were held by the former Court of Appeal for Eastern Africa to be that it must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that short of this the amount is inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

As the claim for future medical expenses is in the nature of special damages, the 1st Respondent was under obligation to specifically plead and prove the same on balance of probabilities. In the case of *Kenya Bus Services Ltd v. Gituma* [2004] 1 EA 91 it was held:

“And as regards future medical (physiotherapy) the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all issues other than those which the law does contemplate as arising naturally from the infringement of a person’s legal right should be pleaded.”

The issue of award of damages must be handled by courts in a judicious manner. In the case of *Kigaraari v Aya* [1982-88] 1 KAR 768 the court held as follows:

“Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford as large awards are inevitably passed onto members of public the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees.”

Also, in *Tayib v Kinany* [1983] KLR 14 it was held as follows:

“By common consent award must be reasonable and must be assessed with moderation. Furthermore, it is essentially desirable so far as possible comparable injuries should be compensated by comparable awards. When all this is said and done, it still must be that amounts which are awarded are to a reasonable extent conventional.”

It is noted that the 1st Respondent was first attended to at Bondo Sub-County Hospital by John Okidi Bunde (PW5) and that an x-ray was conducted which revealed a fracture of tibia and fibula. She was later examined by Dr. Paul Aloo (PW6) of Acela Medical Centre who prepared a medical report and that he noted that the patient had pain on right leg and walked with a limping gait. That the x-ray showed poor healing with non-union and that the patient needed to undergo surgery to fix the fracture and physiotherapy.

The 1st Respondent was also examined by the Appellants’ doctor Steve Ochieng on 3/8/2023 who indicated that the 1st Respondent required future expenses of Ksh 250,000/= for splenectomy



vaccination and prophylactic antibiotics for upto three years. It was the opinion of the said doctor that the injuries should have healed by that time. This is despite admitting on cross examination that the proposed future medical expenses should be in the region of Kshs250,000/=. This seems to support the 1st Respondent's medical expenses of Kshs285,000/= which includes physiotherapy. I find that the 1st Respondent who suffered injuries should not be denied an award for future medical expenses which she duly pleaded and confirmed by both doctors. She had sustained serious injuries. It is also not in dispute that inflation on the economy must be taken into account and hence the proposed amounts appear to me to be reasonable in the circumstances. I find the said amounts are not excessive and that the trial court did not take into account irrelevant factors when awarding the damages. Hence, the finding of the trial court was proper and must be upheld.

15. As there was no dispute regarding the other heads of damages namely general damages and special damages, the same shall remain undisturbed.
16. In view of the foregoing observations, it is my finding that the Appellants' appeal lacks merit. The same is dismissed with costs to the 1st Respondent.

DATED AND DELIVERED AT SIAYA THIS 19TH DAY OF JANUARY 2026.

D. K. KEMEI

JUDGE

In the presence of:

N/A M/s Tesot....for Appellants.

M/s Mukoya.....for 1st Respondent.

N/A.....for 2nd Respondent.

Maureen/Kimaiyo.....Court Assistant.

