



REPUBLIC OF KENYA



KENYA LAW
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**Otieno & another v Ogenga & another (Civil Appeal E001 of 2025)
[2026] KEHC 964 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E001 OF 2025
DK KEMEL, J
FEBRUARY 5, 2026**

BETWEEN

VINCENT FREDRICK OTIENO 1ST APPELLANT

PETER JUMA OJWANG 2ND APPELLANT

AND

MAURICE JUMA OGENGA 1ST RESPONDENT

NILE PERCH MATATU LINE SACCO SOCIETY LIMITED .. 2ND RESPONDENT

*(Being an appeal from the judgment /Decree of the Honourable J.P.
Nandi (SPM) in Bondo PMCC No. 099/2022 delivered on 20/11/2024)*

JUDGMENT

1. The appeal herein arises from the judgment/decree of Hon. J.P Nandi (SPM) in Bondo PMCC No. E099 of 2022 wherein he held the 2nd Appellant liable at 100% for an accident which took place on 16/7/2022 involving the Appellants and 2nd Respondent's vehicle reg. No. KCU 914R make Toyota Hiace and the 1st Respondent who was then a rider motor cycle reg. No. KMFZ 161E make Boxer and proceeded to enter judgment in favour of the 1st Respondent for general damages (Kshs600, 000/=), future medical expenses (Kshs600,000/=) and special damages of Kshs23,750/= as well as costs and interest from the date of judgment until payment in full.
2. The two Appellants herein were aggrieved by the said judgment and lodged 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 Kshs600,000/= which was not proved.



2. That the learned trial magistrate erred in law and in fact in awarding future medical expenses which were excessive.
3. That the learned trial magistrate erred in law and in 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 awards of 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 decree 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. This court should also take into account the fact that it neither saw nor heard the witnesses testify and hence it must give due allowance for that. See *Selle Vs. Associated Motor Boat Co. Ltd* [1968] EA 123.
4. The record of the trial court indicates that the 1st Respondent had lodged suit before Bondo Law Courts vide plaint dated 21/9/2022 and amended on 24/1/2023 wherein she sought for both special damages for injuries sustained in a road traffic accident which took place on 16/7/2022 involving the Appellants' and 2nd Respondent's motor vehicle Registration No. KCU 914 R Toyota Hiace matatu and the 1st Respondent's motor cycle registration number KMFZ 161E Boxer wherein the 1st Respondent was the rider and ferrying one pillion passenger. The 1st Respondent pleaded that the Appellants' motor vehicle registration number KCU 914R hit the motorcycle from behind thereby injuring the rider and pillion passenger. It was further pleaded that the Appellants driver was later charged before Bondo court traffic case of careless driving contrary to section 49 of the *Traffic Act* vide case No. E095 of 2022 wherein he was fined Kshs 10,000/ and in default to serve three months imprisonment. The 1st Respondent blamed the Appellants for the accident and sought for damages as pleaded in the plaint dated 21/9/2022 and amended on 24/1/2023.
5. The Appellants and 2nd Respondent denied the claim vide their statement of defence dated 9/3/2023 and put him to strict proof and further averred that the 1st Respondent filed fake documents as he was not an accident victim.
6. The 1st Respondent filed a reply to defence dated 15/3/2023 wherein he denied the Appellants' claims and sought for their dismissal.
7. Maurice Juma Ogenga (PW1) testified that he recorded his statement dated 21/9/2022 and that he wished to adopt it as his evidence in chief. That he sustained chest pain, back pain, abdominal pain which led to the spleen being ruptured and that he produced the document as Exhibit 1, copy of medical report records as Exhibit 2, P3 form as Exhibit 3, discharge summary from Siaya County Referral Hospital as Exhibit 4, receipts for Kshs23,750/= as exhibit 5, traffic case proceedings in Tr case No. E 095/22 as Exhibit 6. That he prays that he be compensated as he lost his job and is not able to provide for his family as he was the daily bread winner. That he has tried to apply for a job but he has been denied the opportunity due to his condition.

On cross examination, he stated that he had his Identity card. That he was a pillion passenger. That he filled the document showing that he was hit from behind. That he gave the documents to his advocate.



That he did not file inspection report for the motor cycle. That he did not check the speedometer for the motor vehicle. That he went to Gobei Dispensary where his wound was examined and that he was given medicine. That he does not have further treatment notes.

8. No. 235864 IP Sebastian Maloba (PW2) testified that he is the Base Commander Bondo Police Station. That he has police abstract for PW1 who was involved in an accident on 7/7/2022 at around 1700 hours along Ndori- Lwala Kotieno road at Kandera. That he was riding motor cycle KMFZ 161 C. That he had indicated to turn right at Got Bondo Junction and that he was swept by motor vehicle registration No. KCU 914R which had switched on the overtaking lane. That the motor cycle had one pillion passenger who landed down. That the victims were taken to Bondo Sub-County then to Siaya County Referral hospital while the pillion passenger was referred to JOOTRH. That the vehicle was inspected on 18/7/2022. That he recorded a statement. That on 27/7/2022, he arraigned the driver of the motor vehicle in court where he pleaded guilty and was fined Kshs10,000/=. That he produced police abstract as Exhibit 1.

On cross examination by Ms. Turgut advocate, he stated that he was not the investigating officer. That PW1 was a rider. That he could not confirm if the motor cycle was insured. That he could not tell if he had a helmet. That no sketch plans are in court as they are in the court file.

9. John Okidi Bunde (PW3) testified that he is a clinical officer at Bondo Sub County Hospital. That he has a P3 form in respect of the Plaintiff who is aged 26 years old. That on detailed examination, he had headache, chest pain, acute abdominal pain with back pain. That the age of injuries was six days and that the weapon was a blunt object. That he produced P3 form as exhibit 3 and the discharge summary as exhibit 4 which indicated that the spleen was ruptured.

On cross examination, he stated that the P3 form and discharge summary does not mention loss of consciousness. That spectomy consists of removal of spleen or connection of spleen. That once successful, there are no permanent disability but future treatment is required. That the victims are susceptible to infections such as malaria. That there is a reliever which is usually given but that he was not aware of the cost.

10. Boss Dick Ochiel (PW4) testified that he is the Court Administrator at Bondo Law Courts. That the 1st Defendant was charged vide Traffic Case No. E095/2022 for the offence of careless driving. That he was convicted to three (3) months imprisonment. That he has the court proceedings which he produced as Exhibit 6.

11. Dr. Paul Aloo (PW5) testified that he is a medical officer at Acela Medical Centre. That he has a report for Maurice Juma Oganga. That he was examined on 1/11/2022. That on examination, the head had healed as well as the abdominal scar. That he recommended that he is at the high risk of suffering infection and that he has costed the same in his report. That he produced his report as Exhibit 4.

On cross examination, he stated that loss of consciousness is not indicated in the discharge summary. That when a spleen is removed, they are at risk of infection. That they undergo routine vaccination but that he has not attached the schedule and the figures.

12. Parties agreed by consent to have the 1st Respondent's second medical report by Dr Steve Ochieng be produced as defence exhibit 1 and that the defence closed their case.
13. The trial court later came up with its judgement which is now the subject of this appeal.
14. The appeal was canvassed by way of written submissions. However, it is only the 1st Respondent who complied.



15. The Respondent's submissions are dated 22nd November 2025 wherein the learned counsel gave a brief background of the appeal as follows.
16. That the plaintiff moved the trial court at Bondo, by a plaint dated 21st September, 2022 and amended on 24th January, 2023 seeking an award of damages for the injuries he sustained as a result of a road traffic accident that occurred on the 16th day of July 2022. (See Pages 4 to 8 and pages 11 to 17 of the Record of Appeal respectively). In the impugned judgment, the Honorable Court found the Defendants liable and entered Judgment in favour of the Plaintiff for special damages in the sum of Kshs. 23,750/-, general damages of Kshs. 600,000/- and future medical expenses of Kshs. 600,000/- together with costs and interest thereon until payment in full. (See Pages 80 to 84 of the Record of Appeal-Judgment).
17. That the plaintiff's claim was that on that fateful day he was riding his motor cycle registration Number KMFZ 161E BOXER travelling along Ndori Luanda Kotieno Road when in the course of his journey on reaching near Kandaria area, the driver of motor vehicle registration number KCU 914R Toyota Hiace matatu carelessly, negligently and recklessly drove the said vehicle knocking the motor cycle that the Plaintiff was riding from behind and as a result he sustained serious bodily injuries. That the plaintiff blamed the driver of the said motor vehicle for causing the accident reason wherefore liability arises. That the defendants claim was that the accident was caused by the reckless, negligent and or careless acts and or omissions on the part of the rider of the said motorcycle. (See Pages 37 to 41 of the Record of Appeal-Defence).
18. Learned counsel for the Respondent submitted that the Honorable Court places due consideration to the fact that a trial court, unlike this court being the appellate court, which had the pleasure of observing the demeanor of the parties to the case and the witnesses therein and subsequently the hearing of the matter in the first instance. Reliance was placed in the case of Peters Vs Sunday Post Limited [1958] EA 424, where the Honorable Court therein rendered itself as thus;

“It is a strong thing for an appellant court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witness... But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”
19. It was submitted that the two issues for determination are whether the assessment on quantum of damages in the amount of Kshs 600,000/= for future medical expenses is objective and who should bear the costs of this appeal?
20. As regards the issue of whether the assessment on quantum of damages in the amount of Kshs600,000/= for future medical expenses is objective, it was submitted that it is trite law and/or rational that, future medical expenses, being a special claim needed to be specifically pleaded and proved before a court of law can award it. Reliance was placed in Kenya Bus Service Ltd vs Gituma(2004) 1 EA 91, it was stated that;

“And as regards future medication (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 losses other than those which the law does contemplate as raising naturally from infringement of a person's legal right should be pleaded.”



21. Further, it was submitted that once the plaintiff pleads that there would be the need for future medication leading to further future medical expenses and the necessity of having the same, then it is not mandatory for the plaintiff to state specifically the amount that will be needed since the same will and or shall depend on several other matters including but not limited to the location and/or place of conducting such procedure and the funds needed to execute the same and as such when pleaded it is expected to be an approximate and/or estimation of the sum of the money that the future medical expense will require. That the Plaintiff at the trial court went further and produced evidence on the expected future expenses, as per the proceedings therein, this Honorable Court will note that, the 1st Respondent pleaded a sum of Kshs 200,000/= for vaccination against meningococcus, pneumococcus/hemophilus and a sum of Kshs. 400,000/= for lifelong antibiotics prophylaxis. (See Pages 5 and 34 to 35 of the Record of Appeal. That the Plaintiff produced a medical report dated 1/11/2022 by one Dr. Paul Oloo which the plaintiff relied upon to show and/or illuminate the need for future medical expenses. (See Pages 34 to 35 of the Record of Appeal.) It was submitted that the said report was never challenged by the appellants and which is construed as to be admitted and as such it is submitted that the 1st Respondent, the Plaintiff at the trial court had promptly and clearly produced and demonstrated that indeed there was the need for future medical expenses and demonstrated the same to that effect and as such the award for the said future medical expenses by the trial court was justified. Similarly, Dr. Paul Oloo while giving his viva voce testimony stated that upon examining the Plaintiff, he noted that he suffered a ruptured spleen and presently complained of lower back pains however due to the rupture of the spleen that he suffered he is at a high risk of certain infections and complications as well as cancer and thus recommended vaccination and lifelong antibiotics for his protection at a cost of Kshs. 600,000/. (See Page 34 to 35 and 66 of the Record of Appeal.)
22. The learned counsel urged this Honourable Court to reject the Appellants opposition to the quantum of damages with respect to future medical expenses as the same is misplaced as the award by the trial court is likely to have been undervalued as the 1st Respondent herein might incur more expenses in the absence of the valued and/or awarded amount.
23. As regards the issue of who should bear the cost of this appeal, learned counsel submitted that costs follows the event, and as guided by the provisions of Section 27 of the Civil Procedure Act which provides as that;

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

Again, it was submitted that where costs are awarded, the quantum of the said costs exclusively lies at the discretion of the judicial officer. It was submitted that like all discretions as to cost, it must be exercised judiciously. That placing into consideration the time and effort placed into responding and/or rebutting this appeal, counsel has been subjected into a position to peruse, enter appearance and eventually tender a written submission in this appeal,



the Appellant should bear the costs of these proceedings in favor of the 1st Respondent herein.

24. I have considered the record of the trial court and submissions filed herein. It is not in dispute that from the Appellants Memorandum of Appeal, their grievances is 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.
25. As regards the aspect of liability, it is noted that the Appellants have claimed that the trial court erred when it wholly apportioned 100% liability on the Appellants. It is instructive that the Appellant's driver was subsequently charged with a traffic offence vide Bondo Traffic Case No. E095 of 2022 wherein he was fined Ksh10,000/= and in default to serve three months imprisonment. From the facts as stated by the prosecutor, it is clear that the Appellant's motor vehicle KCU 914R had smashed onto the motor cycle from behind forcing the rider and pillion passenger to fall down and sustain injuries. The Appellants' driver (1st Appellant) ought to have a proper look out and to observe the Highway Code of traffic and to give way to the motorcyclist or overtake when it was safe to do so but instead threw caution to the wind and drove onto and smashed the motor cycle. It is noted that the 1st Respondent herein was the motor cycle rider and was on his rightful lane and thus did not contribute to the accident and that explains why the police charged the 1st Appellant with a traffic offence of careless driving. I find that the 1st Respondent did not contribute to the accident in any way. The 1st Appellant was found to be responsible and was duly charged with a traffic offence. Further, it is noted that the Appellants in their statement of defence claimed that the documents relied upon by the 1st Respondent were fraudulent and that he had not been involved in an accident as alleged. It is noted that the Appellants failed to rebut the 1st Respondent's claim of having been involved in the accident and failed to discredit those documents. Indeed, the Appellants doctor Steve Ochieng in the second medical report confirmed the injuries sustained by the 1st Respondent. 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.
26. As regards the award of future medical expenses, it is noted that the 1st Respondent vide his Plaint dated 21/9/2022 and amended on 24/1/2023 did plead specifically for future medical expenses. The trial court upon consideration of the evidence and documents allowed the 1st Respondent's claim for Kshs600,000/= comprising of Pneumococcus/Hernophilus medication (Kshs 200,000/) and lifelong antibiotics prophylaxis (Kshs 400,000/). It is noted that the 1st Respondent was first attended to by the Bondo Sub county hospital by John Okidi Bunde (PW3) and later by Paul Aloo (PW5) of Acela Medical Centre where it was noted that he had suffered grievous bodily harm. Again, the Appellant's doctor, Dr. Steve Ochieng who had examined the 1st Respondent confirmed that he had suffered injuries which require future medical expenses of Kshs 200,000/ for post splenectomy vaccination as well as Kshs 50,000/ for prophylaxis antibiotics for up to three years. That being the position, the 1st Respondent could not be denied an opportunity to get further future medication. 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 Limited t/a Meru Express Services & Another Vs 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 a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took factor, or left out of account or relevant one, or that short of this,



the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

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 a balance of probabilities. In the case of Kenya Bus Service Ltd vs Gituma [2004] EA 91 it was held:

“And as regards future medication (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, 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 vs. Aya 1982 – 1988] 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 on to members of public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees.”

Also, in Tayib vs Kinanyu [1983] KLR 14 it was held as follows:

“By common consent awards 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 herein was first attended to at Bondo sub County hospital by John Okidi Bunde (PW2) and who confirmed that the patient had suffered grievous harm. He was also examined by Dr. Paul Aloo (PW5) who prepared a medical report and that he noted that the patient needed future medical interventions to take care of pneumococcus/Hernophilus as well as lifelong antibiotics prophylaxis; The 1st Respondent was also examined by the Appellant’s doctor Steve Ochieng who noted that the 1st Respondent would require future medical expenses of Kshs 200,000/ for post splenectomy vaccination and Kshs 50,000/ for prophylaxis antibiotics for three years.

Looking at the amounts proposed by Dr Aloo and Dr Steve Ochieng, I find that the difference is not that significant. It is not in dispute that inflation on the economy must be taken into account and thus 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 sums. Hence, the finding of the trial court was proper and must be upheld.

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

DATED AND SIGNED AT SIAYA THIS 5TH DAY OF FEBRUARY 2026.



D. K. KEMEI

JUDGE

In the presence of:

M/s Tesot.....for Appellants.

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

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

Maureen/Kimaiyo.....Court Assistant.

