



REPUBLIC OF KENYA



**Kweya v Attorney General & another (Civil Appeal 10 of 2019)
[2026] KEHC 1388 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 10 OF 2019
AC BETT, J
FEBRUARY 12, 2026**

BETWEEN

EZEKIAL MUDAVADI KWEYA APPELLANT

AND

THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT

RENTWORKS EAST AFRICA LTD 2ND RESPONDENT

*(Being an appeal arising out of the Judgment of the Hon. E. Malesi (SRM)
in Kakamega Civil Suit No. 159 of 2017 delivered on 15th January 2019)*

JUDGMENT

1. The Appellant had instituted a civil suit against the 1st and the 2nd Respondent from a road traffic accident that involved motor vehicle registration number GKB 208H and a motorcycle registration number KMDG 099C.
2. Liability for the accident was not in dispute. It was agreed between the parties that the liability of the Appellants was to be 30%, while the Respondents were to bear a higher liability of 70%. On the quantum, the Appellant, Ezekiel Mudavadi, stated that he suffered a dislocation of the posterior left hip and had proposed a general award of Kshs. 2,000,000/=. The trial court, upon relying on past awards for similar injuries, awarded Kshs. 500,000/=.
3. On the special damages, the Appellant had pleaded Kshs. 60,550/= made up as follows: Kshs. 5,000/= for the demand notice, Kshs. 55,000/= for the medical report and P3 form, and Kshs. 559/= for the motor vehicle search.
4. The trial court held that although the Appellant had pleaded and produced evidence of payment of Kshs. 55,000/=, for a medical report, the same appeared unreasonably exaggerated. The trial court scaled it down to Kshs. 10,000/=.



5. In conclusion, the trial court awarded general damages of Kshs. 500,00/= and special damages of Kshs. 15,550/=.
6. The Appellant, being aggrieved by the decision of the trial court, appealed on the following grounds:-
 - a. The learned magistrate erred in law and fact by failing to award special damages as pleaded and proved.
 - b. The learned magistrate failed to appreciate the submissions of the learned Counsel for the Appellant.
7. The appeal was canvassed by way of written submissions.

Appellant's Submissions

8. In his submissions dated 15th February 2025, the Appellant avers that he had submitted the medical receipt by Dr Lamba and produced the same as exhibit 19. He relied on Legal Notice No. 131, arguing that, under the *Medical Practitioners and Dentists Act*, CAP 253, the minimum fee for general medical and dental reports is Kshs. 6,000/= and a maximum of Kshs. 60,000/=.
9. He submits that the medical report was per scale and that it was pleaded, and as such, it should be awarded. He argues the learned Magistrate erred in finding that the fee was Kshs. 55,000/= was unreasonable. In support of his case, he cites *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited* [2019] KEELC 1664 (KLR) and prays that the court find that the appeal has merit and should be allowed with costs.

2nd Respondent's Submissions

10. The 2nd Respondent raised two issues for determination in their submissions, being whether the trial court erred in failing to award special damages as pleaded and proven, and whether the trial court failed to appreciate the submissions of the learned counsel for the Appellant.
11. On the first ground, they assert that the trial court was fair in failing to award Kshs. 55,000/=, since the amount was exaggerated, and the court gave a reasonable amount that should be allowed, as the court exercised its discretion.
12. They further aver that although the Appellant relied on the Legal Notice that allows doctors to charge a medical fee of between Kshs. 6,000/= to Kshs. 60,000/=, the Notice was not produced, and the court exercised its discretion judiciously in awarding Kshs. 10,000/=.

Analysis and Determination

13. This court is empowered to subject the whole of the evidence before the trial court to a fresh and exhaustive scrutiny and make its own conclusions, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first-hand. This duty was stated in *Selle & another v Associated Motor Boat Co. Ltd. & others* (1968) EA 123 and *Peters v Sunday Post Limited*. (1958) EA page 424.
14. The main issue of contention before this court is whether the trial court erred in awarding lesser special damages than pleaded and proved. The Appellant submitted a medical receipt from Dr Lamba for the medical-legal report in the amount of Kshs. 55,000/= which the trial Magistrate held was unreasonably exaggerated, and exercised his jurisdiction by reducing it to Kshs. 10,000/=.



15. The Appellant was in disagreement and argued that they had pleaded and proved that the doctor's fee for the medical report amounted to Kshs. 55,000/= and as such the trial court was bound to award the special damages as had been pleaded.
16. The law on special damages is settled. Special damages must not only be specifically pleaded but also strictly proved. The Court of Appeal in *Hahn v Singh* Civil Appeal No. 42 of 1983 [1985] KLR 716 held:-

“Special damages must not only be specifically claimed (pleaded) but also strictly proved..... for they are not direct natural or probable consequence of the act complained of and may not be inferred from the act.”
17. From the record, the Appellant pleaded special damages amounting to Kshs. 60,550/=, which comprised the medical report fees, demand notice fees and a motor vehicle search fee. The Appellant produced receipts in support thereof, including a receipt for Kshs. 55,000/= allegedly paid for a medical report.
18. The trial record shows that the learned trial Magistrate accepted that a medical report had been produced, but expressed the view that the amount claimed appeared unreasonably exaggerated and proceeded to award Kshs. 10,000/= instead.
19. While it is correct that trial courts retain discretion in the assessment of damages, that discretion must be exercised judiciously and based on evidence on record. In *Coast Bus Service Ltd v Murunga & Others* [1992] KLR 55, the Court of Appeal held that once special damages are pleaded and strictly proved, the court has no basis to arbitrarily reduce them unless there is evidence casting doubt on their authenticity or necessity. In *Christine Mwigina Akonya v Samuel Kairu* [2017] KEHC 1484 (KLR), the court stated as follows:-

“Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted. A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury.”
20. The receipt from Dr Lamba was produced, and the Respondents did not present any evidence to demonstrate that the receipt was forged, irregular, or otherwise invalid, although I note that the said receipt is clearly drawn by the same hand that drew the advocate's receipt for the demand notice fee. Since the Respondent did not question the authenticity of the receipt, I will not delve into the issue further.
21. However, based on the *Medical Practitioners and Dentists (Professional Fees) Rules, 2016, L.N. 131*, which Dr Lamba relied on, the prescribed charges for a general practitioner for a general legal report are between Ksh. 6,000/= and Ksh. 12,000/=, with a maximum of Ksh. 12,000/=. The charges for a specialized medical report is between Ksh. 6,000/= to Kshs. 60,000/=.
22. Having seen Dr. Lamba's report it is clear that the same is a standard report which does not call for specialized or complex examination and tests. It was based on a systemic examination of the Appellant and a review of the Appellant's prior treatment records. There is nothing in the medical report to justify the fees that Dr Lamba, a general practitioner, allegedly charged.



23. I am alive to the fact that in *Jackline Sarah Kwendo v. The Hon. Attorney General & Another* [2024] KEHC 1530 (KLR), the court set aside the lower court's decision to reduce the Doctor's fee to Ksh. 10,000/= and awarded the Ksh. 55,000/=. However, this court is mindful of the fact that Dr Lamba is not a Specialist and is precluded from charging fees above Ksh. 12,000/=. Further, the court has a duty to ensure that fees charged by professionals are reasonable and within the prescribed limits to protect parties from inflated fees. In a nutshell, fees for standard medical reports should not be allowed to escalate to a level that is beyond the reach of parties. I am also cognizant of the fact that the standard charges levied by Doctors for legal reports have been between Ksh. 5,000/= to Ksh. 10,000/=.
24. Having carefully evaluated the evidence, it is my view that the trial court exercised its discretion in a judicious manner when it decided to reduce the Doctor's fee.
25. Flowing from the above, I find that the appeal is not merited. It is hereby dismissed with no order as to costs, as the same was dismissed on grounds other than those canvassed by the Respondent.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 12TH DAY OF FEBRUARY 2026.

A. C. BETT

JUDGE

In the presence of:

Ms. Shibanda for the Appellant

Ms Barasa for the Respondent

Court Assistant: Polycap

