Saat v EOM (Suing as the Next Friend and Father of JMO) (Civil Appeal 144 of 2022) [2026] KEHC 1412 (KLR) (13 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1412 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL 144 OF 2022

JRA WANANDA, J

FEBRUARY 13, 2026

BETWEEN

ABRAHAM KIPCHIRCHIR SAAT ..... APPELLANT

AND

EOM (SUING AS THE NEXT FRIEND AND FATHER OF JMO) . RESPONDENT

(Appeal from the Judgment dated 30/09/2022 delivered in Eldoret Small Claims Court Civil Case No. E108 of 2022 by Hon. T.W. Mbugua-Adjudicator)

JUDGMENT

1. This Appeal arises from the Judgement delivered in the said Small Claims Court case in which the Respondent (as the Claimant) obtained Judgment against the Appellant in damages for injuries sustained in a road traffic accident. The Judgment was in the following terms:

Liability	100% against the Appellant
General damages	Kshs 600,000.00
Special damages	Kshs 6,700.00
Future medical expenses	Kshs 150,000.00
Total	Kshs 756,700.00
Plus costs and interest at Court rates	

2. The background of the case is that by the Statement of Claim dated 25/07/2022, filed through Messrs Mwinamo Lugonzo & Co. Advocates, the Respondent pleaded that on, or about 13/06/2022, the minor was lawfully walking as a pedestrian along the Munyaka-Kapsoya road when at Boda Farm area, the Appellant, and/or his driver, so negligently drove the motor vehicle registration number KBW 683D Toyota Premio such that it lost control and veered off the road thereby knocking down the minor and causing him injuries. It is against this backdrop therefore that the Respondent prayed for Judgment against the Appellant for general and special damages, costs of the suit and interest.

3. The Appellant, in his Response dated 6/08/2022, filed through Messrs Onyinkwa & Co. Advocates, generally denied the allegations made by the Respondent, and in the alternative, blamed the minor for the negligence that caused or contributed to the accident.

4. The matter then proceeded for trial in which the Respondent called 2 witnesses, while the Appellant called 1.

5. CW1 was Police Officer Elishiba Mweru. He confirmed occurrence of the accident on 14/07/2022, and involvement of the minor and the said motor vehicle therein. He testified that the motor vehicle was being driven from Munyaka heading towards the minor's direction, when it left its lane and veered to the left side of the road facing the minor's direction and hit the minor who was walking along the road as a pedestrian. He confirmed that the minor sustained injuries, and was taken to hospital by the driver of the motor vehicle. He stated further that the matter was reported at the Ainaptich Police Station, upon which the scene was visited, and statements recorded, and he then produced the Police Abstract. In cross-examination, he agreed that he was not the Investigating Officer but stated that he visited the scene with him. He testified further that skid marks of the motor vehicle were visible at the scene, but conceded that he did not have the police file and sketch maps, and also agreed that no one was charged in Court for causing the accident.

6. CW2 was Dr. Joseph Sokobe who stated that he examined the minor and prepared the Medical Report dated 15/07/2022, which he produced at the end of his evidence-in-chief. He testified that in preparing the Report, he also relied on the Discharge Summary from the Moi Teaching and Referral Hospital (MTRH), X-Ray Requests and Prescriptions from MTRH, Referral letter from Reale Hospital, P3 Form, and also the physical X-ray films, some of which he also produced. He stated that the minor's main injury was a fracture of the right tibia/fibula, and noted that the right leg had metal implants, which required removal at an estimated cost of Kshs 150,000/-. In cross-examination, he agreed that the cost of removal of the implant may be lower in a public hospital, and also agreed that the minor did not suffer any permanent incapacity.

7. CW3 was the Respondent, EOM. He adopted his Witness Statement and stated that on 13/06/2022, he was informed that his child, the minor herein, had been involved in an accident, and when he arrived at the scene, he found the minor already being taken to hospital, where he was admitted for 2 weeks. He reiterated the exhibits produced by Dr. Sokoke (CW1). He also stated that he reported the matter to the police station, wrote a statement, and was issued with an Abstract. He produced copies of the demand letter and notice issued by his Advocate. In cross-examination, he agreed that he did not have any document, such as a Certificate of Birth, to prove that he was the minor's father. He, too, stated that the motor vehicle's skid marks were visible on the left side of the road, and confirmed that the minor has a plaster and plates in situ.

8. For the Appellant, one Stella Chepchumba testified as RW1. She adopted her Witness Statement, and testified that she was the one driving the Appellant's motor vehicle on 13/06/2022 along the Munyaka-Kapsoya road when, at around 8:50 am, a minor jumped on the road, whom she later learnt wanted to cross the road, and that when she swerved to avoid hitting the minor, the left hind wheel of the motor

vehicle ran over the minor's right foot. She testified that she stopped immediately, and took the minor to Reale Hospital from where he was later transferred to MTRH. She reiterated that she swerved to the right to avoid hitting the minor. She contended that the accident would not have occurred had the minor been keen when crossing the road. She also pointed out that she was not charged in Court for causing the accident, and she then produced copies of her National Identity Card, and driving licence. In cross-examination, she stated that the accident occurred at a shopping center, that she has been using the road on a daily basis, that there are 3 schools in the vicinity, and she thus agreed that intrusions were likely to occur. As for the speed, she stated that she was driving at 40/km/hr., and she also agreed that the account and version given by the Police Officer (CW1) was correct.

9. Aa aforesaid, at the close of the trial, by her Judgment delivered on 30/09/2022, the Adjudicator found liability at 100% against the Appellant, and awarded damages to the Respondent at Kshs 600,000/- in general damages, Kshs 6,700/- in special damages, and Kshs 150,000/- in future medical costs, plus interest, and costs of the suit.

Appeal

10. Aggrieved by the Judgment, the Appellant filed this Appeal by way of the Memorandum of Appeal dated 8/10/2022. The grounds listed are as follows:

    a. That the learned trial magistrate erred in law and in fact in holding that the Appellant 100% liable without taking into account the evidence adduced.

    b. That the learned trial magistrate erred in law and in fact by failing to apportion liability on the part of the Respondent in view of the evidence on record.

    c. That the learned trial magistrate erred in law and in fact in failing to take into account the evidence on record hence arriving at an erroneous decision on the issue of liability.

    d. That the learned trial magistrate erred in law and in fact by failing to consider the submissions by the Appellant thereby arriving at erroneous decision.

    e. That the learned trial magistrate erred in law and in fact in awarding general damages of Kshs.600,000/= which were excessive in the circumstances in view of the evidence adduced.

    f. That the learned trial magistrate erred in law and in fact in adopting wrong principles in assessing the damages payable to the Respondent thereby arriving at an erroneous decision.

    g. That the learned trial magistrate erred in law and in fact in awarding future medical expenses of Kshs.150,000/= to the Respondent when no evidence of the same was adduced.

11. The Appeal was canvassed by way of written Submissions. The Appellant's Submissions is dated 24/04/2024, while the Respondent's is dated 25/08/2023.

Appellant's Submissions

12. Counsel for the Appellant, in respect to liability, cited the authority relied on by the trial Magistrate, namely, the case of Rahima Tayab & Others vs Anna Mary Kinanu (1983) KLR 114 & 1 KAR 90, in regard to which she submitted, the trial Court only cited the portion that restated the general principle that a minor, ordinarily, cannot be held contributory negligent in causing a road accident, save in cases where it can be shown that the minor was of such age as to be expected to take precautions for his safety. Counsel faulted the Adjudicator for omitting the portion of the authority in which the Court, at the end, held the subject 9-year-old child contributory negligent. She contended that the minor in this case, a 10-year-old, must or ought to have had a heightened road sense since, according to

Counsel, the minor used to walk to school alone. She also faulted the Adjudicator for finding that the Appellant's driver failed to act cautiously and/or reasonably. She pointed out that the driver (RW1) testified that she was moving at a speed of 40 km/hr., and contended that the accident was caused by the minor suddenly jumping into the road. She averred, "on a without prejudice basis", that the minor should be held at least 50% liable. In respect to quantum, Counsel faulted the Adjudicator for not indicating the authorities she relied on in awarding Kshs 600,000/- as general damages. She also faulted the Adjudicator for failing to consider the Appellant's Medical Report prepared by Dr. Gaya, which according to her, showed that the minor had recovered well, and was the more recent, and only considering the Respondent's Medical Report prepared by Dr. Sokobe. She urged that an award ranging at Kshs 300,000/-Kshs 350,000/- would have been sufficient.

13. In respect to the "future medical expenses" award made at Kshs 150,000/-, being the cost of removal of the metal implants, Counsel urged that the Appellant's Medical Report prepared by Dr. Gaya, indicated that the implants had already been removed. She therefore averred that the cost incurred for the removal should have been pleaded as special damages if the Respondent intended to recover the cost already s spent, since a medical cost already incurred is no longer a "future medical expense".

Respondent's Submissions

14. Counsel for the Respondent, on her part, urged that the Appellant's witness, RW1, was not straightforward or trustworthy since her testimony that the minor jumped into the road from a culvert, contradicted the particulars of negligence listed in the Statement of Defence, insofar as it was alleged therein that the minor "was walking carelessly on the road", or "failed to concentrate on the road while walking", or "was walking at the verge of the road". She cited the principle that a party is bound by his pleadings. She also cited the case of Gough vs. Thorne (1996) WLR 1387, and the case of Basir Ahmed Bush vs. Uwais Ahmed Khan (1982-1988) KLR 349, on the principle that generally, a minor is never held to be contributory negligent. In respect to quantum, Counsel defended the amount of Kshs 600,000/- awarded in general damages, which she described as reasonable and proportionate to the degree of injuries sustained. On special damages, Counsel submitted that the Respondent pleaded a sum of Kshs 156,700/- as special damages and future medical expenses, broken down as Kshs 6,700/- for the Medical Report and medical expenses, and Kshs 150,000/- for medical expenses for removal of the implants. She therefore asserted that the claim for special damages was properly pleaded and proved, and which the Appellant did not contest.

Determination

15. As this is an Appeal from a decision of the Small Claims Court, the same can only be entertained on points of law. This is the import of Section 38 of the *Small Claims Court Act*, which provides as follows:

> " 38. Appeals
>
> 2. A person aggrieved by the decision or an order of the Court may Appeal against that decision or order to the High Court on matters of law.
>
> (2) An Appeal from any decision or order referred to in subsection (1) shall be final.

16. In respect to Appeals that are, by law, limited to points of law only, Nyamu J, in the case of Kenya Breweries Limited v Godfrey Odoyo [2010] eKLR), while dealing with a second Appeal, which is also

ordinarily allowed only on points of law, and thus similar to those contemplated under Section 38 aforesaid, stated as follows:

> " In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse."

17. In this Appeal, all the grounds listed in the Memorandum of Appeal begin with the phrase "the learned trial Magistrate erred in law and in fact". It may therefore be presumed that the Appeal, contrary to the limitations stipulated in Section 38, raises factual issues, which this Appellate Court would have no jurisdiction to entertain. Nonetheless, having carefully looked at the grounds and Submissions presented, I am satisfied that some of the grounds raised properly qualify as points of law. For this reason, I have identified only the following as proper issues for determination herein:

    i. Whether the Adjudicator correctly applied the principle that generally, a minor is not held contributory negligent, save in limited circumstances.

    ii. Whether the award of general damages was inordinately too high and manifestly excessive.

    iii. Whether the claim for future medical expenses was properly pleaded.

18. In respect to the issue of whether the Adjudicator correctly applied the principle that generally, a minor cannot be held contributory negligent, it is clear that the Adjudicator warned herself of the existence of exceptions to that general rule. She then proceeded to correctly interpret the case of Rahima Tayab & Others vs Anna Mary Kinanu (supra) in which the Court of Appeal exhaustively dealt with that issue. Having correctly appreciated the legal position, and particularly, the exceptions identified in law, the Adjudicator applied the same in making the finding of fact, which I have no jurisdiction to contradict, that in this case, none of the exceptions was established since the driver of the Appellant's motor vehicle did see children on both sides of the road prior to the accident, and that as a prudent driver, she should have reasoned consciously and appreciated the possibility of any of the children crossing the road suddenly. The Adjudicator thus held that the driver had an extra duty of care, which she did not exercise in this case. Under these circumstances, the Adjudicator having made the findings of fact while fully alive to the correct position of the law, including the exceptions thereto, I am unable to find any indication that the Adjudicator failed to properly exercise her discretion.

19. In respect to the challenge to the award of general damages, the principles guiding an appellate Court when called upon to interfere with an award of quantum, the Court of Appeal, in the case of Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & Another (No 2) [1985] eKLR, held as follows:

> " The principles to be observed by an appellate Court in deciding whether it is justified in disturbing 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 into account an irrelevant factor, or left out of account a 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 ....."

20. Similarly, in the case of Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR, the Court of Appeal also held as follows:

> " ... it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled ....."

21. The Court of Appeal yet again reiterated the above principle in the case of Dilip Asal v Herma Muge & Another [2001] eKLR [2001] KLR, as follows:

> " ..... Assessment of damages is essentially an exercise of discretion and the grounds upon which an appellate Court will interfere with the manner in which a trial Court assessed damages relate to issues of an error of principle."

22. An appellate Court will not therefore disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. For an appellate Court to interfere, it must be demonstrated that the trial Court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was unsupported.

23. On the mode of assessing damages, the Court of Appeal in the case of case of Butter v Butter, Civil Appeal No. 43 of 1983 [1984] KLR, held as follows.

> " In awarding damages, a Court should consider the general picture of all prevailing circumstance and effect of the injuries of the claimant but some degree of is to be sought in the awards, so regard would be paid to recent awards in comparable cases in local Courts. The fall of value of monies generally, the levelling up and down of the facts of exchange between currencies should be taken into consideration."

24. Further, the Court of Appeal in the case of Odinga Jacktone Ouma v Moureen Achieng Odera [2016] eKLR stated that

> " Comparable injuries should attract comparable awards".

25. Similarly, inSimon Taveta v Mercy Mutitu Njeru Civil Appeal 26 of 2013 [2014] eKLR, the Court of Appeal observed that:

> " The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past."

26. From the above, it is clear thatin awarding damages, some degree of uniformity must be set depending on the facts, and the best guide would be to consider recent awards on comparable injuries. The Appellant's position herein is that the award of Kshs 600,000/- as general damages was excessive. I may state that assessment of general damages is an issue of fact but, in the event that the Court assesses such damages without basis, the same becomes unlawful and, in turn, a point of law.

27. In this case, as correctly captured by the Adjudicator, the Medical Report dated 3/08/2022 prepared by Dr. Sokobe and produced on behalf of the Respondent, indicates that the major injury suffered by the Respondent was the fracture of the right tibia/fibula (open), in respect to which, at the time of examination, the Respondent had not recovered from, was unable to use his lower limb, and was therefore using crutches to walk. The fracture was also secured with metal implants in situ, which required to be surgically removed after some time. The rest of the injuries consisted of, basically, multiple soft tissue injuries. Although the Appellant's Counsel complained that the Adjudicator failed to also consider the Appellant's Medical Report prepared by Dr. Gaya, I find no indication that any such Medical Report was produced in evidence, since, in any event, Dr. Gaya never even testified in the case as a witness.

28. To establish comparable awards, I have perused various relatively recent authorities in which the injuries suffered were almost similar, or close, to those suffered herein. I have for instance, picked out the following:

    a. D. Majanja J, in the case of Jitan Nagra v Abidnego Nyandusi Oigo [2018] KEHC 3078 (KLR) eKLR, on appeal, reduced an award of Kshs 1,000,000/- to Kshs 450,000/-.

    b. R. Aburili J, in the case of Daniel Otieno Owino & another v Elizabeth Atieno Owuor [2020] KEHC 4895 (KLR), on appeal, reduced an award of Kshs 600,000/- to Kshs 400,000/-.

    c. D. Majanja J, in the case of Kiama v Mutiso [2024] KEHC 5135 (KLR), on appeal, reduced an award of Kshs 700,000/- to Kshs 400,000/-.

    d. A. Ongeri J, in the case of Kiama v Mutiso [2024] KEHC 5135 (KLR), on appeal, upheld an award of Kshs 500,000/-.

    e. Gichohi J, in the case of Kiama v Mutiso [2024] KEHC 5135 (KLR), on appeal, enhanced an award of Kshs 350,000/- to Kshs 550,000/-.

19. From the foregoing, it can be safely concluded that majority of the awards made for the category of injuries in issue herein range at between Kshs 400,000/- and Kshs 500,000/-, of course each depending on the severity thereof.While theprevailingstatus of our currency and economy have to be taken into account in awarding damages, astronomical awards must also be avoided. The Court must therefore ensure that awards result in fair compensation.

19. In light of the comparable awards and the principles referred to, I find thesum of Kshs 600,000/- for general damagesawarded by the trial Magistrate to be considerably high and substantially excessive to amount to an error in principle, which error justifies interference by this Court. Accordingly, I set aside the award of Kshs 600,000/- and substitute it with one for Kshs 450,000/-.

19. As regards the award made under the head of future medical expenses, the Appellant took issue with the fact that this expense was awarded yet, according to Dr. Gaya's Medical Report, the Respondent's implants had already been removed. As already aforesaid, I have no indication that any such Medical Report was produced in evidence, since, in any event, Dr. Gaya never even testified in the case as a witness.

19. On whether the claim for future medical expenses was pleaded and proved, the Court of Appeal, in the case of Tracom Limited & Another v Hasssan Mohamed Adan [2009] eKLR stated as follows:

> " We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can

award it. In the case of Kenya Bus Services Ltd vs. Gituma (2004) 1 EA 91, this Court, stated: -

> "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 arising naturally from infringement of a person's legal right should be pleaded."
>
> We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require."

19. Applying the above principles, it is clear in this case, the Respondent specifically pleaded the claim for "future medical expenses" in his Statement of Claim, and specifically the sum of Kshs 150,000/-. It can also be safely presumed that at the time when the Respondent filed the suit, the minor still had plates in-situ. This is dedicible from the fact that while the Statement of Claim is dated 22/07/2022, Dr. Sokobe's Medical Report bears the earlier date of 15/07/2022. Under these circumstances, the Adjudicator cannot be faulted for awarding the damages of Kshs 150,000/- for "future medical expenses", and, I thus have no reason to disturb that award.

19. I note that the special damages award of Kshs 6,700/- has not been challenged.

Final Orders

29. The upshot of my findings above is that this Appeal partially succeeds, and only to the extent that the award of Kshs 600,000/- made under the head of general damages is reduced to Kshs 450,000/-.

30. Accordingly, the final particulars and computation of the Judgment entered in Eldoret Small Claims Court Civil Case No. E108 of 2022 shall be as follows:

Liability	100% against the Appellant
General damages	Kshs 450,000.00
Special damages	Kshs 6,700.00
Future medical expenses	Kshs 150,000.00
Total	Kshs 606,700.00
Plus costs and interest at Court rates	

31. Since the Appeal has only partially succeeded, each party shall bear his/her own costs of thereof.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 13 TH DAY OF FEBRUARY 2026

…… ……

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Ms. Gati for the Appellant

Mr. Ekisa for the Respondent

Court Assistant: Brian Kimathi