



Rabindo & another (Suing as Administrators of the Estate of the Late Peter Rabindo Ngumbo-Deceased) v Beauty Wholesale (K) Ltd (Civil Case 317 of 2016) [2026] KEMC 13 (KLR) (10 February 2026) (Judgment)

Neutral citation: [2026] KEMC 13 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 317 OF 2016
YA SHIKANDA, SPM
FEBRUARY 10, 2026**

BETWEEN

JUMWA PETER RABINDO 1ST PLAINTIFF

JOHNATHAN KATANA RABINDO 2ND PLAINTIFF

**SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE PETER
RABINDO NGUMBO-DECEASED**

AND

BEAUTY WHOLESALE (K) LTD DEFENDANT

JUDGMENT

The Claim

1. The suit herein was initially filed by the deceased Peter Rabindo Ngumbo (hereinafter referred to as the deceased) on 11/7/2016 vide a plaint dated 3/6/2016. Following his demise, the current plaintiffs Jumwa Peter Rabindo and Johnathan Katana Rabindo (hereinafter referred to as the 1st and 2nd plaintiffs respectively) substituted the deceased. The plaint was later amended accordingly. In the amended plaint, Beauty Wholesale (K) Ltd (hereinafter referred to as the defendant) was sued on account of a road traffic accident that allegedly occurred on 17/4/2016 along Mombasa-Nairobi Highway.
2. The plaintiffs averred that the deceased was a lawful passenger aboard motor vehicle registration number KBZ 773V when the driver of the said motor vehicle drove so negligently, recklessly and carelessly that he caused it to veer off its proper lane and landed into a ditch, causing the deceased to sustain severe bodily injuries. The defendant was sued as the registered and beneficial owner of motor vehicle registration number KBZ 773V at the material time. The plaintiffs pleaded the following particulars of negligence against the alleged defendant's driver:



- a. Failing to keep any or any proper lookout;
 - b. Drove motor vehicle registration KBZ 773V at a speed that was too fast in the circumstances;
 - c. Failed to have any or any proper control of the motor vehicle registration number KBX 773V;
 - d. Drove without any due regard and attention;
 - e. Failed to have any or any sufficient regard for the safety of other road users and in particular the plaintiff herein;
 - f. Failed to brake, stop, swerve, slow down or in any other manner manage or control the said motor vehicle registration number KBZ 773V so as to avoid the accident subject matter;
 - g. Drove recklessly, carelessly and dangerously.
3. The plaintiffs further pleaded particulars of injuries sustained as well as those of special damages. They relied on the doctrine of Res ipsa loquitur and prayed for judgment against the defendant for:
- a. General damages for pain, suffering and loss of amenities
 - b. Special damages for Ksh. 131,931/=;
 - c. Costs and interest.

The Defendant's Defence

4. The defendant entered appearance on 5/8/2016 and filed a statement of defence on the same day. The defendant denied that it was the registered and/or beneficial owner of motor vehicle registration number KBZ 773V, denied the occurrence of the accident and denied the particulars of negligence as pleaded by the plaintiff. In the alternative, the defendant averred that if the accident occurred, as the plaintiff may prove, then the same was caused solely and/or substantially contributed to by the plaintiff's (deceased) own negligence. The defendant pleaded the following particulars of negligence against the plaintiff (deceased):
- a. Failing to take any or any adequate precaution for his own safety;
 - b. Failing to heed the defendant's instructions on safety precautions when travelling;
 - c. Failing to heed to the traffic rules and regulations when travelling.
5. The defendant denied the particulars of injuries, loss and damage as pleaded in the plaint and further denied the applicability of the doctrine of Res ipsa loquitur. The defendant prayed that the plaintiff's suit be dismissed with costs.

The Evidence

The plaintiff's Case

6. Two witnesses testified in support of the plaintiffs' case. These were a police officer and the 2nd plaintiff. PW 1 Police Constable Edwin Cheruiyot from Makindu police station produced a police abstract on the accident in issue. The police abstract confirmed the occurrence of the accident. The abstract further confirmed that the deceased was a passenger in the motor vehicle at the time of accident. That the accident was self-involving and that the driver of the said motor vehicle was charged with the offence of careless driving and was convicted and fined Ksh. 4,000/=. PW 2 Johnathan Katana Rabindo (2nd plaintiff) adopted his statement filed in court as his testimony. However, I note that the statement



contains what appears to be hearsay since he did not witness the accident but recorded a statement as if he witnessed the accident. I will disregard his testimony as far as it relates to the manner in which the accident occurred. PW 2 produced documents in support of the plaintiffs' case.

The Defendant's Case

7. The defendant did not call any witnesses.

Main Issues For Determination

8. In my opinion, the main issues for determination are as follows:
- i. Whether an accident occurred on 17/4/2016 along Mombasa-Nairobi road involving motor vehicle registration number KBZ 773V;
 - ii. Whether the deceased was a passenger in motor vehicle registration number KBZ 773V 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 KBZ 773V was to blame for the accident?
 - v. Whether the defendant is vicariously liable for the accident;
 - vi. Whether the deceased sustained injuries and suffered loss as a result of the alleged accident;
 - vii. Whether the plaintiffs are entitled to damages and if so, the nature and quantum thereof;
 - viii. Who should bear the costs of this suit?

The Plaintiffs' Submissions

9. On liability, the plaintiffs relied on the evidence on record and averred that the plaintiffs' evidence was uncontroverted. They urged the court to hold the defendant 100% liable. That the deceased was a passenger in the accident motor vehicle and did not contribute to the accident. The plaintiffs' relied on the authority of Felix Odiwuor Aluoch t/a Rescue Bookshop v Modern Coast Couriers Limited [2020] eKLR.
10. On quantum, the plaintiffs submitted a sum of Ksh. 400,000/= in general damages and relied on the following authorities:
1. Mara Tea Factory Limited v Lillian Bosibori Nyandika [2021] eKLR The plaintiff and respondent in the appeal sustained head injury, dislocation of the left shoulder joint, dislocation of the left wrist joint and a deep cut wound on the head. The trial court awarded Ksh. 400,000/= on 9/10/2020. On appeal, the award was reduced to Ksh. 300,000/= on 14/12/2021.
 2. 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, tenderness on the neck, tenderness on the anterior chest, tenderness on the lower back, tenderness on the shoulders, swelling and tenderness on the right hand, bruises on right index finger, swelling, tenderness and bruises on 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.



11. The plaintiff further urged the court to award special damages of Ksh. 131,931/= plus costs of the suit and interest.

The Defendant's Submissions

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

Analysis And Determination

13. I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiffs. From the testimony of the police officer and the documents produced in evidence, I have no doubt that an accident occurred on 17/4/2016 at Kiboko area along Mombasa-Nairobi road involving motor vehicle registration number KBZ 773V. There is also sufficient evidence to show that the deceased was a passenger in motor vehicle registration number KBZ 773V at the time of accident. The police abstract produced in evidence confirmed the position. In any event, the plaintiffs' evidence was not controverted by the defence.
14. 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 KBZ 773V as at 27/5/2017. The defendant did not attend court to deny that it was the owner of the said motor vehicle. I am satisfied that the defendant was the owner of motor vehicle registration No. KBZ 773V at the time of accident.

Liability

15. It is the duty of the plaintiffs to establish or prove negligence on the part of the defendant. 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.”

16. No eye witness was called to testify as to the occurrence of the accident. However, the police abstract produced in evidence indicates that the driver of motor vehicle registration number KBZ 773V was charged and convicted of the offence of careless driving and was fined Ksh. 4,000/=. The contents of the police abstract were not challenged at all by the defendant. Section 47A of the *Evidence Act* provides:

“A final judgment of a competent court in any criminal proceedings which declares any person to be guilty of a criminal offence shall, after the expiry of the time limited for an appeal against such judgment or after the date of the decision of any appeal therein, whichever is the latest, be taken as conclusive evidence that the person so convicted was guilty of that offence as charged.”

17. There is no indication that there was an appeal against the conviction in the traffic case. As already indicated, the deceased was a mere passenger in the accident motor vehicle and there is no evidence to show that he was negligent in any manner. The conviction of the driver of the accident motor vehicle is an indication that he was negligent. I rely on the Court of Appeal authority of *Abdi Ali Dere v Firoz*



- Hussein Tundal & 2 others [2013] KECA 167 (KLR). Consequently, I find the driver of the accident motor vehicle 100% liable for the accident.
18. 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.
19. 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.”
20. 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.”
21. 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.”
22. It has not been denied in evidence that the driver of motor vehicle registration number KBZ 773V was driving in the course of his employment with the defendant. Consequently, I find the defendant 100% vicariously liable for the accident.

Quantum

23. The medical evidence on record indicates that the plaintiff sustained the following injuries:
- a. Deep laceration on the parietal/occipital region;
 - b. Deep laceration on the left shoulder; and
 - c. Pain and bleeding (not really an injury).
24. There is no contrary evidence. I find that there is sufficient evidence to prove that the deceased sustained injuries as a result of the accident. Given the fact that the defendant has been held 100% vicariously liable for the accident, the plaintiffs are 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.

25. 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”.

26. I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington 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.”

27. 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.

28. Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

29. I have considered the injuries sustained by the deceased. The medical evidence produced by the 2nd plaintiff indicates that the deceased was treated as an inpatient. I have further considered the submissions made by the plaintiffs on quantum as well as the authorities relied upon. The authorities relied upon by the plaintiffs are comparable. On my part, I have considered the following authorities:

1. *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.



2. 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. 250,000/= in general damages would suffice. I award the same.

Special Damages

The plaintiff pleaded special damages as follows:

- a. Medical report.....Ksh. 3,000/=
 - b. Medical expenses.....Ksh. 128,431/=
 - c. Copy of records.....Ksh. 500/=
- Total.....Ksh. 131,931/=.

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”

30. 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.”

32. Some receipts for medical expense are totally faded and illegible. I will only award what is legible. The plaintiffs opted to produce faded documents. They will have to carry their own cross. Consequently, I award special damages to the tune of Ksh. 74,229/=

Disposition

33. In summary, I hold that the plaintiffs have proven their case on a balance of probabilities as against the defendants. Consequently, I make the following awards:

- 1. General damages for pain, suffering and loss of amenities.....Ksh. 250,000/=
 - 2. Special damages.....Ksh. 74,229/=
- Total.....Ksh. 324,229/=

34. 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.”
35. 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.
36. 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.”
37. 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 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..... Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)
38. 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/decreed 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 VIA CTS THIS 10TH DAY OF FEBRUARY, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

