



**Intex Construction Limited v Cheptanui & another (Civil Appeal  
E078 of 2025) [2026] KEHC 4313 (KLR) (31 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4313 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E078 OF 2025  
JK SERGON, J  
MARCH 31, 2026**

**BETWEEN**

**INTEX CONSTRUCTION LIMITED ..... APPELLANT**

**AND**

**BETTY CHEPTANUI ..... RESPONDENT**

**AND**

**JAMES SANG ..... THIRD PARTY**

*(Being an appeal from the judgment and decree of Hon. L. Kananu, Resident Magistrate, in  
Kericho Chief Magistrate's Court Civil Suit No. E374 of 2023 delivered on 23rd July 2025)*

**JUDGMENT**

1. This is an appeal against the entire judgment of the learned trial magistrate, Hon. L. Kananu, delivered on 23<sup>rd</sup> July 2025 in Kericho CMCC No. E374 of 2023. In that judgment, the trial court found the appellant 80% liable and the third party 20% liable for a road traffic accident that occurred on 18<sup>th</sup> October 2023 along the Nakuru-Kericho road at Jubert area. The trial court awarded the respondent general damages of Kshs. 600,000/-, special damages of Kshs. 15,090/-, and future medical expenses of Kshs. 150,000/-, making a total award of Kshs. 765,090/- together with costs and interest.
2. The appellant, being dissatisfied with the said judgment, filed a Memorandum of Appeal dated 22<sup>nd</sup> August 2025 raising seven grounds of appeal. The appeal was canvassed by way of written submissions which I have carefully considered.
3. The respondent initiated her claim by way of a plaint dated 30<sup>th</sup> November 2023. The respondent pleaded that she sustained the following injuries as a result of the accident: Left radius fracture· Left ulna fracture· Right sub-conjunctival hemorrhage· Bruises on the right lower limb· blunt trauma to the



- lower back. Physical and psychological pains· Chest contusion· Lacerations on the face· Bruises on the neck. Blood loss· Bruises on the left lower limb
4. The respondent also pleaded special damages as follows;· Police Abstract: Kshs. 200/-· Medical Report: Kshs. 650/-· Doctor's Court Attendance Fees: Kshs. 6,000/-· Treatment Costs Incurred: Kshs. 2,590/-· Future Surgery Costs: Kshs. 200,000/-· Total Special Damages Pleaded: Kshs. 209,440/-
  5. The respondent pleaded that at the material times, the appellant was the registered and/or possessory or equitable owner of motor vehicle KDG 144U.
  6. The appellant entered appearance and filed a defence denying liability. The appellant subsequently joined one James Sang as a third party. The third party did not enter appearance, and interlocutory judgment was entered against him on 23<sup>rd</sup> July 2024.
  7. The trial proceeded with the respondent testifying as PW1 and IP Onyuka Ken testifying as PW2. The appellant called its driver as DW1 and CIP David Onyuka as DW2.
  8. The trial court found that the evidence established that motor vehicle KDG 144U was attempting to overtake on a climbing lane and caused a chain collision. The court apportioned liability at 80% against the appellant and 20% against the third party.
  9. On quantum, the trial court awarded Kshs. 600,000/- as general damages, Kshs. 15,090/- as special damages, and Kshs. 150,000/- as future medical expenses.
  10. The issues for determination are;
    - (i) Whether the trial court erred in its apportionment of liability;
    - (ii) Whether the trial court erred in its assessment of general damages;
    - (iii) Whether the trial court erred in its award of special damages and future medical expenses.
  11. The appellant argued that the trial court erred in holding the appellant 80% liable without evidence. I have reviewed the evidence on record.
  12. PW2, IP Onyuka Ken, testified that motor vehicle KDG 144U was attempting to overtake on a climbing lane and upon seeing another motor vehicle, tried to go back to his lane, thereby causing a chain collision.
  13. The appellant's own driver confirmed he was present and his vehicle was involved in the accident.
  14. The respondent pleaded that the appellant was the owner of motor vehicle KDG 144U. This pleading was not specifically denied by the appellant.
  15. I find no error in the trial court's finding on liability. This ground of appeal fails
  16. The appellant contended that the award of Kshs. 600,000/- was inordinately excessive.
  17. The respondent's injuries included multiple fractures (both ankles, right foot, neck) and soft tissue injuries. These are serious injuries. The trial court's award of Kshs. 600,000/- is reasonable and not inordinately excessive. This ground of appeal fails.
  18. The respondent pleaded special damages totaling Kshs. 209,440/-, which included future surgery costs of Kshs. 200,000/-.



19. The trial court awarded Kshs. 15,090/- as special damages and a separate Kshs. 150,000/- as future medical expenses. This approach effectively split the pleaded future surgery costs between special damages and future medical expenses.
20. To avoid double counting and to reflect the pleaded amount, the total award for special damages (including future surgery costs) should be Kshs. 209,440/-. However, the trial court's total award under both heads (Kshs. 15,090 + Kshs. 150,000 = Kshs. 165,090) is less than the pleaded amount of Kshs. 209,440/-.
21. I will uphold the trial court's award as it is within the discretion of the trial court and no error has been demonstrated.
22. In light of the foregoing, the appeal lacks merit and is hereby dismissed. The appellant shall pay the costs of this appeal to the respondent.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 31<sup>ST</sup> DAY OF MARCH, 2026**

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**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh/Naomi

Bunde J. O. for Respondents

Miss Wendy for the Appellant

