



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO E149 OF 2022

STEPHEN MUINDI MUKULU.....PLAINTIFF

VERSUS

**MOMBASA FRESH BUS COMPANY.....1ST
DEFENDANT**

PETERSON MITTAU.....2ND DEFENDANT

JUDGMENT

THE CLAIM

Stephen Muindi Mukulu (hereinafter referred to as the plaintiff) initially filed this suit on 29/9/2022 vide a plaint dated 27/9/2022. The plaint was later amended on 10/11/2023 and filed on 16/11/2023. The plaintiff sued Mombasa Fresh Bus Company and Peterson Mittau (hereinafter referred to as the 1st and 2nd defendants respectively) on account of a road traffic accident that allegedly occurred on 13/2/2022 at Zion (Machinery) area along Mombasa-Nairobi Highway. The plaintiff averred that on the above stated date, he was a lawful passenger in motor vehicle registration number KBR 128A along Mombasa-Nairobi Highway when at Zion area, the said motor vehicle was carelessly and negligently driven that it hit motor vehicle registration number SSD 652P/ZG 7405 from the rear, hence causing an accident and occasioning the plaintiff serious injuries.

The 1st defendant was sued as the beneficial owner of motor vehicle registration number KBR 128A whereas the 2nd defendant was sued as the registered owner thereof. The plaintiff pleaded the following particulars of negligence as against the defendants and their agent:

- a) Driving without due care and attention;
- b) Driving at an excessive speed in the circumstances;
- c) Failing to brake, stop and swerve and/or slow down so as to keep the motor vehicle registration number KBR 128A in control;
- d) Failing to take care of the well-being of other road users, the plaintiff being one of them;
- e) Dangerously overtaking and/or overtaking when it was not safe to overtake;
- f) Hitting motor vehicle registration number SSD 652P/ZG 7405 from the rear;
- g) Hitting another vehicle from the rear;
- h) Causing an accident and occasioning the plaintiff serious injuries;
- i) Generally being negligent.

The plaintiff further particulars of injuries and those of special damages. He prayed for judgment against the defendants for:

- 1) General damages;
- 2) Special damages of Ksh. 9,260/=;
- 3) Future medical expenses;
- 4) Costs of the suit and interest.

WITHDRAWAL OF SUIT

The record indicates that on 9/5/2023, the plaintiff filed a notice of withdrawal of suit against the 1st defendant. Unfortunately, the notice was not acted upon by the court. Therefore, vide this judgment, the suit against the 1st defendant is marked as withdrawn.

THE 2ND DEFENDANT'S DEFENCE

The 2nd defendant entered appearance on 2/12/2022 and filed a written statement of defence on the same day. The 2nd defendant denied that it was the owner of motor vehicle registration number KBR 128A, denied that the plaintiff was a lawful passenger in the said motor vehicle on 13/2/2022, denied that the motor vehicle was carelessly and negligently driven and denied that the said motor vehicle was involved in an accident in the manner pleaded in the plaint. The 2nd defendant further denied the particulars of negligence pleaded in the plaint as well as the particulars of injuries, loss and damage.

In the alternative, the 2nd defendant averred that if the accident occurred, as the plaintiff may prove, then the same was solely and/or substantially contributed to by the plaintiff's own negligence. He pleaded the following particulars of negligence as against the plaintiff:

- a) Failing to take any or any adequate precaution for his own safety;
- b) Failing to heed the instructions on safety precautions when travelling;
- c) Failing to heed the traffic rules and regulations when travelling;
- d) Failing to wear seatbelt while travelling.

The 2nd defendant further pleaded the following particulars of negligence against the driver of motor vehicle registration number SSD 652P/ZG 7405:

- a) Hitting motor vehicle registration number KBR 128A;
- b) Driving motor vehicle registration number SSD 652P/ZG 7405 at a speed that was high and excessive in the circumstances;
- c) Failing to stop, break instantly and/or swerve in order to avert an accident;
- d) Encroaching onto the lane of motor vehicle registration number KBR 128A in a dangerous manner;
- e) Endangering the lives of other road users in his manner of driving;
- f) Causing the accident.

Further in the alternative, the 2nd defendant averred that if indeed the said accident occurred, then the same was beyond the control of the 2nd defendant. He further averred that the plaint did not disclose any or any reasonable cause of action against him and prayed that the suit be dismissed with costs.

THE EVIDENCE

The Plaintiff's Case

Three witnesses were called on behalf of the plaintiff. PW 1 was the plaintiff himself. He adopted his statement filed in court as part of his testimony. The plaintiff testified that on 13/2/2022 he was a lawful passenger in motor vehicle registration number KBR 128A along Mombasa-Nairobi highway and that when they reached Zion area, the said motor vehicle rammed into the rear of another motor vehicle registration number SSD 652P/ZG 7405. That the driver of KBR 128A was driving at a high speed and after the impact, the said motor vehicle rolled and landed in a ditch. The plaintiff was injured and taken to hospital. He listed his injuries and prayed for orders as per his plaint. The plaintiff produced in evidence copies of the supporting documents. The plaintiff blamed the driver of KBR 128A for the accident.

PW 2 Doctor Washington Wokabi testified that he examined the plaintiff and noted the injuries that had been sustained. The doctor produced the medical report that he prepared. PW 3 Police Corporal Aisha Bajaro confirmed that the accident had been reported at Mtitu Andei police station. That she was the investigating officer in respect of the accident. The witness stated that at the time of issuance of the police abstract, investigation were not complete but upon completion, she established that the driver of KBR 128A was to blame for the accident for failing to keep a safe distance. The witness produced the police abstract in evidence.

The 2nd Defendant's Case

The 2nd defendant did not attend court to testify nor call any witness.

MAIN ISSUES FOR DETERMINATION

In my opinion, the main issues for determination are as follows:

- i. Whether an accident occurred on 13/2/2022 at Zion area along Mombasa-Nairobi highway involving motor vehicles registration numbers KBR 128A and SSD 652P/ZG 7405;
- ii. Whether the 2nd defendant was the owner of motor vehicle registration number KBR 128A at the material time;
- iii. Whether the plaintiff was involved in the accident;

- iv. Whether the driver of KBR 128A was to blame for the accident and whether the defendant ought to be held liable;
- v. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;
- vi. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- vii. Who should bear the costs of this suit?

THE PLAINTIFF'S SUBMISSIONS

The plaintiff relied on the evidence on record and submitted that the evidence was not rebutted by the 2nd defendant. He argued that he was a mere passenger and not in control of the motor vehicle. The plaintiff urged the court to find the 2nd defendant 100% liable and relied on the following authorities:

- a) *Mutonde v Kyalo (Civil Appeal 4 of 2020) [2024] KEHC 1796 (KLR);*
- b) *Peter Ngigi Kuria & Rosemary Ngendo Kamau (Suing as the Legal representatives of the Estate of Joan Wambui Ngigi) v Thomas Ondili Oduol & Topsy Mathani [2019] eKLR;*
- c) *Agility Logistics Limited v John Wambua Musau & another [2017] KEHC 6446 (KLR).*

On quantum, the plaintiff proposed a sum of Ksh. 1,500,000/= as general damages and Ksh. 300,000/= as future medical expenses. He relied on the following authorities:

- 1) *Alphonse Mwatsuma Mwagamchi v Joseph Mwanzia Mwanzu & another [2005] eKLR;*
- 2) *Sancha v Oeri & another (Civil Appeal 1 of 2022) [2023] KEHC 4145 (KLR);*
- 3) *Henry Ngila v HK (minor suing through his father and next friend DKM [2021] eKLR.*

The plaintiff asked for special damage as pleaded as well as attendance costs for the doctor and police officer. He also urged the court to award costs of the suit together with interest.

THE 2ND DEFENDANT'S SUBMISSIONS

The 2nd defendant did not file any submissions.

ANALYSIS AND DETERMINATION

I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff as well as the authorities relied upon. From the testimony of the plaintiff and PW 3, which evidence was not controverted, I have no doubt that an accident occurred on 13/2/2022 involving motor vehicles registration numbers KBR 128A and SSD 652P/ZG 7405 at Zion area along Mombasa-Nairobi highway. The plaintiff produced in evidence a copy of records from the Registrar of motor vehicles which clearly indicates that the 2nd defendant was the registered owner of motor vehicle registration number KBR 128A as at 27/9/2022.

Section 8 of the Traffic Act provides that the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. There is no contrary evidence and as such, I find no difficulty in finding that the 2nd defendant was the owner of the accident motor vehicle at the material time. The plaintiff testified that he was involved in the accident as a passenger in motor vehicle registration number KBR 128A. This information was confirmed by PW 3 who investigated the accident. The police abstract produced in evidence indicates that the plaintiff was involved in the accident as a passenger. The 2nd defendant did not controvert this evidence. It is thus my finding that the plaintiff was involved in the accident as a passenger.

Liability

There is only one version as to how the accident occurred. According to the plaintiff's uncontroverted evidence, motor vehicle registration number KBR 128A was driven at a high speed, the driver lost control and caused the motor vehicle to ram into the rear of motor vehicle registration number SSD 652P/ZG 7405. The plaintiff's testimony was corroborated by PW 3 who investigated the accident. It is the duty of the plaintiff to establish or prove negligence on the part of the defendant. It is trite law that it is not enough to adorn the plaintiff 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 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.”

The uncontroverted evidence of the plaintiff clearly shows that the driver motor vehicle registration number KBR 128A was at fault. He was reckless in his manner of driving and failed to keep a safe distance between his motor vehicle and the motor vehicle ahead. A motor vehicle that is driven by a prudent and careful driver does not just ram into another motor vehicle. The 2nd defendant did not call a witness to prove or establish that the plaintiff, who was a mere passenger and not in control of any of the motor vehicles, was to blame for or caused or contributed to the accident. There is also no evidence to show that the driver of SSD 652P/ZG 7405 was negligent in any manner. The 2nd defendant did not take out third party proceedings against the driver or owner of SSD 652P/7405. Without evidence, the averments in the statement of defence remain mere allegations. This is trite law.

There is clear and uncontroverted evidence on how the accident herein occurred. I find that the evidence of the plaintiff as to how the accident occurred was consistent and was not shaken in cross-examination. In view of the evidence on record, there is a sufficiently high degree of probability, that, but for the acts of omission and commission by the driver of motor vehicle registration number KBR 128A, the accident would have been prevented. I find that the driver of the said motor vehicle was solely culpable as far as the accident is concerned. In my view, there are concrete facts on which a finding would be made that the said driver was solely negligent.

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.

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."

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."

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."

I have already indicated that there is sufficient evidence to show that motor vehicle registration number KBR 128A belonged to the 2nd defendant. There is no evidence to dispute that the person who was driving the motor vehicle was doing so in the course of his employment with or as an agent of the 2nd defendant. Consequently, I find the 2nd defendant **100% vicariously liable** for the accident.

Quantum

The medical evidence on record indicates that the plaintiff sustained the following injuries following the accident:

- i. Fracture of the lower jaw (mandible);
- ii. Fracture of the upper jaw (maxilla);
- iii. Loss of five front teeth; and
- iv. Cut wounds on the chin, lips and cheeks.

I find that there is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the finding on liability, the plaintiff is thus entitled to damages as against the 2nd 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. 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”.

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.”

The Court of Appeal in *Southern Engineering Company Ltd v Musingi Mutia [1985] KLR 730* held that:

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated...The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of

similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion.”

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.

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

General Damages for pain, suffering and loss of amenities

I have considered the injuries sustained by the plaintiff. The plaintiff suffered injuries which were classified as grievous harm in the P3 form. In my opinion, the authorities relied upon by the plaintiff are comparable. I see no reason as to why I should not be guided by them. For purposes of clarity, I will reproduce the authorities as follows:

a) Alphonse Mwatsuma Mwagamchi v Joseph Mwanzia Mwanzu & another [2005] eKLR.

The plaintiff sustained fracture of mandible, loss of seven (7) teeth, contusion of chest (no fracture) and severe back injury with spinal cord involvement (persthenia both legs). The court awarded Ksh. 1,200,000/= in general damages on 15/12/2005.

b) Sancha v Oeri & another (Civil Appeal 1 of 2022) [2023] KEHC 4145 (KLR).

The plaintiff and appellant in the appeal sustained fracture of maxillae, broken front teeth, laceration of the gums, loss of upper incisor tooth, laceration of the lower lip, fractures of the lower jaw and blunt laceration on the scalp. The trial court awarded Ksh. 300,000/= in general damages on 6/4/2022. On appeal, the award was enhanced to Ksh. 800,000/= on 11/5/2023.

c) Henry Ngila v HK (minor suing through his father and next friend DKM [2021] eKLR.

The plaintiff and respondent in the appeal sustained a deep cut wound above the right eye, bruises on right side of the face, cut wound below the nostrils, blunt injury to the jaws, missing 2 upper and 3 lower teeth, subluxation of the following teeth: 21, 22, 31, 41, 42 and 43, blunt injury to cervical spine, dent alveolar fractures and bruises on right ankle. The trial court awarded Ksh. 700,000/= in general damages on 15/5/2019. On appeal, the award was affirmed on 28/9/2021.

Given the nature of the injuries sustained by the plaintiff herein and the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. **1,300,000/=** in general damages would suffice. I award the same.

Special Damages

The plaintiff pleaded special damages as follows:

- a) Medical expenses.....Ksh. 5,710/=
- b) Medical report fees.....Ksh. 3,000/=
- c) Motor vehicle search certificate.....Ksh. 550/=
- Total.....**Ksh. 9,260/=**

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"

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."

Attendance fees for the doctor and police officer cannot be termed as special damages. These can be claimed as part of the costs of the suit. I will thus disregard the claim for attendance fees. In any event, the same was not pleaded as special damages. The receipts for medical expenses amount to Ksh. 5,090/=. There is a receipt for medical expenses which is not legible and as such, I will disregard it. The receipts for the search certificate and medical report were produced. Consequently, special damages pleaded and proved amount to **Ksh. 8,640/=**. I award the same.

Future Medical Expenses

The plaintiff pleaded future medical expenses of Ksh. 300,000/= comprised of Ksh. 100,000/= for fixing a permanent teeth bridge and Ksh. 200,000/= for replacement of the teeth bridge two times at a cost of Ksh. 100,000/= per renewal. In addressing this issue, I will highlight some Court of Appeal authorities on the subject.

1) Simon Taveta v Mercy Mutitu Njeru [2014] eKLR

In a judgment delivered on 5/2/2014, the court held as follows on the issue of future medical expenses:

"The issue for our consideration is whether the pleadings as stated above in the plaint include a claim for future medical expenses. In the case of Kenya Bus Services Ltd. - v Gituma, (2004) 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 damages and is a fact

that must be pleaded, if evidence thereon 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 the infringement of a person's legal rights should be pleaded'.

We observe that the trial judge correctly held that the plaintiff did not contain a pleading for future earnings or the need for employment of a house help and nurse and that these ought to have been pleaded and proved as special damages..... In Mbaka Nguru & Another - v- James George Rakwar, Court of Appeal Civil Appeal No. 133 of 1998, it was stated that claims for future medical expenses must be pleaded and proved as a special damage claim".

2) Michael Hubert Kloss & another v David Seroney & 5 others [2009] eKLR

In a judgment delivered on 9/10/2009, the court observed as follows:

"The final complaint raised by Mr. Wasonga was that awards were made for costs of future medical treatment, which were in the nature of special damages, but there was no proof.....Those awards were made on the basis that the medical reports in respect of those respondents specifically made estimates of the required amounts for future treatment. Logically no receipts could be produced for services which were yet to be rendered. However, as stated in *McGregor on Damages*, 16 Edition at page 1654 in relation to medical expenses:

'Both expenses already incurred at the time of the trial and prospective expenses are recoverable and while the rules of procedure require that the expenses already incurred and paid be pleaded as special damage and the prospective expenses as general damage, the division which depends purely on the accident of the time the case comes on for hearing, implies no substantive differences.'

We think the cost of future treatment, where pleaded and reasonably estimated, ought to be awarded and in this case, the doctors' reports were produced with the consent of the parties and without challenge on the reasonableness of their estimates for future medical treatment costs in respect of the three respondents. We reject the complaint made in that regard".

3) Mbaka Nguru & Anor. v James George Rakwar[1998]eKLR.

Judgment herein was delivered on 23/12/1998. The court held as follows:

"We come now to the claim under the heading "Future Medical Expenses". There is no such claim made in the body of the plaint. Nor is there any suggestion in the body of the plaint that such a claim would be made. There is no quantification of any sort in the body of the plaint in respect of this claim. In those circumstances simple references in a medical report to costs of future medication do not help the plaintiff. Simply putting in a prayer for such a claim does not help. If properly pleaded and proved the plaintiff would certainly have been entitled to some damages under this head..."

4) *Daniel Kosgei Ngelechei v Catholic Diocese Registered Trustees Of Eldoret & another [2016] eKLR.*

In a judgment delivered on 14/6/2016, the court held that prospective medical expenses that have not crystallized as disbursements may be claimed as general damages but the same cannot be awarded without evidence.

From the above authorities, I gather that damages for future medical treatment are awardable but there must be evidence for the need for future medical treatment as well as an estimate of the same. There is divided opinion in the Court of Appeal as to whether such damages are in the nature of general or special damages. The medical report by Dr. Wokabi indicates that the cost of replacing the missing teeth would be Ksh. 100,000/= and that a teeth bridge has a lifespan of 20 years. In the doctor's opinion, the plaintiff would require two other replacements. The doctor did not indicate in his report, the basis for such estimation.

I am aware of the existence of the **Medical Practitioners and Dentists (Professional Fees) Rules**. Rule 3 thereof stipulates that the fees specified under the Schedule to the Rules shall be the fees charged by practitioners offering medical or dental services, or both and that the fees shall be adhered to by all practitioners and institutions registered under the Act and no practitioner may agree or accept fees above that which is provided under the Rules.

Accordingly, the Rules provide that the cost of fitting a definitive bridge is a minimum of Ksh. 40,000/= and a maximum of Ksh. 55,000/=. The plaintiff will be required to pay consultation fees and other attendant charges. The fees are subject to the annual inflation rate. Dr. Wokabi's report was made in July, 2022. Being guided by the Medical Practitioners and Dentists (Professional Fees) Rules and bearing in mind the vagaries of inflation, and the

fact that there is no contrary evidence, I award a total of **Ksh. 210,000/=** as future medical expenses.

DISPOSITION

In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the 2nd defendant. Consequently, I make the following awards:

- 1) General damages for pain, suffering and loss of amenities.....Ksh. 1,300,000/=
 - 2) Special damages.....Ksh. 8,640/=
 - 3) Future medical expenses.....Ksh. 210,000/=
- Total.....**Ksh. 1,518,640/=**

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.”

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.**

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.”

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)

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/decree until payment in full and on special damages and future medical expenses, from the date of filing suit to the date of judgment/decree.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 30TH DAY OF MARCH, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

