Mupa v Chilson & another (Civil Appeal E045 of 2023)
[2026] KECA 751 (KLR) (24 April 2026) (Judgment)

Neutral citation: [2026] KECA 751 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MALINDI

CIVIL APPEAL E045 OF 2023

SG KAIRU, KI LAIBUTA & GW NGENYE-MACHARIA, JJA

APRIL 24, 2026

BETWEEN

RUTH SARAH MUPA ..... APPELLANT

AND

CHARLES AGADE CHILSON ..... 1ST RESPONDENT

GA INSURANCE LIMITED ..... 2ND RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Malindi (S. Githinji, J.) delivered on 30th October 2023 in Malindi HCCA No. 26 of 2021)

JUDGMENT

1. This is a second appeal from the Judgement in Malindi High Court Civil Appeal No. 26 of 2021 (Githinji, J.) delivered on 30th October 2023. The background to the appeal is that the appellant, Ruth Sarah Mupa, by a Plaint dated 25th April 2019 filed before the Senior Principal Magistrate's Court at Kilifi in Civil Suit No. 175 of 2019, sued the 1st respondent, Charles Agade Chilson, as the beneficial owner and/or policy holder of Motor Vehicle Registration Number KCP 596J (the motor vehicle) and the 2nd respondent, GA Insurance Limited, as the owner of the said suit motor vehicle.

2. It was the appellant's case that, on or about 16th June 2018, while she was travelling as a lawful fare-paying passenger in the motor vehicle from Ganze to Kilifi, the respondents' authorized driver, servant and/or agent, negligently and/or carelessly drove and/or controlled the motor vehicle around Stage B near River Rare thereby causing the motor vehicle to lose control and overturn as a result of which she sustained severe injuries and, therefore, suffered loss and damage.

3. The appellant particularised the respondents' authorized driver, servant and/or agent's negligence as:

    i. Driving too fast or at an excessive speed in the circumstances.

ii. Failing to keep any or proper look out on the road or to have any sufficient regard for traffic along the said road.

iii. Failing to exercise or maintain any or any proper lookout for the road conditions.

iv. Failing to exercise or maintain any or any proper or effective control over the said motor vehicle.

v. Failing to exercise due diligence and/or skills in the circumstances.

vi. Failing to stop, slow down, swerve or in any other way to manage the motor vehicle as to avoid the accident.

vii. Driving the motor vehicle when the respondents knew or ought to have known that it was unsafe to do so.

viii. Failing to provide any/or any adequate care for the safety of the appellant while on board the motor vehicle.

4. By reasons of the alleged negligence, the appellant further stated that she suffered injuries, which she particularised as follows:

a. Displaced fracture of the left clavicle.

b. Severe back injuries involving:

i. wedge compression fracture of the thoracic vertebra spine number 9 and 11;

ii. fracture of the transverse process of the thoracic spine 7. 8 and 9; and

iii. loss of the normal cervical spine curve due to muscle spasms;

c. Severe chest injuries involving:

i. fracture of the 1st, 2nd, 3rd, 4th, 5th and 6th posterior ribs on the left side of the chest;

ii. left lung partial collapse; and

iii. Left sided hemo - pneumo - thorax.

d. Blunt injury to the left peri-orbital area.

5. The appellant particularised the special damages as follows:

i. Medial report fees – Kshs.3,000.

ii. Medical expense incurred – Kshs.347,480.

iii. Police abstract report – Kshs.200/=.

iv. Completion of P3 Form – Kshs.1,000.

v. Costs of obtaining official search – Kshs.800. Total – Kshs.352,480.

6. For the above reasons, the appellant prayed for judgement against the respondents jointly and severally for:

a. special damages as particularised above;

b. general damages;

c. future medical costs for the removal of implants assessed at Kshs.150,000;

d. costs of, and incidental to, the suit; and

e. Interest on (a), (b) and (c) above at court rates.

7. On their part, the respondents filed a joint Statement of Defence dated 10th May 2019. The 2nd respondent averred that the claim against it was non-suited and could only accrue upon pronouncement of judgement by dint of Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, and that, for this reason, it would seek at the earliest opportunity that the suit be struck out. The respondents jointly denied: that any accident occurred on the date and place or that it was caused by the 1st respondent's negligence as alleged; the particulars of negligence allegedly attributed to them; that the appellant suffered injuries, loss or damage; and that the respondents were liable to compensate the appellant for any loss or damage she allegedly suffered, and the appellant was put to strict proof thereof.

8. On a 'without prejudice' basis, the respondents averred that the accident was inevitable and was caused by circumstances beyond human control.

9. On 9th March 2020, the parties recorded consent on liability at the ratio of 15:85% against the appellant and the respondents respectively. The hearing therefore proceeded for formal proof. At the hearing, the appellant testified by adopting her witness statement contained in her bundle of documents dated 25th April 2019 as PEXH 1 - 9. In the brief statement, she stated that she was a laboratory technician at KEMRI Malindi Sub-County Hospital. While restating her case as per the plaint, she recounted that the motor vehicle lost control and overturned as result of being carelessly driven; that she sustained severe injuries as a consequence; that she was first treated at Mephi Health Services Clinic before being transferred to Pandya Memorial Hospital; and that, after discharge, she reported the accident to the police station where she was issued with a Police Abstract report.

10. On cross-examination, she stated that, since the accident, she feels pain when bending over a microscope; that she was forced to purchase a washing machine and hire a house help to assist her in domestic chores, and whom she pays Kshs. 7,000/= per month; and that she had been attending hospital wherever she felt pain, although she did not have receipts to show what she incurred in hospital bills. She further stated that the invoices amounting to Kshs.347,000 were addressed to APA Insurance Co. Limited, her insurer, whose premiums were paid by her employer, KEMRI.

11. The respondents did not call any witness in support of their defence.

12. The learned Magistrate (S. D. Sitati, RM) considered the pleadings, documents, the appellant's evidence and the submissions by both parties. He found that the appellant proved her case on a balance of probabilities through the treatment notes from Mephi Health Services, Pandya Memorial Hospital, Metropolitan Diagnostics & MRI Centre Limited and the medical report from Dr. S. K. Ndegwa, which were found to be consistent with the injuries suffered by the appellant.

13. The learned Magistrate further considered the different authorities cited by the parties, comparable to the injuries suffered by the appellant, and awarded the appellant Kshs.1,200,000 as general damages.

14. As for the special damages, the trial court dismissed the respondents' argument that the appellant was not entitled to compensation of Kshs.347,480, being the medical expenses covered by APA Insurance Company Limited. The learned Magistrate held that the doctrine of subrogation does not apply to personal injury claim. She held that special damages for Police Abstract of Kshs.200.00, costs of

completing the Police Abstract of Kshs. 1000 and of obtaining official search of the motor vehicle of Kshs. 800 were not proved, and those amounts were not awarded. She however awarded Kshs. 3000 for obtaining a medical report from Dr Ajoni Adede since a receipt was produced in that regard. In sum, the trial court awarded Kshs.350,480 as special damages. The learned Magistrate further awarded Kshs.150,000 for future medical expenses.

15. Accordingly, the trial court entered judgement for the appellant against the respondents jointly and severally for:

    a. Liability - 85%

    b. General damages for pain and suffering – Kshs.1,200,000.

    c. Special damages – Kshs.350,480.

    d. Future medical costs – Kshs.150,000.

    e. Sub - total – Kshs.1,700,480.

    f. Less appellant's 15% contribution – (Kshs.255,072)

       Total – Kshs.1,445,408

    g. Costs of the suit, interest, prorated to the ratio of contribution.

16. Aggrieved by the decision, each of the parties filed separate appeals before the High Court at Malindi, being HCCA No. 26 of 2021 filed by the appellant and HCCA No. 27 of 2021 filed by the respondent. The appeals were consolidated for hearing.

17. In HCCA No. 26 of 2021, the appellant appealed on the grounds that the learned Magistrate erred in law and in fact: by failing to take into account her submissions, making general damages that were inordinately low and not commensurate with the nature of injuries suffered, and for relying on obsolete authorities; in failing to hold that the appellant required domestic help; and in failing to make an award for her salary.

18. In HCCA No. 27 of 2021, the respondents appealed on the grounds that the learned Magistrate: failed to apply the requisite principles in award of special damages; misdirected himself in law by awarding the medical expenses which were catered for by APA Insurance Limited under the employer's medical scheme; and in awarding special damages which were not expended by the appellant.

19. In a judgment delivered on 30th October 2023, the learned Judge (Githinji, J.) upheld the general damages of Kshs.1,200,000 upon observing that awards of general damages is an exercise of discretion of the trial court; and that the trial court considered the authorities availed by both parties before arriving at the award.

20. As to the special damages, the learned Judge opined that what was produced in proof thereof were invoices; that invoices are not equivalent to receipts, and cannot be used to prove special damages; that the several invoices totalling to Kshs.347,480 from Pandya Memorial Hospital were addressed to APA Insurance Co. Limited, but that there was no evidence that it was the appellant who settled the bills; and that, in any event, the appellant testified that it was her insurance which settled the bills. Accordingly, the learned Judge set aside the award of Kshs.350,480 and substituted it for an award of Kshs.3,000, being the cost of preparing the medical report by Dr. S. K. Ndegwa, which was proved by a receipt.

21. The final order by the learned Judge was that both appeals were determined to the extent of substituting the special damages of Kshs.350,480 for Kshs.3,000 with, no order as to costs.

22. Further aggrieved, the appellant proffered the instant appeal. In a Memorandum of Appeal dated 27th November 2023, she has raised 6 grounds, namely that the learned Judge erred in law:

    i. in upholding the finding of the trial court on general damages of Kshs. 1,200,000, which was inordinately low in view of the injuries suffered;

    ii. in failing to consider the appellant's submissions and judicial authorities on quantum filed in the trial court;

    iii. by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering, which are inordinately low;

    iv. in failing to appreciate that failing to award the special damages because they were paid by the appellant's insurer amounted to benefiting the respondent, a tortfeasor whereas such benefit should only accrue to the appellant and not any other person, and that the learned Judge's finding went against the law and public policy;

    v. in failing to appreciate that the medical expenses/bills paid by the medical insurer was due to the premiums paid by the appellant from her salary deductions every month, and that allowing the sum to be held by the respondents is enriching them unjustly thereby occasioning a miscarriage of justice; and

    vi. in failing to make a determination for homecare required by the appellant on account of her injuries.

23. The appellant thus prayed: that the entire judgement of Githinji, J. delivered on 30th October 2023 be set aside in respect to the special damages and quantum; that this Court substitutes the said Judgment of Githinji, J. for its own judgment on special and general damages; that this Court makes an award for homecare for the appellant given the degree of injuries suffered and the degree of her incapacitation as a result of the respondents' negligence; for costs of this appeal; and any other relief that the Court deemed fit to grant.

24. We heard this appeal on 9th October 2025. There was no representation by counsel for any of the parties. The firm of Shariff Ramadhan & Co. was on record for the appellant while the firm of Murimi, Mbago & Muchela Advocates was on record for the respondents. The appeal was determined on the respective written submissions which we have duly considered.

25. The appellant filed written submissions dated 9th May 2024 by which she raised two issues, namely whether the doctrine of subrogation applies to personal injury claims, and whether the award of general damages was inordinately low as to represent an erroneous estimate of an award.

26. As to whether the doctrine of subrogation applies to personal injury claims, it was submitted that, although the insurance premiums were paid to APA Insurance by the appellant's employer, they were deducted from her (the appellant) salary; and that personal injury claims are not subject to the doctrine of subrogation. To buttress this submission, the appellant relied on decisions of superior courts in Leli Chaka Ndoro vs. Maree Ahmed & S.M. Lardhib (2017) KEHC 7713 (KLR); and Ondiek & Another vs. Simba (2023) KEHC 3073 (KLR) where the respective learned Judges opined that a plaintiff who

pays insurance premiums can be reimbursed from a tortfeasor; and Egypt Air Corporation vs. Suffish International Food Processors (U) Ltd & another (1999)1 EA, 69 where the Ugandan Court of Appeal defined the basis of the doctrine of subrogation, in part, as "...founded on a binding and operative contract of indemnity and it derives its life from the original contract of indemnity and against its operative force from payment under the contract..."

27. According to the appellant, by virtue of the fact that she was the one paying the insurance premiums, she was entitled to indemnification through the award of the amount expended in hospital, and that it was an error on the part of the learned Judge not to take into account this fact.

28. As to the award of general damages, the appellant submitted that the first appellate court failed to take into consideration the fact that the injuries which she suffered rendered her unable to discharge her duties efficiently, and that, therefore, she needed extra care at home. Reliance was placed on the decision of the High Court in Abdi Wedi Abdulahi vs. James Royo Mungatia & Another (2019) eKLR where the court considered the costs of an aide/helper under future medical costs and, accordingly, awarded the sum of Kshs.1,00,000.

29. While relying on this Court's decision in Maore vs. Geoffrey Mwenda (2004) eKLR on the principles that a court should consider in awarding general damages, the appellant submitted that the award of Kshs.1,200,000 was too low compared to the injuries she suffered. She relied on this Court's decision in Hussein Ali Shariff alias Hussein Ali vs A.L.L (minor suing through FTL) (2018) KEHC 8761 (KLR) where an award of Kshs.2,700,000 was made for closed left humerous mid-shaft fracture; right clavicle medial end fracture; right superior and left inferior pelvic rami fracture and left 4th toe middle phalanx injury.

30. On their part, the respondents filed written submissions dated 29th July 2024. As to the award of special damages, the respondents submitted that the appellant did not produce receipts of payment of the medical expenses; that the appellant admitted that the premiums for the medical scheme by APA Insurance Limited were remitted by her employer; that the doctrine of subrogation does not apply to personal injury claims; and that, therefore, the learned Judge was not in error in holding that she (the appellant) was not entitled to the award of the expense that was met by the insurance. In this regard, reliance was placed on the decision of this Court in Forwarding Company Limited & Another vs. Kisilu; Gladwell (Third Party) KECA 96 (KLR) (4th February 2022)(Judgment) in which the Court declined to award sums paid to offset medical bills by the insurance company and held that it is only the employer who would have claimed the sums paid out by the insurer by virtue of having remitted premiums towards payment of the insurance scheme; and Mehari Tewolde T/A Mehari Transporters Limited vs. Damus Muasya Maingi (2013) KEHC 3712 (KLR) in which Thande, J. declined to award the respondent therein medical expenses paid on behalf of his company because payslips were not adduced to show the deductions from his salary.

31. The respondent contended that the appellant could only recover money expended in medical expenses paid by the insurer if there was proof that she paid the premiums herself, or that the premiums were deducted from her salary.

32. As to the award of general damages, the respondent submitted that, on second appeal, the court confined itself to matters of law only unless it is shown that the courts below considered or misdirected themselves by considering irrelevant matters; that the second appellate court should resist from interfering with the decision on matters of fact; and that, in this regard, the first appellate court considered this Court's decision in Hussein Ali Shariff alias Hussein Ali (supra) and found that the award that was merited in the circumstances was of Kshs.1,200,000 and, therefore, arrived at the

conclusion that the appeal before it was unmerited in so far as the award of general damages was concerned.

33. We were accordingly urged to dismiss the appeal with costs.

34. The jurisdiction of this Court on second appeal is underpinned in Section 72 of the *Civil Procedure Act*, which states:

> 72. Second appeal from the High Court
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> 1. Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely-
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> a. the decision being contrary to law or to some usage having the force of law;
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> b. the decision having failed to determine some material issue of law or usage having the force of law;
>
> c. a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

35. In Stanley N. Muriithi & another vs. Bernard Munene Ithiga [2016] eKLR, this Court held that:

> " We are conscious of our limited jurisdiction when dealing with a second appeal. Our reading of Section 72(1) of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, which provides for the circumstances when a second appeal shall lie from the appellate decrees of the High Court, indicates that the appeal must be on matters of law."

36. In the same vein, this Court held thus in Kenya Breweries Ltd vs. Godfrey Odoyo [2010] eKLR that:

> " 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. In the case of Stephen Muriungi and another vs. Republic (1982-88) 1 KAR 360, Chesoni Acting JA (as he then was) said at page 366:
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> 'We would agree with the view expressed in the English case of Martin v Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 that where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.'"

37. We have considered and scrutinised the record, the grounds of appeal, the written submissions of the respective parties, and the authorities relied upon by both parties. In our view, the issues that fall for determination are (i) whether the award of general damages of Kshs.1,200,000 was proper in view of the injuries that the appellant suffered and (ii) whether the appellant was entitled to the special damages of Kshs.347,480.

38. In Kemfro Africa Limited T/A 'Meru Express Services (1976)' & Another vs. Lubia & Another (1985) KECA137 (KLR), Kneller, J. A. propounded on the principles to be applied while considering interference with damages awarded by the trial court 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 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. See Ilango v. Manyoka [1961] EA 705 709, 713; Lukenya Ranching and Farming Co-operatives Society Lt v. Kavoloto [1970] EA, 414 418, 419."

39. This Court in Arrow Car Limited vs. Elijah Shamalla Bimomo & 2 others (2004) KECA 136 (KLR), while applying the principles set out in Kemfro Africa Limited (ibid), held that:

> "..... 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."

40. On the issue of general damages, the medical report confirms that the appellant suffered multiple fractures especially on the back as well as chest injuries with a partial collapse of the left lung. The appellant was treated as an outpatient at Mephi Health Services on 17th June 2018, but was later admitted at Pandya Memorial Hospital on the same date and was discharged on 21st June 2018 as per the discharge voucher issued on 21st June 2018. A medical report issued by Dr Ndegwa dated 12th April 2019 shows that the appellant suffered:

    a. Displaced fracture of the left clavicle.

    b. Severe back injuries involving:

        i. wedge compression fracture of the thoracic vertebra spine number 9 and 11;

        ii. fracture of the transverse process of the thoracic spine 7. 8 and 9; and

        iii. loss of the normal cervical spine curve due to muscle spasms;

    c. Severe chest injuries involving:

        i. fracture of the 1st, 2nd, 3rd, 4th 5th and 6th posterior ribs on the left side of the chest;

        ii. left lung partial collapse; and

        iii. left sided hemo - pneumo - thorax.

    d. Blunt injury to the left peri - orbital area.

41. As at the time of examination by Dr. Ndegwa, the appellant complained of chest pains, back pains and pain on the fracture site on the left clavicle. The doctor opined that healing was expected but with a permanent disability of 7% due to the multiple weak bone unions that can easily fracture following future lesser trauma and chronic pains.

42. The general method of approach in determining general damages in personal injury claims is that comparable injuries should as far as possible be compensated with comparable awards in decided case law.

43. The learned Magistrate considered a single decision relied upon by the respondents and found that it did not reflect the injuries suffered by the appellant, the award therein being too low. It suffices to note that, as at the time of writing the judgment, the trial court was not seized with the appellant's submissions. The learned Magistrate therefore proceeded to independently analyse case law, more so of the High Court, being Anne Ayuma Harrison vs. Simon Githure Marungo (2014) KEHC 2263 (KLR); and George Kiptoo Williams vs. William Sang & Another (2004) KEHC 38 (KLR) where the injuries suffered by the plaintiffs therein were comparable to those suffered by the appellant herein. The trial court also considered the considerable lapse of time since the accident and the inflationary trends, and found that an award of Kshs.1,200,000 was appropriate.

44. On the part of the learned Judge, and while citing no authority, held that:

> " I am cognizant of the fact that an award of general damages is always at the discretion of the trial court. That discretion must however be exercised judiciously in accordance with the law. The mandate of an appellate Court to interfere with damages awarded by a trial court is not unlimited. It is confined to certain circumstances.
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> I have had an opportunity to go through the authorities availed by both parties to the trial Court supporting their respective proposals on quantum. I note that the injuries sustained by the Respondent were severe going by the medical report by the doctor. I further note that learned trial magistrate in his judgment clearly indicated that he had considered the submissions made by the defendant but plaintiff's submissions were not on record at the time of writing his judgment, the nature of the injuries sustained and cost of inflation in awarding Kshs.1,200,000 as sufficient compensation for the injuries sustained.
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> Given the evidence on record, I find no fault in the learned trial magistrate's award for general damages, considering the injuries that were suffered by the Respondent in the instant case. I am of the considered view that the finding of the Learned Magistrate was well within the acceptable limits that reflected the nature and gravity of the injuries sustained by the Respondent."

45. We are of the view that the learned Judge did not misdirect himself in upholding the award of Kshs.1,200,000 that the trial court awarded. He applied the correct principles, more so on recognition of the fact that award of general damages is a matter of the discretion of the trial court as well as the principles that should guide a court in award of damages as laid down in the case of Gitobu Imanyara & 2 others vs. Attorney General (2016) eKLR where the Court of Appeal held that:

> " ...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. This is the principle enunciated in Rook v Rairrie [1941] 1 All ER 297. It was echoed with approval by this Court in Butt v. Khan [1981] KLR 349 when it held as per Law, J.A that:
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> 'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordi nately high or low.'"

46. We find, as did the first appellate court, that the trial court did not misapprehend the injuries suffered by the appellant in awarding Kshs.1,200,000 as general damages. We find no reason upon which we should disturb that award, which we accordingly uphold.

47. As to the award of special damages, it is trite law that they must be specifically pleaded and strictly proved. See: Hahn vs. Singh (1985) KECA 129 (KLR). The appellant argues that she was entitled to payment of Kshs.347,480, being the medical expenses incurred. The learned Judge set aside this award since the appellant did not produce receipts to prove that she actually incurred this expense. The appellant argues that, even though the insurance company, APA, settled the claim, the premiums were being deducted from her salary.

48. The Black's Law Dictionary 9th Edition at page 1563 defines subrogation as follows:

> "The substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies or securities that would otherwise belong to the debtor."

49. The doctrine of subrogation in insurance law provides for reimbursement of an insurer who has indemnified an insured person under the contract of indemnity insurance. For any third-party claims, it is the insurer who is entitled to reimburse itself of any claims that the insured will have against the third parties.

50. In the appeal before us, the appellant acknowledged that she was insured by APA Insurance Limited. In our view, the premiums paid are deemed to have been reimbursed to the appellant upon payment of the medical claims. She insured herself against future risks to obviate the need to spend money from her pocket. Had the appellant herself incurred the expense of paying from her own pocket, it would make sense to plead for reimbursement since there would be evidence of receipt payments. In this instance, we do not have receipts confirming that payments were made by her. In any event, it is the hospital which treated her that would be entitled to make claims from the insurance company. To make a finding that the appellant is entitled to Kshs.347,480, would be tantamount to an unjust enrichment on her part.

51. As to the failure of the learned Judge to make a finding on the payment of the helper, we have scrutinised the record and there is nothing to show that this claim was succinctly pleaded in the plaint and/or placed before the trial court for it to make a determination on it. However, we note that failure to make provision for the helper was one of the grounds of appeal raised by the appellant before the High Court, but the learned Judge did not address himself thereon. As we have observed, that issue was not particularly pleaded and proved.

52. Furthermore, we are alive to the cardinal principle that a court will not consider or deal with issues that were not canvassed, pleaded or raised at the lower court, and that, for a matter to be a ground of appeal, it ought to have been sufficiently raised and succinctly made an issue at trial. See: Kenya Hotels

Limited vs Oriental Cmmercial Bnk Limited (2019) KECA 1037 (KLR). The appellant's ground of appeal in that regard is dismissed.

53. The same fate befalls the claim for future medical expenses. Although the medical report by Dr Ndegwa opined that the appellant would need removal of the implants which will cost Kshs.150,000, the same was not pleaded. There was no need to specifically prove the need to be entitled to the Kshs.150,000 since, with time, the prognosis may change and cost of future medical treatment is an estimate of future costs. However, being a special damages claim, this type of claim must be pleaded as was held by this Court in Tracom Limited & another vs. Hasssan Mohamed Adan (2009) KECA 48 (KLR) that:

> "...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 in the nature of special damages 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..."

54. In conclusion, and in view of the foregoing reasons, we find that this appeal lacks merit and is hereby dismissed with each party to bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 24TH DAY OF APRIL, 2026.

S. GATEMBU KAIRU, CArb, FCIArb

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA, CArb, FCIArb

.....

. JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR