



REPUBLIC OF KENYA



**Kaleway v Export Consolidation Services Limited (Civil Appeal  
E025 of 2024) [2025] KEHC 8936 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 8936 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E025 OF 2024  
AN ONGERI, J  
JANUARY 31, 2025**

**BETWEEN**

**MUKENG'URA LINUS KALEWAY ..... APPELLANT**

**AND**

**EXPORT CONSOLIDATION SERVICES LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. A. M. Obura  
(CM) in Voi CMCC No. E014 of 2023 delivered on 29th February 2024)*

**JUDGMENT**

1. The Respondent filed Voi CMCC No. E014 of 2023 against the Appellant seeking the following remedies:-
  - i. General damages and special damages for injuries sustained by the Respondent.
  - ii. Future damages.
  - iii. Costs of the suit and interest.
2. The cause of action arose out of an accident that arose on 7<sup>th</sup> November 2022 while the Respondent was travelling in motor vehicle registration number KDJ 710C from Mombasa to Nairobi.
3. The accident occurred at Man Eaters area along Mombasa Road when motor vehicle registration No. KBG 429F/ZD 03040 belonging to the Appellant overtook a trailer and collided with motor vehicle registration number KDJ 710C where the Respondent was lawfully travelling as a passenger.
4. The parties entered into a consent judgment on apportioned liability at 85:15% in favour of the Respondent against the Appellant.



5. The trial court assessed damages as follows:-

Special damages Kshs. 31,950/=

Pain killers Kshs. 72,000/=

Physiotherapy Kshs. 40,000/=

General damages for pain and suffering Kshs. 1,300,000/=

Total Kshs. 1,443,950/=

6. The amount was subject to the agreed liability of 85%:15% in favour of the Respondent against the Appellant.

7. Both the Appellant and the Respondent have filed an appeal and cross-appeal against the assessment of damages on the following grounds:-

- i. The Learned Trial Magistrate erred in law and fact in failing to award the whole sum of the special damages as pleaded and strictly proved by the Appellant by evidence thereby made an unfair and unjust award to the Appellant.
- ii. The Learned Trial Magistrate erred in law and fact in misapprehending the evidence tendered by the Appellant on the special damages thus arrived at an unfair and unjust decision.
- iii. The Learned Trial Magistrate erred in law and fact in failing to take into account of the development of modern electronic financial transactions systems which are widely acceptable forms of payments.
- iv. The Learned Trial Magistrate erred in law and fact by misconstruing the basic principle of assessing special damages thereby arrived at an unfair and unjust decision.
- v. That the Learned Trial Magistrate erred in law and in fact and misdirected herself by failing to consider at all the submissions made before her by the Defendant and reached an erroneous conclusion thereby occasioning a miscarriage of justice.
- vi. That the Learned Trial Magistrate erred in law and in fact by not considering the legal authorities cited by the Defendant on general damages and future medical costs and thereby reaching an erroneous conclusion on the award of general damages and future medical costs.
- vii. That the Learned Trial Magistrate's award under the headings of general damages and future medical cost is inordinately high and grossly exaggerated taking into account the cited authorities by the Defendant on similar matters.
- viii. That the award on general damages and future medical costs fails to recognize the submissions by the Defendant and the binding authorities cited therein and ought to be set aside and/or award adjusted downward.
- ix. That the Learned Trial Magistrate in assessing quantum of damages took into account irrelevant factors and wrong principles and arrived at a wrong decision and excessive award on quantum of damages.

8. The parties filed written submissions as follows:-

Julie please summarize both the submissions in the appeal and cross-appeal here



9. This being a first appeal, the duty of the first appellate court are as follows:-  
Julie please state the duty here and put any authority
10. The issues for determination in this appeal and cross-appeal are as follows:-
- i. Whether the assessment of damages was erroneous.
  - ii. Whether the cross-appeal should be allowed.
11. I have considered both the appeal and cross-appeal. I find that both the Appellant and the Respondent are aggrieved with the assessment of damages.
12. The Respondent Doctor (Kiema) summarized the Respondents injuries as follows:-
- i. Bust fracture 12<sup>th</sup> Thoracic vertebra (T12).
  - ii. Fracture spinous process 1<sup>st</sup> and 2<sup>nd</sup> lumbar vertebra L1 & L2.
  - iii. Spinal cord compression/injury.
  - iv. Blunt trauma to the left shoulder.
  - v. Bruises and abrasions on the face, left shoulder and left thigh.
13. For starters, I find that there is a difference between the Respondent's Doctor's report and that of the Appellant.
14. The Respondent's doctor classified the injuries as grievous harm and assessed permanent incapacity at 40% while the Appellant's doctor stated the Respondent mainly suffered soft tissue injuries except the fracture of spine involving T12, L1 and L2.
15. However, both doctors confirmed permanent incapacitation with the Appellant's doctor assessing the same at 30%.
16. I therefore find that the Respondent suffered incapacity and the general damages of Kshs. 1,300,000/= is reasonable.  
(Julie see if you can get any comparable authority to be considered)
17. However, I do not see the basis for assessing the cost of pain killers at Kshs. 72,000/=. Pain killers are prescriptive medicines which are given where necessary. I set aside the said award.
18. The future medical costs in respect of physiotherapy is upheld.
19. On the issue of special damages, the Respondent produced evidence that the total amount paid by M-pesa is Kshs. 915,207. The Respondent also had a receipt of Kshs. 18,000/= from Kenyatta National Hospital.
20. I find that the Respondent proved on a balance of probabilities that the total special damages incurred were Kshs. 935,209/=
21. I set aside the special damages of Kshs. 31,975/= awarded by the trial court and I substitute it with an award of Kshs. 915,207/=
22. The total award is as follows:-
- i. Special damages 915,207/=



- ii. Future costs for physiotherapy 40,000/=
  - iii. General damages for pain and suffering 1,300,000/=
- Total 2,255,207/=
23. This amount is subject to the contributory negligence agreed on of 85:15%. The total award is Kshs. 1,916,925.95.
24. Judgment be and is hereby entered in favour of the Respondent against the Appellant in the sum of Kshs. 1,916,925.95 plus costs and interest.
25. Interest for special damages to run from the date the suit was filed and in respect of general damages from the date of the trial court's judgment.

**DATED, SIGNED AND DELIVERED THIS 31<sup>ST</sup> DAY OF JANUARY 2025 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Maina

