



REPUBLIC OF KENYA



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**Kenya Seed Company Limited v Amwayi (Civil Appeal 035 of 2023)
[2025] KEHC 1389 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL 035 OF 2023
AC MRIMA, J
FEBRUARY 28, 2025**

BETWEEN

KENYA SEED COMPANY LIMITED APPELLANT

AND

SAMUEL MURINDA AMWAYI RESPONDENT

*(Being an appeal from the Judgment and decree of Hon. S.K. Mutai (SPM) in
Kitale Chief Magistrates Civil Case No. E258 of 2022 delivered on 8th May 2023)*

JUDGMENT

Background:

1. Samuel Murinda Amwayi, the Respondent herein, instituted Kitale Chief Magistrates Civil Case No. E258 of 2022 [hereinafter referred to as 'the civil case'] vide a Plaint dated 30th May 2022 against Kenya Seed Company Limited, the Appellant herein. He sought damages for injuries he sustained as a result of a road traffic accident, which he pleaded, were caused by the Appellant driver's negligence.
2. At the trial Court, the Respondent prayed for special damages of Kshs. 31,550/-, general damages for pain and suffering, damages for future treatment costs and costs of above-knee prosthesis of Kshs. 500,000/-, damages for costs of above knee prosthesis as Kshs. 500,000/- x 3, general damages for loss of amenities, damages for loss of earnings at Kshs. 30,000/- per month, damages for diminished earning capacity, costs of the suit and interests on the foregoing.
3. The Appellant herein filed a Statement of Defence dated 1st July 2022 denying both liability and quantum.
4. However, on 21st November 2022, parties recorded a consent on liability at the ratio of 70%:30% in favour of the Respondent. The matter proceeded to hearing on quantum. The Respondent adopted his statement as his evidence-in-chief. The Appellant closed its case without calling any witness.



5. In its judgment, the trial Court assessed damages for pain and suffering at Kshs. 4,000,000/-, loss of amenities at Kshs. 200,000/-, future medical expenses at Kshs. 1,500,000/- loss of earning capacity at Kshs. 10,080,000/- and special damages at Kshs. 31,550/-.

The Appeal:

6. Aggrieved by the findings of the trial Court, the Appellant lodged the Memorandum of Appeal dated 7th June 2023, asserting its grounds in the following terms: -
 1. That the learned trial magistrate erred in law and in fact by disregarding the correct principles of law and or left out account relevant factors whilst assessing quantum thereby resulting to an award that was so inordinately high as to be an erroneous estimate of damage, that is to say;
 - i. Erroneous treating of loss of earning capacity as a special damage claim thereby adopting the multiplicand and multiplier approach to arithmetically compute the same.
 - ii. Assessing loss of earning capacity on the incorrect assumption that the Respondent suffered 100% loss of earning capacity.
 - iii. Assessing and awarding general damages that are outside the limits set out by decided cases and/or failing to secure uniformity in the award of damages and/or that are excessive in the consideration of the Kenyan economy.
 - iv. Assessing and awarding damages that were unreasonable and or unconventional and or lacking in moderation and failing to pay fidelity to the principle that comparable injuries should be compensated with comparable awards.
 - v. Splitting and awarding separate damages on account of pain and suffering, loss of amenities and loss of earning capacity.
 - vi. Adopting a multiplicand of Kshs. 30,000/- on account of income in the absence of strict proof.
 - vii. Failing to take into account vagaries and or vicissitudes of life thereby adopting a multiplier of 28 years for the 32-year-old Respondent.
 2. That the learned trial magistrate erred in law and in fact by awarding damages for future medical expenses based on estimates and in the absence of strict proof.
 3. That the learned trial judge (sic) erred in law and fact by failing to apply the doctrine of stare decisis in his rendition generally and particularly when assessing damages awarded to the Respondent and or by failing to consider relevant authorities submitted by the Appellant thereby arriving at an assessment on quantum which was inordinately high in the circumstances of the case.
 4. That the Judgment of the learned trial magistrate went against the law and weight of the evidence on record.
7. The Appellant filed written submissions dated 11th September 2023. From the outset, it was its case, while citing the decision of the Court of Appeal in *Rahima Tayab & Another -vs- Anna Kinaru (1987-88) 1 KAR*, that awards must be reasonable and must be assessed with moderation and as far as possible comparable injuries ought to be compensated by comparable injuries.



8. On loss of earning capacity, it was the Appellant's submission, based on the Court of Appeal in S.J. -vs- Francesco Di Nello & Another that there is a distinction between loss of earning capacity, loss of future earnings and loss of income. The Appellant submitted that the trial Court erroneously treated loss of earning capacity as a special damage claim and without the benefit of any evidence adopted a multiplicand of Kshs. 30,000/- and a multiplier of 28 years to arithmetically compute the same arriving at an award of 10,080,000/-.
9. Drawing support from the Court of Appeal decision in Mumias Sugar Company Ltd. -vs- Francis Wanalo, the Appellant submitted that where a claimant is not employed and no evidence is laid to demonstrate the risk that he will not get employed in future, the Court ought to make a token as opposed to a substantial award. It was its case that the multiplicand approach should not be used where facts do not support its application. It argued further that the trial Court failed to consider the vicissitudes and vagaries of life and that it made the incorrect assessment that the Respondent had suffered 100% loss of earning capacity. The Appellant further submitted that the trial Court made the error of splitting and awarding separate damages on pain and suffering, loss and amenities and loss of earning when in fact it ought to have been awarded as a global figure.
10. Regarding the cost of prosthesis, the Appellant argued that the sum of Kshs. 500,000/- and additional cost of Kshs. 1,500,000/- for replacing it every 15 years was an estimate and did not constitute strict proof required of special damages and that the medical report did not mention the need to replace it every 15 years.
11. It was the Appellant's contention that the trial Court applied the wrong principles and thus arrived at inordinately damages. It was its case that appropriate quantum in view of "comparable injuries for comparable awards" it was its case that an award of Kshs. 2,000,000/- would have sufficed for general damages for pain and suffering, loss of amenities and a sum of Kshs. 500,000/- for diminution of earning capacity.

The Respondent's case:

12. The Respondent challenged the appeal through written submissions dated 24th January 2024. It was its case, based on the decision in Kemfro Africa Ltd. And Another t/a Meru Express Service -vs- AM Lubia & Another (1987) KLR 27, that an award is an exercise of judicial discretion and ought not be disturbed unless an irrelevant factor was taken into consideration or a relevant one was left out.
13. It was its case that the Appellant's quest to review the awards downward was based on the decision in Pestony Limited & Anor -vs- Kagoko (2022) eKLR and SBI International Holdings (AG) Kenya -vs- William Ambugua Ongeru was erroneous since in the cases, the victims suffered fractures with no amputation of the leg.
14. The Respondent submitted that the only decision that was close was Charles Oriwo Odeyo -vs- Apollo Justus Andabwa (2017) eKLR but was decided about 6 years ago when the economy was stable and cost of living was low. It was its case that inflation and effluxion of time justify the award of Kshs. 4,000,000/-. As for damages for loss of amenities, the Respondent submitted that the loss of his right leg, a fact which was not controverted, at an early age of 32 years deprived him of the ability to ride a motorbike and to play his favourite game.
15. The decision in Mwaura Muiruri -vs- Suera Flowers Limited & Another (2014) eKLR was relied upon where it was the court's finding that Kshs. 300,000 loss of amenities. It was its case, therefore, that Kshs. 200,000/- was not inordinately huge. Regarding damages for future medical expenses/cost of future prosthesis, the Respondent submitted that the Appellant did not make submissions on it at the trial



Court and as such, it cannot now fault the Court for applying the wrong principles. The authority of Copana Limited -vs- David Ouma Obanga (2021) eKLR was relied upon where the Court awarded damages for amputation of the leg at ankle joint at Kshs. 2,000,000/-. The case of Beatrice Anyango Okoth -vs- Rift Valley Railways Limited was further relied on where the Court awarded 6,080,000/= as costs for four sets of future prosthesis, the Plaintiff having suffered 50% disability. On the limb of loss of future earning capacity, the Respondent submitted that he had pleaded that he was a mason earning Kshs. 30,000/- per month, a fact that was ascertained and was uncontroverted.

16. Drawing support from various decisions, among them the case of Oyugi Judith & Anor -vs- Fredrick Odhiambo Ongong & 3 Others (2014) eKLR where it was observed that multiplier is just a method of assessing damages and not a principle of law or a dogma, it was submitted that the multiplicand approach was safe and appropriate to assess damages under this head since he had proved he was a mason, produced a certificate to that end.
17. It further was its case that under the *Employment Act*, the minimum wage for a mason in Kitale Municipality is Kshs. 32,280/- monthly. The Respondent urged the Court not to fault the trial Court for making the award since it did not apply wrong principles.
18. The Respondent submitted that loss of future earnings was pleaded as a separate claim and it was not awarded erroneously or was misunderstood with the claim of damages for loss of future earning/diminished earning capacity. It was its case that he lost his leg as at early age of 32 and given his life expectancy of 60 years, a fact which was not controverted, the approach used by the trial Court was correct.
19. On the claim that the trial Court failed to consider vicissitudes and vagaries of life, the Respondent submitted that his health was robust and there was no evidence that he had experienced ill health or had been hospitalized before the accident. It was its argument that Courts have ignored imponderables and or vagaries of life when considering the multiplier approach. Support to that end was drawn from the case of Benedetta Wanjiku Kimani -vs- Changwon Cheboi & Another (2013) eKLR. In conclusion, the Respondent submitted that the trial Court cannot be faulted for its findings. It urged this Court to dismiss the appeal with costs.

Analysis:

20. Having appreciated the appeal in its entirety, there is no doubt that liability is not contested in the matter. The main issue for consideration is whether the trial Court applied the correct principles and rendered reasonable awards in the civil suit.
21. As the appeal is on quantum of damages, I reiterate that assessment of damages is generally a difficult task. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion. (See *Butler vs. Butler* (1982) KLR 277.)
22. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

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.

23. This position was restated by the Court of Appeal in *Arrow Car Limited -vs- Bimomo & 2 others* (2004) 2 KLR 101 and also in *Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd* (2013) eKLR.

24. With the foregoing principles, I now address the issue under the following heads: -

a. Loss of earning capacity:

25. Under this head, the Appellant pleaded that he used to earn his living as a mason and that he made at least Kshs. 30,000/- per month. He claimed, therefore, that the loss of his left leg at the age of 32 years rendered him unable to continue to earn his livelihood as such. He further stated that his ability to earn a living generally had been greatly diminished.

26. In *Butler -vs- Butler* [1984] KLR 225 the Court of Appeal observed:

... A plaintiff's loss of earning capacity occurs where, as a result of his injury, his chances in the future of any work in the labour market or work, as well paid as before the accident, are lessened by his injury. ... It is a different head of damages from an actual loss of future earnings which can readily be proved at the time of the trial. The difference was explained in this way: compensation for loss of future earnings is awarded for real accessible loss proved by evidence. Compensation for demotion of earning capacity is awarded as part of the general damages. ...

27. In *Mumias Sugar Company Limited -vs- Francis Wanalo* [2007] eKLR, an award of loss of earning was discussed as follows: -

..... The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability.

28. It is first necessary to dispense with the invitation by the Appellant that loss of earning capacity is a special claim that must be specifically pleaded and proved. As explained by the Court of Appeal, it is the loss of future earnings that fall under that categorization and not loss of earning capacity. Loss of earning capacity is claimed and is awarded as part of general damages. The only issue, therefore, is where the amount awarded was manifestly excessive.

29. There was also a contention by the Appellant that the trial Court awarded loss of earning capacity as a separate claim instead of being lumped with damages for pain and suffering and loss of amenities. As was observed by the Court in *Mumias Sugar Company Limited -vs- Francis Wanalo* case [supra], a decision cited and relied upon by the Appellant, a victim of an accident can claim and be awarded loss of earning capacity as part of general damages for pain and suffering and loss of amenities or as a separate head of damages. Therefore, it is incorrect to fault the learned trial Magistrate for making a separate award yet the Respondent pleaded it as a standalone claim.

30. In this case, whereas it was not in contest that the Respondent was a mason, there is no evidence to that end. There also are no payment vouchers to aid this Court assess the damages. The Kshs. 30,000/- was, hence, arrived at without any factual consideration. This limb being part of general damages,



this Court agrees with the Appellant that the trial Courts' assessment took the erroneous approach of computing it as a special damage yet the earning of the Respondent was not a liquidated loss and there was no evidence of monthly earnings. However, there is no doubt that the Respondent suffered adverse injuries. The Report by Doctor Sokobe assessed the accident to have permanently disabled him at 50%. Masonry being manual labour, his ability to earn a living through it is highly compromised.

31. In the premises, having regard to the direction of the Court of Appeal in *Mumias Sugar Company Limited case [supra]*, I find that a lumpsum figure ought to have been used which in the circumstances of the case, and having regard to comparable compensation for comparable injuries, a sum of Kshs. 5,000,000/- [Five Million] is adequate compensation. There is no doubt that the figure arrived at by the trial Court is manifestly high.

b. General damages for pain, suffering and loss of amenities:

32. The Appellant's contention was that general damages were excessive in the circumstances of the case and did not match comparable injuries. It also was its case that loss of amenities ought not be compensated where an award of pain and suffering is already made.
33. Was the award excessive on this limb of damages? A comparative approach will answer the question. In *Copana Limited -vs- David Ouma Abanga (2021) eKLR*, the Respondent, a boda-boda rider suffered fracture of the right tibia/fibula bone, amputated right foot at the ankle among other injuries. He was awarded Kshs. 2,000,000/- for pain and suffering. In *Charles Kiplagat Koech -vs- Benard Ng'etich (2021) eKLR*, the injuries suffered were fracture on the leg leading to amputation. Court made the award of Kshs. 1,800,000/- as general damages. In *John Kipkemboi & Another -vs- Morris Kedolo & Another (2019) eKLR*, the Court made an award of Kshs. 2,500,000/- for general damages for pain and suffering. The Court, in *Michael Wafula Malenya -vs- Matunda Bus Services Limited, (2022) eKLR* enhanced the award to Kshs. 3,000,000/- for amputation and 50% permanent disability.
34. Having perused the trial Court judgment, it is evident that there is no basis upon which it arrived at Kshs. 4,000,000/= and Kshs 200,000/= for pain and suffering and loss of amenities respectively. The comparable awards are as enshrined in the above cases. There is no doubt the award for pain and suffering was on the higher side comparatively. In view of the change in time and the economic dynamics, I hereby substitute the Kshs. 4,000,000/- for Kshs. 3,000,000/-.
35. As regards loss of amenities the decision in *Jacinta Kendi & another vs. Rose Kimonda (2020) eKLR*, is succinct. It was observed;

... However, I find that the trial Court's award of Kshs. 300,000 under the head of loss of amenities was based on the wrong principle and went against jurisprudence, practice and precedent. This award amounted to double compensation and ought not to have been awarded when an award under the head of general damages for pain and suffering had been awarded....

36. The award of Kshs. 200,000/- on loss of amenities is hereby set aside.

c. The award on future medical expenses:

37. The trial Court awarded the Respondent Kshs. 500,000/- for prosthesis and made the finding that since it is replicable every 15 years, the Respondent would replace it twice, thus three prosthesis legs, making a total of Kshs. 1,500,000/-.



38. The principle to be observed under this head was set out in the Court of Appeal decision in Kenya Bus Services Ltd. – vs- Gituma, (2004) EA 91, where it was observed: -

.... 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.

39. In Civil Appeal 26 of 2013, Simon Taveta v Mercy Mutitu Njeru [2014] eKLR the Court spoke further to the foregoing as follows;

... we are of the view that taking into account the 100% disability on the part of the respondent and the injuries sustained, we make an award of Kshs. 3,500,000/= which we consider is not inordinately excessive as general damages for pain and suffering and loss of amenities. No award is made for future medical care as the same was neither pleaded nor proved as special damages.” (emphasis added)

40. The Respondent indeed pleaded in paragraphs 10 and 11 of the Plaint that he would need to undergo future treatment and an above knee prosthesis at an estimated cost of Kshs. 500,000/- x 3, that is, replaceable every 15 years. The only piece of evidence in support of future medical expenses is the Medical Doctor’s report which states, in the ‘opinion and prognosis’ section as follows;

... He requires further treatment and later fitting of a prosthesis at an estimated cost of Kshs. 500,000/-.

41. It is evident that the cost of the prosthesis as a future medical cost was pleaded and proved, as per the evidence of the medical professional. However, the claim that it was to be replaced every 15 years was without any evidence. Therefore, this Court will only award Kshs. 500,000/- for future medical expenses.

42. Since nothing turns out on the special damages as granted and the appeal was only against the quantum, the above, therefore, sufficiently disposes it.

Disposition

43. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

44. In the end, the appeal on quantum partly succeeds and the following awards hereby issue: -

- i. Loss of earning capacity Kshs. 5,000,000/-
- ii. Pain, suffering and
loss of amenities Kshs. 3,000,000/-



- iii. Future Medical expenses ... Kshs. 500,000/-
 - iv. Special damages Kshs. 31, 550/-
45. The above awards shall be subject to the agreed apportionment of liability and the Appellant shall have the costs of the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Otieno, Learned Counsel for the Appellant.

Miss. Masinde, Learned Counsel for the Respondent.

Chemosop/Duke – Court Assistants.

