



REPUBLIC OF KENYA



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**Serem v Chepkurui (Civil Appeal E016 of 2023)
[2025] KEHC 5493 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CIVIL APPEAL E016 OF 2023
RB NGETICH, J
APRIL 30, 2025**

BETWEEN

CYPRIL KIPRUTO SEREM APPELLANT

AND

JOEL KIPKORIR CHEPKURUI RESPONDENT

(Being an Appeal from the Judgment on quantum delivered on 12th May, 2023 in Kabarnet by Honourable Caroline R.T. Ateya (PM)- in Kabarnet CMCC 4 OF 2021)

JUDGMENT

1. The Respondent filed suit against the Appellants vide plaint dated the 11th January, 2021 seeking general damages, special damages, costs of the suit and interest thereof arising from a road traffic accident which occurred on or about 8th July, 2018 when along Eldoret-Kabarnet road when Motor Vehicle Registration Number KCH 108L owned by the Appellant lost control and collided with Motor Vehicles Registration Number KBM 899G, as result whereof the Respondent sustained injuries.
2. By judgment delivered on 12th May, 2023 the trial magistrate Honourable Caroline R.T. Ateya Principal Magistrate awarded the plaintiff General damages at Kshs.3,000,000/=. Special damages at Kshs.290,779/=. Future medical expenses at Kshs.200,000/= plus costs and interests of the suit.
3. Pursuant to leave granted on 16th November, 2023 vide Miscellaneous Application No. 6 of 2023, the appellants herein being aggrieved appealed on quantum on the following grounds:-
 - i. The Learned Magistrate erred in fact and in law by weighing the 1st Respondent's case in isolation from the appellant' case precluded herself from assessing the magnitude of damages impartially.



- ii. The Learned Magistrate erred in fact and in law by awarding the 1st Respondent an excessive and unjustified amount on quantum for General damages of Kshs.3,000,000/=.
 - iii. The Learned Magistrate erred in fact and in law when she failed to consider the Appellant's evidence and submissions on points of law and facts on finding that the 1st Respondent was entitled to Special Damages of Kshs.290,779/= which the same was not specifically proved.
 - iv. The learned magistrate erred in fact and in law and misdirected herself as to the exact nature of the 1st Respondent's injuries and therefore erred in law in her assessment of damages which had not been proved.
 - v. The Learned Magistrate erred in law and in fact by disregarding the submissions of the Appellant in totality thus precluding herself from assessing the magnitude of damages impartially.
 - vi. The learned magistrate erred in law and in fact when she relied on erroneous principles of law in arriving at an excessive award on quantum.
 - vii. The Learned magistrate grossly misdirected herself by treating the evidence and submissions before her on quantum superficially and consequently arrived at a wrong decision without any basis in law or fact.
 - viii. The Learned Magistrate erred in fact and in law in failing to accord the Appellant's submissions due consideration.
 - ix. The Learned magistrate's findings on quantum of damages are not supported by facts or law hence irregular.
4. The Appellant seeks for the following Orders: -
- i. That this Appeal be allowed.
 - ii. That the judgment on quantum of the Hon. C.R.T. Ateya, Principal Magistrate be set aside and substituted with a fresh award.
 - iii. That the costs of this Appeal and that of the trial court be awarded to the Appellant.
 - iv. That such further orders may be made by this Honourable Court as it deems fit.
5. The Respondent blamed the Appellant for the alleged accident and set out particulars of negligence in the Plaintiff. The Respondent testified, adopted his statement filed on 20th July, 2022 and filed submissions dated 19th January, 2023 in support of his case. The Appellant did not call any witnesses or produce any evidence to rebut plaintiff's evidence but filed submissions denying any liability arising from the said accident. The appeal was canvassed by way of written submissions.

Appellant's Submissions

- 6. The appellant submits that the Plaintiff pleaded the following injuries being head injury and abrasions, soft tissue abrasions scalp and back disorders, open comminuted fractures of the right tibia and fibula and left acromio-clavicular fractures and dislocations.
- 7. The Appellant urged this court to re-evaluate quantum in view of the mild nature of the injuries sustained and that it is trite law that assessment of quantum of damages in a claim for general damages is a discretionary exercise. However, the law has set dimensions for exercise of discretion and must be exercised judicially, with wise circumspect and upon some legal principles. That the said dimensions



are vital such that when the trial court has violated a legal principle(s), the appellate court will interfere with the exercise of discretion by the trial court and the discretion in assessing the amount of general damages payable will be disturbed if the trial court:-

- i. Took into account an irrelevant factor or,
 - ii. Left out of account a relevant factor or, short of this
 - iii. The amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.
8. They submit that it is also trite law that awards must be within consistent limits and court awards for damages must be made taking into account comparable injuries or similar injuries and awards. That in *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* [2013] eKLR [as quoted in *Michael Okello v Priscilla Atieno* [2021] eKLR] it was held that the general method of approach for assessing damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.
9. That similarly, in the case of *Kigaraari v Aya* [1982-88] 1 KAR 768, as quoted by Kamau J in *Godfrey Wamalwa Wamba & another v Kyalo Wambua* [2018] eKLR it was stated as follows:

“Damages must be within the limits set out by decided cases and also within the limits the Kenyan economy can afford. Large awards are inevitably passed on to members of the public, the vast majority of whom cannot afford the burden in the form of increased insurance and increased fees.”

10. The Appellant urge this Court to revise the General damages downwards to the award of Kshs.500,000/=; that submit that the Respondent alleged that he had not healed fully and his physical wellbeing was being tampered with, additionally he alleged that he could not perform sexual activities but despite his averments and testimony he did not adduce or produce any documents that show the effects he was experiencing especially in performing physical and sexual activities.
11. The Appellant submit that the injuries were confirmed in the medical documents produced in Trial Court from the initial treating hospital and the medical reports by the Plaintiff/Respondent and the Appellant. That the medical report by Dr. Ogotu dated 20th December, 2021 indicate that the tibial intramedullary rod and screw were adequately seen thus reducing distal diaphyseal fracture, the plates and screws were seen reducing the ulna fracture fragments and as such all the fractures had fully healed. That the medical report confirmed that the respondent had a dislocation at the acromio-clavicular joint and distal clavicular and the fractures sustained had fully healed.
12. The Appellant relies on the case of *Daniel Otieno Owino and Another v Elizabeth Atieno Owuor* [2020] eKLR where the court stated as follows: -

“The respondent at the time of hearing of the case stated that she had not fully healed but never demonstrated what treatment she was receiving at that time following the doctor's advice in 2016. There was no indication that she had any malunion of the fractures site to warrant surgery. In my view, the respondent's injuries were not as serious as those suffered by the plaintiffs in all the cited cases and especially on the long-term effect thereof. That being the case, I find an award of Kshs.600,000/= general damages for pain, suffering and loss of amenities to have been inordinately high. I interfere with the same and substitute the award with an award of Kshs.400,000/= general damages, at 100% liability. This amount to be subjected to 20% contribution leaving Kshs.320,000/= plus specials of Kshs.2,000/=



pleaded and proved making a total of Kshs.322,000/= plus costs of the suit and interest at court rates from date of judgment in the lower court on general damages and front date of filing suit on special damages. There shall be no contribution on special damages."

13. Further in the case of Alex Wanjala v Pwani Oil Products Limited and Another (2019) eKLR where the Appellant sustained a closed head injury leading to loss of consciousness for several weeks, closed fractures of the right humerus and closed fracture of the right femur and the court awarded the plaintiff Kshs.600,000/= for general damages.
14. And the case the case of Sammy Mugo Kinyanjui & Another v Kairo Thuo (2017) eKLR where the respondent had slight tenderness in the forehead, neck, chest, abdomen, right knee and both legs; fracture of the right tibia; fracture of the left tibia and fibula. His conclusion was that the injuries were very severe but had healed the court lowered the award of general damages from Kshs.1,000,000/= to Ksh.600,000/= and finally the case of Tirus Mburu Chege & Another v JKN & Another (2018) eKLR where the respondent suffered fractures on the tibia and fibula on both legs, blunt injury on the forehead, broken upper right second front tooth, nose bleeding and consistent loss of consciousness the court lowered the award for general damages from Kshs.800,000/= to Kshs.500,000/=.
15. That in all the above cited cases, the claimants suffered more severe injuries than the Respondent in the present appeal and submit that an award of Kshs.500,000/= will be sufficient under the head of General Damages.
16. On award under future medical expenses of Kshs.200,000/=: the appellant submit that on 1st December, 2019 the Plaintiff underwent surgery for removal of plates and screws and a medical report by Dr. Ogutu dated 20th December, 2021 indicate that the tibial intramedullary rod and screw were adequately seen thus reducing distal diaphyseal fracture, the plates and screws were seen reducing the ulna fracture fragments and as such all the fractures had fully healed.
17. It is the Appellant's submission, that there will be no need for any future treatment as confirmed by the Medical reports and as there is no need for an award future medical expenses as pleaded. Further, the Respondent paid his hospital bills using the NHIF cover and as such the Respondent should not be awarded the amount pleaded.
18. On special damages, the Appellant submit that it is trite law that special damages must not only be pleaded but also specifically proven and those not proven must be disallowed. To support their argument, the Appellant relied on the case of National Social Security Fund Board of Trustees v Sifa International Limited (2016) ECLR, the court quoted the case of Bangué Indosue v DJ Lowe and company Ltd (2006) 12KLR 208 cited with approval in Satwant Singh Danjal & 2 others Ha Paramount Hauliers v Kenya Revenue Authority [2017] eKLR.
19. The appellant further submits that the Respondent in his plaint pleaded for Kshs.290,779/= under special damages but he produced an invoice from St. Luke's Orthopaedic and Trauma Hospital and not receipts. That Judge Ngugi in giving his judgment in the case of Christine Mwigina Akonya v Samuel Kairu Chege [2017] KEHC 1484 (KLR) stated in paragraph 27:-

"I have carefully perused these documents. As is readily obvious, many of them are pro forma invoices not receipts as our case law requires. I am therefore unable to award the amounts represented by those invoices as special damages."

20. Further, that the Plaintiff/Respondent adduced some taxi receipts which are very questionable since they are unauthenticated and unverifiable and the said receipts have no vehicle registration number of the taxi which allegedly ferried the Respondent to the various destinations; that it is pertinent to note



that the receipts for transportation are for different dates, years and months and it is the Appellant's prayer that this court disregard the invoices produced and filed for medical treatment as the same is not a receipt and consider only the receipts which accrue to Kshs.10,550/=.

21. That it is therefore the prayer of the Appellant that the amount payable under the head of special damages is only Kshs.10,550/= as the injuries sustained by the Respondent have adequately healed and as demonstrated in various case laws and precedents, the court should be guided by case laws with comparable injuries which in this case, the amount adequate for quantum is Kshs.500,000/=, Special Damages is Kshs.10,550/= and no award should be awarded under the head of Future Medical Expenses. In view of the foregoing, the Appellants urge this Honourable court to set aside the Judgment of the trial court herein and award a fresh award for quantum.
22. On the issue of costs, the appellants pray for costs of this Appeal based on Section 27(1) of the *Civil Procedure Act* 27.

Respondent's Submissions

23. The Respondent submits that the only issue for determination before this Honourable Court is whether the trial court erred in law and in fact in assessing damages and/or whether the awarded amount was inordinately high to warrant interference by this Honourable Court. That Appellant is 100% liable jointly and severally for the accident and liability is not contested.
24. The Respondent humbly submits that the assessment of general damages is at the discretion of the trial court and the appellate court can only interfere where the trial court took into account an irrelevant factor or left out a relevant factor or where the award was too high or too low as to amount to an erroneous estimate or that the assessment was based on no evidence and the position was stated by the Court of appeal in the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, where the Court 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:

"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 inordinately high or low."

25. Further in the case of *Savanna Saw Mills Ltd v Gorge Mwale Mudomo* [2005] eKLR the court stated as follows: -

"It is trite law that the assessment of damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court simply because it would have awarded a different figure if it had tried the case at the first instance."



26. The Respondent submit that he sustained serious injuries being head injury and abrasions, Soft tissue abrasions scalp and back disorders, Open Comminuted fracture of right Tibia and Fibula and Left acromioclavicular fractures and dislocations and further residual injuries being Persistent headache/ occasional impaired vision of unknown (origin maybe from head injury sustained), Numbness/ stiffness/tenderness/pain of both left and right shoulder/joint with occasional pains, Persistent backaches, stiffness, swelling and seating discomfort, Persistent pain/stiffness/swelling of the ankle joint/plate knee pain on bending (Osteoarthritis-Consultant/Doppler report of 6th February, 2020), Non prolonged standing, seating, seating and ambulation with crutches due to stiffness, swelling, weakness, pain, fatigue etc. (See CT Scan Lumbar-sacral spine report of 3rd June, 2020 attached), Urinary/emotional and reproductive disorders (urinary sexual discharges/dysfunction of unknown origin among others), General body weakness and occasional enlarged blisters of unknown origin from the site (s) operation (27th May, 2020 report) and Impaired movement/ambulation/locomotive inefficiencies (physical) resulting from a permanent shortness of his right leg (by 1.5" to 2" inches) and slightly curved towards the ankle joint. (Physio report-05/11/2029-age may aggravate more).
27. Further that the Respondent underwent several major surgical operations and received the following treatment being Surgeries and implanting (plating and nailing), Bone crafting, Antibiotics and analgesics, Regular cleaning of wounds and dressing, Bi-weekly physiotherapy/exercises, Ambulate using crutches for unknown time (copping up daily life), Avoiding weight bearing activities/items (March 2019) and Avoiding extensive bending the back among other consultant recommendations. The medical documents in support were produced as Exhibits.
28. The Respondent submits that he has not healed and he is required to undergo further medical operations and treatment to remove the implants. The trial court computed the award of Kshs.3,000.000/= as general damages based on Gabriel Mwashuma v Mohammed Sajjad & another [2015] eKLR where the Plaintiff sustained similar injuries and the Court awarded general damages of Kshs.3,000.000/=. That the trial court also relied on the case of Mwangi v Siloma *& another (Civil Appeal E102 of 2022)* [2023] KEHC 26140 (KLR) (27 November 2023) (Interim Judgment) where the Plaintiff sustained similar injuries and the Court awarded general damages of Kshs.1,200.000/= and considering the effect of inflation and the nature of injuries sustained by the Respondent the trial court was justified in exercising discretion to award Kshs.3,000,000/= and submit that Respondent's (Plaintiff) submissions have been omitted in the Record of Appeal and a record thereof is attached with these submissions. The Respondent relies and reiterates the authorities on quantum cited therein and the cases of Agatha, Christine and Gabriel cited in the Plaintiff's submissions involved similar injuries as those sustained by the Respondent herein.
29. The Respondent submit that the trial court awarded special damages of Kshs.290,779/= which were specifically pleaded and proved in the trial and the Respondent produced receipts as well as treatment chits from Baringo County Referral Hospital and a discharge summary from St. Luke's Orthopaedic & Trauma Hospital as well as a medical report from Dr. Jenifer Kahuthu which are sufficient proof that he was injured and treated.
30. In conclusion, the Respondent submits that the Appellant has failed to demonstrate how the trial magistrate erred in assessing quantum or how the award is excessively high to warrant interference by this Honourable Court and submit that the trial court considered all facts and law including authorities presented by both parties in their submissions before awarding damages totaling to Kshs.3,490,779/= plus costs and interest and thus the amount awarded is not excessive to warrant this Honourable Court to interfere with it.



31. On the issue of costs and interests, the Respondent submit that the law is that costs follow the event and that the Appeal herein should be dismissed with costs and interests to the Respondent in the Trial Court and in this Honourable Court.

Analysis And Determination

32. This being the first appeal, I am obligated to re-evaluate the evidence of the trial court and come up with my own conclusion. I am however minded of the fact that unlike the trial court, I did not have the chance to hear witnesses and observe their demeanor, for this I give due allowance. This position was held in the case of *Selle & Another v Associated Motor Board Company Ltd.* [1968] EA 123, where the court held as follows: -

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

33. When assessment of damages is challenged, the court must satisfy itself that in assessing the damages, the trial court took into account all relevant factors to arrive at the award. If it finds that the award is inordinately too high or too low as to be a wholly erroneous estimate of the damage, it will intervene and disturb the said award. This position was held in the case of *Kemfro Africa Ltd T/A Meru Express Service, Gathogo Kariri v A.M. Lubia & Another* [1998] eKLR and *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KARS .

34. In arriving at the awards on damages, the trial court relied on the medical documents and evidence presented before it. In particular the treatment chits from Baringo County Referral Hospital and a discharge summary from St. Luke's Orthopaedic & Trauma Hospital as well as a medical report from Dr. Jenifer Kahuthu.

35. The injuries sustained by the Respondent as captured in paragraph 26 above is not contested.

36. In the case of *Stanley Maore v Geoffrey Mwanda Civil Appeal No. 147/2002 (2004) eKLR* the court stated as follows: -

“It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

37. In the case *Regina Mwikali Wilson v Stephen M. Gichuhi & Another* (2015) e KLR, Mabeya J, awarded a sum of Kshs.2,500,000/= for fractures to the neck, fracture to the humerus fracture to the right leg and fracture right hip bone in 2015. Further in the case of *Polyline W. Kinura alias Roselyne Muthui Katee v Ocheru Kibra & 3 Others Nakuru HCCC No. 237 of 2009*, for fractures to the right tibia and fibula, posterior dislocation of left hip, an acetabulum fracture, and soft tissue injuries, the plaintiff was awarded Kshs.1,500,000/= in 2009.

38. I am aware that no two injuries can be exactly similar but can only be comparable, and depends on the severity nature and post injury prognosis. In his judgment, the trial magistrate considered several authorities to arrive at the sum of Kshs.3,000,000/= for pain and suffering and loss of amenities.



39. Looking at the decisions relied on by both parties, the decisions cited by the claimants sustained less severe injuries than the Respondent herein. Taking into consideration the severity of the respondent's injuries which required him to undergo surgery and physiotherapy, the degree of permanent disability and the duration the respondent spent in hospital, it is my considered view that Kshs.3,000,000/= is reasonable compensation as general damages for pain, suffering and loss of amenities.
40. On the issue of future medical expenses, the Court of Appeal in the case of *Tracom Limited & Another v Hassan Mohammed Adan* [2009] eKLR stated: -
- 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 v 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 special damage 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 raising 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 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 treatment is 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 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.
41. The appellant challenges award of Kshs.200,000/- as future medical expenses for the reason that the same was not proved. The medical report produced by the Respondents indicated that the respondent would require further treatment to remove the implants at an approximate cost of Kshs.200,000/-. The respondent pleaded for future medical expenses in his plaint and proved the same through the medical report. Thus, it is my considered view that the award for future medical expenses was made in consideration of the applicable principles and ought not to be disturbed
42. On Special damages, the respondent had pleaded special damages in her Plaint in the sum of Kshs. Kshs.290,779/=.
43. The appellants challenge is that the award of Kshs. Kshs.290,779/= Was not proved. In the case *Haln v Singh* [1985] KLR 719 the Court of Appeal rendered that
- “---special damages must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstance and the nature of the act themselves.”
44. In the above case, the respondent produced proforma invoices specifying the outstanding bill and also receipts. The Appellant submits that without evidence of payment, proforma invoices would not amount to a receipt. I however take judicial notice of the fact that a hospital bill or invoice for medical treatment need not be paid first for a claimant to claim compensation, because many times claimants are unable to pay hospital bills on demand and are discharged and released upon signing a guarantee



for payment in future or by offering security by way of land title deeds of any other asset with a promise to pay.

45. Ibrahim J, (as he then was) in *Thomas Kabaya Ngaruiya v David Chepesiror* [2012] eKLR was of the same opinion that special damages though not paid may be granted if it is proved that such hospital bills were indeed incurred and are secured by a guarantee or deposit of a security. See also the case *George Kigamba v Buuri Dairy Farmers Co-operative Society* [2018] eKLR in respect of guarantees, and requirements for stamp duty before they can be admissible in evidence.
46. I have seen the, the treatment chits from Baringo County Referral Hospital, the discharge summary from St. Lukes Orthopaedic & Trauma hospital bills as well as the medical report by Dr. Jeniffer produced by the Respondent. There is no doubt that the respondent was a patient therein having been admitted therein. The discharge summary confirms this. It is therefore clear that the special damages were specifically pleaded and proved. I find no fault in the trial courts award under this head.
47. It is therefore my finding that the appeal lacks merit and is hereby dismissed with costs to the respondent. It is hereby so ordered.

Final Orders: -

48. Appeal on assessment of damages is hereby dismissed with costs to the Respondent.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY, THIS 30TH DAY OF APRIL, 2025 AT KABARNET.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Mwema for Appellant.

No appearance for Respondent.

Court Assistant – Elvis.

