



**Chemutai v TSS Express Limited (Civil Appeal 105 of 2018)
[2022] KEHC 13617 (KLR) (11 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 13617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 105 OF 2018
TM MATHEKA, J
OCTOBER 11, 2022**

BETWEEN

EUNICE CHEMUTAI APPELLANT

AND

TSS EXPRESS LIMITED RESPONDENT

JUDGMENT

1. This appeal arises from the judgment and decree passed by the Resident Magistrate Hon Soita on July 23, 2018 in the Chief Magistrate's Court Civil Suit No 226 of 2014.
2. The memorandum of appeal filed on June 21, 2019 and dated April 3, 2018 by Gekonga & Company Advocates on behalf of the appellant Eunice Chemutai sets out five grounds of appeal namely that:-
 - i. erred in law and in fact in dismissing the appellant's suit.
 - ii. erred in law and in fact in finding that the appellant had not proved her case on a balance of probabilities despite concrete evidence on record.
 - iii. erred and misdirected himself in law and in fact by ignoring the appellant's testimony in court on her injuries, her documents on record and her submissions thus reaching an erroneous decision.
 - iv. erred in law and in fact in failing to quantify the award he would have awarded had he not dismissed the appellant's case.
 - v. failed to appreciate and/or misapplied the principles applicable in the assessment of damages under the circumstances.



3. It was the appellant's prayer that the said judgment of the subordinate court be set aside and substituted with a judgment in favor of the appellant against the respondent, with assessed damages for pain, suffering and loss of amenities and costs here and below.
4. The appellant's claim was in the amended plaint dated January 19, 2015. It arose from a road traffic accident which occurred on December 21, 2013 along Eldoret-Nakuru road when the plaintiff was lawfully traveling in motor vehicle registration number KBD 978 G. It was alleged that the defendant/respondent by itself, its servant, agent, and/or employee so negligently drove, managed and/or controlled the motor vehicle as a result of which it was involved in an accident causing serious injuries to the plaintiff. She sought general damages, future medical expenses and special damages.
5. The particulars of negligence were that the motor vehicle registration number KBD 978 G was driven in excessive speed in the circumstances and without due care and attention to other road users, the driver failed to slow down, swerve or in any way maintain the said motor vehicle so as to avert the accident, failed to brake on time to avoid the accident, failed to ascertain that the road ahead was clear before proceeding on, driving a defective motor vehicle and that ultimately this was a case of *res ipso loquitur*.
6. It was the plaintiff appellant's case that following the accident she sustained maxillofacial injury, loss of 4 upper incisors teeth, soft tissue injuries of the upper lip, chest and back and that she required reconstruction and replacement of the teeth at a cost of Kshs.80,000/= which she claimed.
7. The defendant/respondent *vide* its amended defence dated April 2, 2015 denied the claim, denied the applicability of the doctrine of *Res ipsa loquitur* and put plaintiff/appellant to strict proof. In the alternative the defendant/respondent averred that the accident was contributed to solely or partially by the negligence of the plaintiff/appellant as she failed to take any or adequate precaution for her own safety, failed to heed the instructions on safety precautions and the traffic rules and regulations when traveling, and further that the plaintiff/appellant's claim was fraudulent and based on misrepresentations. .
8. The defendant/respondent set out the particulars of fraud and misrepresentation *viz*: swearing a false affidavit; fabricating documents to support a fake claim; forging documents to further this claim; obtaining or attempting to obtain by false pretense money from the defendant by way of damages claimed in the fake claim; purporting to have been injured in the accident whilst travelling in motor vehicle registration number KBD 978G; Informing and misrepresenting facts to the police at Bomet Police Station that she had been injured in an accident involving motor vehicle registration number KBD 978G when she knew the same to be false and misleading; fraudulently obtaining claim supporting documents from Nakuru Nursing Home Hospital; instructing advocates to pursue a claim on her behalf to recover damages for injuries allegedly sustained in the accident knowing the same to be misleading and fraudulent as she was not injured as alleged or otherwise and thus no damages are payable to her; instituting a fake/non-genuine suit in this court in which she represented that she had been injured in an accident and attended Nakuru Nursing Home Hospital thus causing to be served upon the respondent/defendant summons to enter appearance and plaint, and materially fundamentally and intentionally misleading advocates for the defendant in the suit and the honorable trial court by adducing fraudulent and doctored evidence in support of this claim.
9. On June 16, 2015, the matter was heard.
10. The plaintiff /appellant testified as PW1 that on December 21, 2015 she was traveling from Eldoret to Mombasa in motor vehicle registration number KBD 978 J which was being driven very fast. Upon reaching Salgaa the driver dozed and the motor vehicle rolled, she said that her hand came off, her



head swelled, she sustained injuries on legs and chest and lost four front teeth. She was admitted at Home Nursing Hospital for three days before being transferred to Turbo Hospital for dental services and later to Moi Referral Hospital and St Lukes for treatment. She produced a bundle of receipts as Exhibit 5, for Kshs 500 for consultation at St Luke's Hospital Kshs 15,860/= for Nakuru Home Nursing Hospital, a P3 form as exhibit 5, demand letter sent to the respondent as exhibit 6 and Kshs 5,000/= for reconstruction, certificate of registration of the suit motor vehicle as exhibit 7A. It was her testimony that the accident was reported at Salgaa Police Station and she was issued with a police abstract. Later Dr Kiambaa examined her and she paid Kshs 7,000/= for the medical report, and was advised that she would have to replace her lost teeth at a cost of Kshs 80,000/= She blamed the driver of the motor vehicle for speeding. She said that though she had recovered, people laughed at her because of the gap in her teeth and she needed to replace them.

11. On cross examination she stated that she was traveling from Eldoret to Mombasa, seat number 27 in the middle. That she could not see the driver, she did not see him sleeping; it was the passenger next to the driver who was shouting to the driver wake up! wake up!; she could not see the speedometer but she could feel that the bus was going fast! She heard other passengers telling the driver to slow down.
12. PW2, Elisha Odhiambo was a Records Officer from Nakuru Nursing Home. He testified that the discharge summary appeared to emanate from their facility as it had their current letterhead with logo and current stamp and produced the same as P exhibit 1. though it did not have an in-patient number. He said that there could have been an omission by the person on duty on that particular date to indicate/record the inpatient number, which was not an unusual occurrence. He confirmed the discharge summary emanated from their hospital
13. PW2 on cross examination he testified that there was a register at the hospital but he had not carried it to court. He confirmed that he was an employee at the hospital for 23 years, that he was the author of the letter dated January 23, 2015 where he stated that he had perused all the registers at the hospital both inpatient and outpatient on the alleged dates of admission and discharge December 21, 2013 and December 23, 2013. He confirmed that the claimant by the name Eunice Chemtai did not appear in any of the hospital registers or records. He also confirmed that the author of the treatment notes was unknown. That the treatment notes did not emanate from that hospital and were not genuine.
14. However on cross examination he stated that one Pauline who signed on the appellant's discharge summary was at the time an employee of the hospital as a clinical officer but tracking the appellant's documents without the inpatient number was difficult.
15. PW3, No 86412 PC George Olala testified that the accident occurred on the December 22, 2013 around 7:30pm. motor vehicle registration number KBD 978G which lost control and landed in a ditch along Eldoret Nakuru Road Migaa area. He said he had taken over from the investigating officer who had been transferred. His role was to produce the file. That the OB record showed that the appellant was one of the passengers. He produced the police abstract and OB extract as P Exhibits 8 and 13 respectively.
16. On cross examination he said the road traffic accident happened on December 22, 2013 and was reported at 1135 hours through OB4/22/12/13, that the police abstract was issued on the April 9, 2014.
17. PW4 was DR Wellington Kiamba. It was his testimony that he relied on the discharge summary from Nakuru Maternity and Nursing Home, P3 form filed at Provincial General Hospital, patient notes and prescription from Turbo Health Center and consultation notes and prescription from Dr Cyrus Micha of St Luke's Orthopedic and Trauma Hospital in preparing his report. He said that the patient suffered maxillofacial injuries, had lost teeth, and had four fragile teeth. It was his view that



- the appellant would require reconstruction and replacement of the lost teeth at a cost of about Kshs 80,000/=. He classified her injuries as grievous harm and awarded temporary disability of three months. On cross examination he confirmed the discharge summary from Nakuru Nursing Home did not state loss of teeth.
18. DW1 was Elisha Odhiambo. He had testified as PW1. He distanced himself from his earlier testimony and stated that the discharge summary he had produced as exhibit 1 was not authentic as it did not have the mandatory in-patient number and that the appellant's name was missing from their admission and discharge records and summary register. That it was unusual for a patient to miss in all their registers hence the reason he authored the revocation letter dated January 23, 2015.
 19. The trial court delivered its judgment on July 23, 2018. On liability he stated that the evidence of the plaintiff on the circumstances leading to the accident was uncontroverted and therefore held the respondent was to blame for the accident.
 20. On quantum, the court relied on the evidence of DW1 and the revocation letter dated January 23, 2015 which showed that the appellant's discharge summary was not authentic. The trial court disregarded the medical report produced by Dr Kiamba on the basis that the primary documents he relied upon had been revoked by the hospital which the appellant alleged to have been treated and admitted. The court while relying on the cases of *Timsales Limited Vs Joseph Njenga Githaiga* [2015] eKLR *Stephen Kinini Wang'ondou vs The Ark Limited* [2016] eKLR & *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros vs Augustine Munyao Kioko* [2006] eKLR found that the appellant had failed to prove the injuries she sustained following the material accident and dismissed her case with costs.
 21. The appeal was canvassed through written submissions.

Appellant's Written Submissions

22. The appellant filed her submissions on February 7, 2022. On grounds one and two of the memorandum of appeal, the appellant submitted that the evidence of PW2, PW3 and PW4 clearly indicated that she was injured in the accident. That PW3 indicated that she had been admitted in their hospital and there was a discharge summary emanating from that hospital indicating the same. She stated that regardless of the fact that the discharge summary lacked the in-patient number PW3 confirmed the document was from their facility and it might have been an omission on the part of the hospital to indicate the said number. She stated that PW2 also testified as DW1 and gave contradicting evidence which should be disregarded as he had already testified on her behalf.
23. The appellant submitted that the respondent did not call any independent witness to testify on the occurrence of the accident and that calling the records officer as its witness demonstrated that it had compromised him and was hell-bent on frustrating her from getting justice.
24. The appellant submitted that the police officer confirmed that she was issued with a P3 form which cannot be issued without evidence of being involved in an accident and that this was sufficient proof which corroborated her evidence. She argued that she had proved her case on a balance of probabilities as she had produced the P3 form, medical report, and the OB and treatment notes from Nakuru Nursing home.
25. On ground 3 - it was submitted that the records officer fully admitted that the hospital might have omitted the inpatient number which was a mistake that normally happened in the hospital. In addition he confirmed the origin and maker of the document to be Nakuru Nursing Home and that the discrepancies presented with the treatment notes should not be visited on an innocent litigant as she was not the author of the treatment notes. The appellant cited the case of *Henry Binya Oyala vs*



Sabera O Itira. [2011] eKLR where the court held that the primary source of information on injuries sustained is by the victim and the evidence of the medical officer was not mandatory. That the victim own statement with regard to injuries should not be dismissed merely on the ground that it was not matched by the initial treatment from the hospital

26. On ground 4, the appellant submitted that she produced medical evidence which included treatment notes from Nakuru Nursing & Maternity home, an OB and medical report by Dr Kiamba that classified the injuries as grievous harm. She argued that the court ought to have quantified the damages it would have awarded as she had proved the injuries through oral evidence. She relied on the case of Daniel Odhiambo Ngesa vs Daniel Otieno Owino & Another [2020] eKLR where the court stated that it is good practice for a trial court to estimate damages payable.
27. On ground 5 of the memorandum of appeal, the appellant submitted that an award of Kshs 800, 000/ = will be sufficient compensation. To support this position she relied on the cases of Martha Agok vs Kampala Coach [2017] eKLR and Joseph Mutua Nthia vs Fredrick Moses M. Katuva [2019] eKLR.

Respondent's Submissions

28. The respondent filed its submissions on March 23, 2022.
29. The respondent submitted that the appellant was not treated at Nakuru Nursing & Maternity home as the treatment notes from this hospital were revoked by the records officer for being fraudulent.
30. The respondent argued that it is trite that when a medical practitioner gives a medical report for an accident, he usually relies on the first treatment notes or discharge summary from the first hospital or medical facility where the patient was treated to make an opinion. That since the initial treatment notes were revoked by DW1 then the testimony and the medical report by Dr Kiamba must fail. In support of this proposition the respondent placed reliance on the cases of Timsales Limited vs Joseph Njenga Gitthaiga [2015] eKLR, Stephen Kinini Wang'ondy vs The Ark Limited [2016] eKLR & Kimatu Mbuvi t/a Kimatu Mbuvi & Bros vs Augustine Munyao Kioko [2006] eKLR.
31. The respondent argued that the burden of proof regarding the injuries sustained lay on the appellant but she failed to discharge it.
32. The respondent submitted that costs follow the event and urged this court to be guided by the provisions of section 27 (1) of the Civil Procedure Act and to dismiss the instant appeal with costs to it.

Analysis and Determination

33. From the pleadings and the evidence on record these issues arise for determination are:
 1. Whether the appellant established that she was involved in a road traffic accident.
 2. Whether the appellant proved that she sustained any injuries in the accident of December 21, 2013.
 3. Whether the trial court ought to have quantified the damages.
34. This being a first appeal, this court has a duty to re-evaluate the case, and come up with its own conclusion as was held in Jabane vs Olenja, [1986] KLR 661, Selle vs Associated Motor Boat Company Limited [1968] EA 123 and Peters vs Sunday Post [1958] E.A. 424
35. The appellant's testimony is that on the December 21, 2012 she was involved in an road traffic accident in motor vehicle registration number KBD 978J. The police officer who testified told the court that the accident for which he was producing the file occurred on the December 22, 2013 video on 4/22/12/13.



He also said that the road traffic accident occurred on December 21, 2013 and was reported on the 22nd at 1135 HRS. This particular accident involved motor vehicle registration number KBD 978G. The appellant's pleadings refer to motor vehicle registration number KBD 978G. Police abstract places the appellant in the said motor vehicle at the time of the accident that was reported on the December 22, 2013 involving the said motor vehicle. She testified on oath to that fact and her testimony that she was in the said motor vehicle was not challenged by the respondent. Hence there is no reason to find otherwise.

36. The appellant was a passenger in the motor vehicle. The respondent did not produce any evidence to demonstrate that the appellant did in any way contribute to the accident. The fact that the motor vehicle lost control and rolled was not controverted by the respondent. Neither was the evidence that the motor vehicle was driven fast or that the driver dozed. Looking at the totality of the evidence there would be no reason to disagree with the finding of the learned trial magistrate on liability.

Whether the Appellant proved that she sustained any injuries in the accident of December 21, 2013.

37. The appellant in her amended plaint pleaded that following the accident, she sustained injuries involving: -
- i. Maxillofacial injury
 - ii. Loss of 4 upper incisors teeth.
 - iii. Soft tissue injuries of the upper lip.
 - iv. Soft tissue injuries of the chest
 - v. Soft tissue injuries of the back
38. During her testimony the record shows that the learned magistrate who heard her witnessed the gap left by the missing teeth. The medical document from Nakuru Nursing Home shows that she was given a dental referral as she was bleeding from the mouth. There is a consistency in the evidence of the dental issue as it seems to have been the main thing taking her to Turbo Dental Services, Doctors Micha and Wambugu and the Moi Referral Hospitals.
39. At the time of the examination by Dr Omuyoma on February 24, 2014 had one loose upper incisor and four missing upper incisors
40. The P3 bears the date of April 3, 2014. It says she has four missing incisors.
41. The examination by Dr Kiamba on December 8, 2014 shows loss of four upper incisors and fractures of two upper canines.
42. There is evidence from documents produced and not objected to that she paid Kshs 5,000/= to Dr Micha S Cyrus BDS for consultation, extraction and treatment.
43. Clearly therefore from the evidence on record the appellant produced consistent evidence that she sustained injuries that led to the loss of 4 teeth that were initially just loose.
44. The blot on all this evidence is the fact that there was no record of her admission at the Nakuru Nursing Home because her documents did not bear any admission or outpatient number. Neither did she appear in any of the hospital's registers either as out or in patient. It is the respondent's argument that this fact alone vitiates the appellant's evidence of sustaining any injuries in the road traffic accident.



45. This was the position taken by the learned trial magistrate in dismissing the appellant's suit on grounds since the initial document which was relied on by the doctor while preparing the medical report was revoked, hence there was no proof of injuries sustained. The court relied on *Timsales Limited Vs Joseph Njenga Gitthaiga* [2015] eKLR, *Stephen Kinini Wang'ondou Vs The Ark Limited* [2016] eKLR & *Kimatu Mbuvi T/Akimatu Mbuvi & Bross vs Augustine Munyao Kioko* Civil Appeal No 203 of 2001 [2007] 1 EA 139. The respondents relied on these cases in this appeal.
46. In *Timsales Limited vs Joseph Njenga Gitthaiga* [2015] eKLR.- In this case the respondent was allegedly injured while working for the appellant. He testified that he was treated and issued with a treatment card however this treatment card was not produced as evidence and as such did not form part of the record. On this basis the appellant contended that the respondent had not proved his injuries. The respondent argued that the failure to produce the said treatment card was not fatal to his case because the medical report which was produced was sufficient proof of the injuries he had sustained. The court noted that the doctor who examined the respondent and prepared his medical report confirming the alleged injuries did so one year after the accident and that he relied on the said treatment card. The court opined that the medical report could only confirm the injuries the respondent suffered but could not confirm that the injuries were indeed inflicted on the date as pleaded by the respondent and that the date could only be confirmed by the treatment card as it was filled by the medical personnel who attended to the respondent on the material date.
47. This case does not appear to be relevant to this case. The records officer PW2 who was also DW1 confirmed that the appellant's details were not found in the hospital records. Despite his yo-yoing between the two sides what was clear was that at the initial stage he wrote a letter clearly stating that there were no records of the appellant's treatment in the hospital records whether as an in or out patient. The learned trial magistrate was satisfied that the primary evidence contained in the impugned treatment record rebutted the testimony of the appellant who failed to prove the source of her injuries. However that is not the case.
48. The issue here is not a collision of expert evidence but the collision between the evidence of the appellant about what happened at a hospital with that of the hospital that did not happen as alleged.
49. The appellant produced the evidence from the nursing home to show that she had been treated there. She produced an invoice for the bill she allegedly incurred in that hospital. She did not produce any receipt as evidence of paying the hospital bill. Hence it is true that there is no documentary evidence to place her in that hospital where she alleges to have received the initial treatment on the day of the accident.
50. Can the court rely on the subsequent medical reports to assess damages for pain and suffering? Only to the extent that those documents may corroborate her testimony.
51. In *Amalgamated Sawmills Limited vs Joseph Njoroge Matheri* [2010] eKLR Emukule J pointed out that there may be circumstances when a treatment card need not be produced, and its absence would not be fatal:

“Whereas I agree with the authorities cited that it is necessary to produce the primary card evidencing treatment, once a doctor's report has been admitted in evidence by consent I think it is not open to a party on appeal to try and repudiate that report or evidence. Failure to produce a treatment card cannot therefore be fatal to an employee's claim.”



52. In *Ben Ocharo & Others vs Kenya Farmers Co-operative Society*, Kisii HCCA No. 91 of 2006 (UR), the court observed:-

“...In my judgment, the primary source of information about injuries sustained in an accident if at all is by the victim himself. He will tell the story. Next in line will be, if there were witnesses to the accident. There may also be people who have an intimate knowledge of the injured person who have lived or worked with him for a reasonably long time who may also have useful information to give about the injuries and his condition. Of course then there are the medical records starting with the treatment notes through to medical reports prepared by medical personnel who examined them. However, the information from the victim is valuable and is complimentary to the doctor’s report. Therefore whereas initial treatment records are no doubt of tremendous value they are not the only ones, to prove injuries sustained in a road traffic accident as the learned magistrate tended to think. Such injuries can be proved by word of mouth by the victim himself. Accordingly, a victim’s own statement with regard to the injuries should not be easily dismissed merely on the grounds that it was not matched by initial treatment from the hospital. It is worth reiterating what Ringera J. (as he then was) said in the case of *Peterson Gutu Ondieki –vs- Daniel Njigua Gichohi* HCCC No. 4018 of 1990 (UR). He held that non-production of a medical report was not necessarily fatal to a plaintiff case. That the injuries sustained can be established through oral evidence of the victim...” (emphasis mine)

53. In *Carolyn Indasi Mwononyo vs Kenya Bus Service Ltd* (2012) eKLR the court held as follows:

“The Black Law Dictionary defines the term evidence as:

Any species of proof, or productive matter, legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete object etc for the purpose of inducing belief in the minds of the court or jury as to their contention

.....

It is clear from the above definition that evidence can be by way of oral, documents or objects. I do find that the trial court erroneously dismissed the appellant’s suit for no apparent reasons. The trial court’s suspicions on the injuries sustained by the appellant blinded its objectivity and corrupted its mind.....

The oral evidence was sufficient to find in favour of the appellant. There is no written rule that injuries suffered by a victim of a road traffic accident must be formed by documentary evidence by way of treatment notes”

54. The thinking is that the court can receive the oral evidence of a claimant and rely on it as proof of injuries sustained. This is not a case of the appellant not producing a treatment document but producing a document allegedly from a specific hospital and that hospital denying the authenticity of such a record. Hence it is clear that the learned trial magistrate failed to take into consideration the plaintiff/appellant’s testimony on the injuries she sustained in the accident, which the court found she was actually involved in. On this ground the appeal succeeds.
55. On the other hand the respondent pleaded fraud on the part of the appellant but other than calling DW1 did not proceed to lead evidence to that effect to establish the other alleged fraudulent actions.



No evidence that the report to police was fraudulent or that all the other documents were fraudulently obtained. There was no evidence to contradict the fact of the accident and the appellant being a passenger in the said motor vehicle.

Whether the trial court ought to have quantified the damages.

56. The trial court after dismissing the appellant's suit failed to quantify damages. It is now trite law that a trial court is under a duty to assess the general damages awardable to the plaintiff even after dismissing the suit. This position is confirmed by the Court of Appeal in the case of *Mordekai Mwangi Nandwa vs Bhogals Garage Ltd* CA No 124 of 1993 reported in [1993] KLR 448 where the court held that the practice that damages be assessed even if the case is dismissed does not imply writing an alternative judgment. Similarly, in the case of *Matiya Byabaloma & Others vs Uganda Transport Co Ltd* Uganda Supreme Court Civil Appeal No 10 of 1993 IV KALR 138 where the court held that the judge erred in not assessing the damage he would have awarded had the appellant been successful in her claim.
57. In this case the appellant testified that she was injured on the chest and lost four teeth. The claim that she was also injured on the hand and the face was not pleaded in the plaint.
58. Having found that the appellant was in the motor vehicle during the accident, and that the same was reported to the police that she had sustained some injuries, and without evidence to the contrary it is my view that the appellant did establish that she suffered some injuries upon which the learned trial magistrate ought to have assessed the general damages.
59. The appellant submitted Kshs 800,000/- would suffice as general damages and relied on [Martha Agok vs Kampala Coach](#) [2017] eKLR & [Joseph Mutua Nthia vs Fredrick Moses M. Katuva](#) [2019] eKLR.
60. The respondents did not submit on this issue.
61. In [Martha Agok vs Kampala Coach](#) [2017] eKLR the appellant sustained soft tissue injuries and loss of one incisor tooth and fracture on the other and the court awarded him Kshs 350,000/= as general damages. In [Joseph Mutua Nthia vs Fredrick Moses M. Katuva](#) [2019] eKLR - injuries were pleaded as injury to the left face, loose teeth, loss of two teeth, blunt chest injury and blunt back injury and the court upheld the award of Kshs 400,000.00 as general damages.
62. In this case the evidence available is of soft tissue injuries that resulted in loose teeth that ended up being extracted. I would assess general damages for pain and suffering at Kshs 200,000/= for pain and suffering.
63. The appellant also testified that she would need to replace her lost teeth. The medical report by Dr Kiamba indicated that she would need about Kshs 80,000/= to replace the same. This evidence was uncontroverted.
64. It is trite law that special damages should be specifically pleaded and strictly proved. The appellant pleaded special damages of Kshs 24,460. However for the sum of Kshs 12,860/= there was merely an invoice and no evidence of payment. That will be struck off leaving the sum of Kshs 11,600/=.
65. In the end the appeal succeeds. The judgment and decree of the subordinate court is set aside and judgment entered against the respondent and in favour of the appellant as follows:
 1. Liability 100% against the respondent
 2. Special damages Kshs 11,600/=
 3. Kshs 80,000/= to replace her teeth



4. General damages for pain and suffering of Kshs 200,000/=
- Total Ksh 291, 600=
5. The appellant will have the costs of the appeal and costs below.
6. Interest to accrue on the costs and the decretal sum from the date of this judgment.

DATED, SIGNED AND DELIVERED BY EMAIL THIS 11TH DAY OF OCTOBER, 2022.

Mumbua T Matheka

Judge

CA Jennifer

Gekonga & Company Advocates

Kimondo Gachoka & Company Advocates

