**Barkrania and another v Kagau**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of Judgment:** 18 March 2004

**Case Number:** 21/02

**Before:** Tunoi, Githinji JJA and Onyango Otieno AJ

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Damages – Special damages – Assessment of damages – Future medical expenses – Loss of earnings*

*– Whether evidence given of future medical expenses – Whether claim for loss of earnings remote or*

*proximate.*

**Editor’s Summary**

The Respondent sustained injuries in a road traffic accident due to the alleged negligence of the appellants. He claimed general and special damages under various heads, including KShs 400 000-00 for future medical expenses and KShs 2 800 000-00 for loss of business earnings. Liability was entered by consent at 80% against the appellants. The trial Judge after considering the submissions, awarded

KShs 120 000-00 for future medical expenses and KShs 200 000-00 for loss of future earnings.

The future medical expenses were in relation to surgical operations required to regraft the fracture sites and to remove the plates and screws inserted to aid healing of the fracture injuries suffered in the accident. The loss of future earnings was in respect to two computer contracts awarded to a company run by the respondent which were allegedly cancelled due to his injury.

The Appellants appealed against the two awards. They argued that the Judge ought to have awarded a lesser sum for future medical expenses. They also argued that the claim for business loss should not have been allowed because the net loss from the value of two cancelled contracts was not disclosed and the said loss occurred to the company and not to the respondent.

**Held** – The trial court had properly considered the medical opinion that the respondent required further surgery to improve his medical condition. Since the assessment of the quantum of damages was an exercise of discretion by the trial court, the appellate court would not disturb the award unless it was shown that the trial Judge proceeded on a wrong principle of law. *Butt v Khan* [1981] KLR 349.

The facts giving rise to the loss of business contracts were not strictly proved. Further, the loss of business was not suffered by the appellant personally, and no proximity between the accident and the loss of the contracts had been established. The trial court had failed to investigate the issue of causation.

*KCM Thyssen v Wakisu Estate Ltd* [1960] EA 288 considered. Hence, the claim for consequential business loss was not proved and no sum ought to be awarded.

Appeal allowed in part. Award for future medical expenses upheld while award for business loss overturned.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Butt v Khan* [1981] KLR 349 – **F**

*Hahn v Singh* [1985] KLR 716 – **F**

*KCM Thyssen v Wakisu Estate Limited* [1960] EA 288 – **C**

**Judgment**

**TUNOI, GITHINJI JJA AND ONYANGO OTIENO AJ:** This appeal is only against the award