**Kenya Bus Services Ltd v Gituma**

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

**Date of ruling:** 28 May 2004

**Case Number:** 241/00

**Before:** Omolo, O’Kubasu JJA and Ringera AJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Damages – General damages – Motor vehicle accident causing bodily injury – Damages assessed*

*piecemeal for each separate injury – Whether compartmentalisation of damages led to a wrong*

*assessment.*

*[2] Damages – Quantum – Fracture of tibia and fibula, right femur, right scapular – Soft tissue injuries*

*– Loss of power in right upper arm – Pain and suffering – Injuries.*

*[3] Damages – Special damages – Future medication – Future medication not pleaded – Whether*

*damages could be awarded for future medication if the same were not pleaded.*

**Editor’s Summary**

The Respondent was a passenger in the Appellant’s motor vehicle. She was involved in a motor vehicle accident and sued the Appellant for various injuries she sustained, including fractures to her tibia, fibula, right femur and right scapular, soft tissue injuries and loss of power and sensation in the right arm. She led evidence at the trial to show that she would incur future medical expenses even though this head of damage had not been pleaded. The trial judge assessed damages on a consideration of each injury separately. Damages were also awarded for future medical expenses. The Appellant appealed, claiming that the Judge had applied a wrong principle in assessing the quantum to be awarded.

**Held** – General damages must be assessed on the combined effect of all the injuries and not calculated as the sum of independent assessments for each injury (*Cavito v Di Filippo* [1957] EA 535 followed). However, an appellate court would not interfere with the quantum of damages assessed unless it was satisfied that the trial court had acted on a wrong principle of law or had misapprehended the facts, or that the award was so inordinately low or high as to represent a wholly erroneous estimate of damages (*Kassam v Kampala Aerated Water Co* [1965] EA 587, *Idi Shabani v Nairobi City Council* [1982–88] 1 KAR 681, *Butt v Khan* [1981] KLR 349 and *Kimotho and others v Vesters and another* [1988] KLR 48 followed). While an award of damages to meet the cost of future medication is made under the rubric of general damages, the need for future medical care is itself a special damage and is a fact that must be pleaded if evidence thereon is to be led and the court is to make an award thereon (*Perestrello v United Paint* [1969] 1 WLR 570 adopted). The award of future medical care herein would therefore be overturned. In the current case, considering the effect of inflation when making a comparative assessment of previous authorities, the figure of KShs 870 000 for pain and injuries sustained was a fair estimate of loss. Since the Court was satisfied that the sum awarded was no more than would have been awarded if the damages had been assessed on a correct basis, it declined to vary the award. *Per curiam*: In personal injury cases, the only damage that is contemplated by law as arising naturally from the injury is the personal injury itself and the consequential pain and suffering. Accordingly, matters pertaining to hospitalisation, treatment and management, the need for further medical care, the disabilities and attendant pecuniary losses (present and future) are special damages which must be pleaded.

**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)

***East Africa***

*Butt v Khan* [1981] KLR 349 – **F**

*Cavito v Di Filippo* [1957] EA 535 – **F**

*Idi Shabani v Nairobi City Council* [1982–88] 1 KAR 681 – **F**

*Ilanga v Manyoka* [1961] EA 705

*Kamau v Mwaura* High Court civil case number 1559 of 1988 (UR)

*Kassam v Kampala Aerated Water Co Ltd* [1965] EA 587 – **F**

*Kemfro Africa Ltd v Luvai and another* [1988] I KAR 727

*Kilonzo v Madara* High Court civil case number 1637 of 1990 (UR)

*Kimotho and others v Vesters and another* [1988] KLR 48 – **F**

*Oppon v Karuri* High Court civil case number 4621 of 1988 (UR)

*Zein and another v Mutua* [1994] LLR 353 (CAK)

***United Kingdom***

*Perestrello v United Paint* [1969] I WLR 570 – **A**