

KENYA / JUDGMENT

# Etyang alias Xaviour v Trail Link Group Ltd [2026] KEMC 854 (KLR)

**[2026] KEMC 854 (KLR)**

COURT

Magistrate's Court

BEFORE

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CASE / FILE NUMBER

Civil Suit E001 of 2026

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REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATES COURT AT MALABA

CIVIL SUIT NO. E001 OF 2026

XAVIER ETYANG alias XAVIOUR.....PLAINTIFF

-VERSUS-

TRAIL LINK GROUP LIMITED.....DEFENDANT

JUDGMENT

## Introduction and Pleadings

1. Vide a Complaint dated 16th January 2026 and amended on 28th January 2026, the Plaintiff instituted this Suit against the Defendant herein and sought that judgment be entered for general damages for pain, suffering and loss of amenities, special damages, cost of future medication, costs of the suit plus interest and any other relief that this court may deem fit and just to grant.
2. The brief facts of the case are that on or about the 25th day of November 2025 the Plaintiff was lawfully riding motor cycle registration number KMGD 799L along Bungoma Malaba Road and that around stage mbili area, the Defendant's Motor Vehicle Registration Number KBP 076K hauling trailer registration number ZE8102 was driven negligently, carelessly and recklessly causing it to lose control and veer off its lane causing it to knock Motor Cycle registration number KMGD 799L as a result the Plaintiff sustained serious bodily injuries.

3. The suit is opposed vide a Statement of Defense dated 6th February 2026 wherein the Defendant denies the Claim in its entirety That in the alternative and without prejudice, the defendant avers that if an accident occurred which is denied, then the same was occasioned by the contributory negligence of the Plaintiff. The Defendant denies the doctrine of res ipsa loquitor and relies on the doctrine of volenti non-fit injuria.
4. The Plaintiff has filed a Reply to Statement of Defense dated 11th February 2026 reiterating contents of the Plaint and denying the particulars of negligence as enumerated in the defence.
5. This matter came up for hearing on 8th July 2026 when Ms Soita Counsel for the Plaintiff and Ms. Achieng Counsel for the Defendant entered into a consent on liability with the same being apportioned in the ratio 90:10 in favor of the Plaintiff against the Defendant.
6. The Plaintiff called one Xavior Etyang as a witness and who adopted his witness statement of 16th January 2026 as his evidence in chief and produced documents as per his list of documents of even date and further list of documents dated 28th January 2026 as exhibits. He testified that he was yet to fully recover and he was not working.
7. There was no cross-examination for this witness and this marked close of the Plaintiff's case. A second medical report by Dr. Patel dated 16th June 2026 was produced by consent as DEXH 1 and this marked close of the defense case.
8. Parties were granted 14 days each to file written submissions for consideration by the court and the matter was set down for mention on 5th August 2026. Upon confirming filing of submissions by both Counsel the court reserved the matter for judgment on 2nd September 2026.

## Issues for Determination

### Special Damages

1. On **\*special damages\***, In **Herbert Hahn v Amrik Singh [1985] eKLR**, the court of appeal held as follows: -

**\*“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”\***

1. I note that the Plaintiff has sought for a total of Kshs. 191,745/= which has been pleaded at paragraph 8 of the Plaint. The court has perused the record and finds that PEXH 5 proves expenses to the tune of Kshs. 185,195/= as prayed and Exhibits 8 and 11 proves the damages under this head totaling to Kshs. 6,550. The Defense in submissions concede to the damages having been proven by way of receipts. It is therefore the finding of the court that special damages have been specifically pleaded and proved.

## Quantum

### 1. General Damages

2. The Plaintiff through his counsel has submitted that an award of Kshs. 1,600,000/= is sufficient under this head. The defendant on the other hand submits that a sum of Kshs. 1,200,000/= would be sufficient under this head.
3. It is alleged that the Plaintiff suffered the following injuries, Bruises on the left cheek, bruises on the left periorbital area, blunt injury to the chest, open fracture to the left tibia/fibula, fracture left patella, cut wound on right knee and bruises on the right lateral ankle. These findings can be discerned from the medical report of Dr Sokobe dated 17th December 2025 and produced as PEXH 8 and that of Dr. Patel dated 16th June 2026 and produced as DEXH1.
4. In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike.
5. In the case of [Chepkwony v Chepkwony & another [2025] KEHC 10013 (KLR)](<https://new.kenyalaw.org/akn/ke/judgment/kehgc/2025/10013/eng%402025-04-29>)

**\*The court sitting on Appeal substituted the trial court award of Kshs. 850,000/= with one of Kshs. 1,500,000/= where the Respondent had sustained the following injuries; \*fracture dislocation of the right hip joint, displaced fracture of the right tibia and fibula and a displaced fracture of the left tibia and fibula. The degree of disability was 5%\***

1. The court has considered the medical evidence placed before it. The report of Dr. Sokobe dated 17th December 2025 does not assign the Plaintiff any percentage of disability. The Defence however produced the report of Dr. Patel, which assesses the Plaintiff at 5 to 7.5% disability but does not indicate whether the stated disability is temporary or permanent.
2. The court has further considered the authority cited at paragraph 14 of this judgment and those cited by parties particularly **Mburu & Another Nkoboini & Another (2026) KEHC 1062 (KLR)** where the court upheld an award of Kshs. 1,200,000/= for open fractures of the tibia and fibula with 15% incapacity.
3. The injuries in this case include, in addition, a fracture of the patella and multiple soft tissue injuries together with evidence of continuing difficulty in walking.
4. Taking into account the nature and multiplicity of the injuries, the residual effects disclosed in Dr. Patel's report, the comparable authorities and the effect of inflation, I find that an award of Kshs. 1,500,000/= is fair and reasonable compensation for pain, suffering and loss of amenities.

5. With regard to the prayer for **\*future medical expenses\*** it is the finding of the court that it was specifically enumerated in the medical report of Dr. Sokobe dated 17th December 2025 and assessed at Kshs. 350,000/=. The defence conceded this claim in its submissions. Accordingly, the court awards Kshs. 350,000/= as prayed.
6. The Plaintiff shall have costs of the suit together with interest on general damages at court rates from the date of judgment until payment in full and interest on special damages from the date of filing of suit until payment in full.

### Conclusion.

1. The upshot of my findings above is that judgment be and is hereby entered in favor of the Plaintiff against the Defendant in the following terms: -
2. **\*Liability is apportioned in the ratio 90:10 in favor of the Plaintiff against the Defendant\***
3. **\*Special Damages- Kshs. 191,745/=\***
4. **\*General Damages- Kshs. 1,500,000/=\***
5. **\*Future Medical Expenses- Kshs. 350,000/=\***

**\*Total Amount- Kshs. /= 2,041,745/=\***

**\*Less 10% Contribution- Kshs. 204,850/=\***

**\*Net award-Kshs. 1,837,570.50/=\***

1. **\*Costs of the suit\***
2. **\*Interest on (b) and (d) from the date of filing of suit until payment in full\***
3. **\*Interest on (c) from the date of judgment until payment in full\***

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT MALABA SENIOR PRINCIPAL MAGISTRATES COURT THIS 2ND DAY OF SEPTEMBER, 2026.**

In the Presence of

Ms. Soita for the Plaintiff

Ms. Achieng for the Defendant

Court Assistant: Paul Otieno

**A.Z. OGANGE**

**RESIDENT MAGISTRATE**

02.09.2026

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Prepared on 29 October 2026 · Esheria