Journal of Law and Jurisprudence
[ISSN 2957-8760]
Volume: 04 Issue: 01 | August-2026
JLJ

Consent Judgments, Judicial Finality and Medical Negligence Litigation in Kenya: A Case Note on *Paul Ngetich & Wilfrida Letting Jepkosgei v. Family Care Medical Centre & Maternity & Others* (Eldoret Magistrate's Court Civil Suit No. MC.CC/1102/2018)

Author
Peter Wangai Kiama
Author's email: pwangai452@gmail.com

Egerton University, Kenya.

Cite this article in APA
Kiama, P. W. (2026). Consent judgments, judicial finality and medical negligence litigation in Kenya: A case note on *Paul Ngetich & Wilfrida Letting Jepkosgei v. Family Care Medical Centre & Maternity & Others* (Eldoret Magistrate's Court Civil Suit No. MC.CC/1102/2018). *Journal of law and jurisprudence, 4(*1), 35-47. https://doi.org/10.51317/jlj.v4i1.1066

OPEN ACCESS
A publication of Editon Consortium Publishing (online)

Article history
Received: 2026-06-10
Accepted: 2026-07-14
Published: 2026-08-18

Scan this QR to read the paper online

Copyright: ©2026 by the author(s). This article is an Open Access article distributed under the terms and conditions of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License (CC BY-NC-SA 4.0).

Abstract
This case note examines the procedural and jurisprudential implications of a medical-negligence dispute arising from the death of Crescentia Jelagat Ngetich following childbirth complications at the 1st respondent's medical facility. Approximately 35 weeks pregnant with twins, the deceased developed severe postpartum haemorrhage and suspected disseminated intravascular coagulation (DIC) after labour and died on 30 May 2018. The plaintiffs alleged negligent induction of labour, lack of informed consent, and failure to manage postpartum bleeding adequately. The central issue, however, is procedural: whether the trial court could disregard a consent on liability entered into by the 1st and 2nd defendants in favour of the plaintiffs on 2 March 2026, adopted by the court on 3 March 2026, and subsequently reconsider liability and dismiss the suit for failure to prove negligence. Using doctrinal legal analysis, the case note examines the consent judgment in light of Kenyan jurisprudence on contractual sanctity, judicial finality, functus officio, and procedural fairness. It argues that, where a consent is validly entered, clearly recorded, and neither reviewed nor set aside, a trial court should not ordinarily reopen liability on its own motion. Instead, it should give effect to the subsisting consent and, subject to its terms and any outstanding issues, proceed to determination or assessment of damages. The case highlights the importance of judicial consistency in upholding consent judgments and the implications of procedural finality for access to justice, negotiated dispute resolution, and public confidence in Kenya's civil justice system.

Key terms: Consent judgments, functus officio, judicial finality, medical negligence, procedural justice.

1.0 INTRODUCTION

Consent judgments occupy an important place in modern civil litigation. They enable parties to exercise autonomy over the resolution of disputes while simultaneously converting their negotiated agreement into an enforceable judicial order. Once properly recorded and adopted by a court, a consent judgment is no longer merely a private agreement between litigants; it acquires the authority and enforceability of a court order. Kenyan jurisprudence has consequently treated consent judgments as possessing contractual characteristics while also attracting the consequences of judicial finality. In *Brooke Bond Liebig (T) Ltd v. Mallya* (1975) and *Flora N. Wasike v. Destimo Wamboko* (1985), the courts emphasised that a consent judgment cannot ordinarily be interfered with except on grounds that would justify the variation or rescission of a contract.

Closely connected to this principle is the doctrine of functus officio. The doctrine expresses the broader principle that adjudicative power should ordinarily be exercised finally rather than repeatedly in relation to the same matter. The Supreme Court of Kenya, drawing on Daniel Malan Pretorius's influential analysis, has recognised functus officio as an expression of the principle of finality: once a decision has been given, it is generally final and conclusive, subject to mechanisms such as appeal or legally recognised review (*Raila Odinga & 2 Others v. Independent Electoral and Boundaries Commission & 3 Others*, 2013; Pretorius, 2005). The Court of Appeal similarly described the doctrine in *Telkom Kenya Ltd v. Ochanda* (2014) as an enduring principle preventing the reopening of a matter before the court that rendered the final decision.

The importance of these doctrines is not merely technical. Finality serves the values of certainty, efficiency, and fairness in civil litigation. If parties who negotiate and record a settlement cannot rely upon the court to respect its terms, settlement loses much of its practical value. Contemporary scholarship on court settlements similarly emphasises the complex interaction between contractual autonomy and procedural law. Nylund (2025) argues that the procedural effects of court settlements cannot adequately be understood by treating them simply as either contracts or judicial decisions; rather, settlement combines elements of private agreement and public adjudicative authority.

The same concern arises in the literature on procedural justice. Welsh (2016) emphasises that parties' perceptions of fairness are influenced not only by outcomes but also by whether the procedure accords them meaningful participation, dignity, and predictability. Settlement therefore has an institutional dimension: the credibility of negotiated resolution depends upon confidence that the judicial process will respect the settlement once it has been formally adopted.

The doctrine of finality is particularly significant in medical-negligence litigation. Medical-negligence claims frequently involve complex factual and scientific questions, expert evidence, and competing accounts of whether an adverse medical outcome resulted from negligent treatment or an unavoidable complication. Kenyan courts have consistently maintained that medical negligence requires proof of a duty of care, breach of the applicable professional standard, and resulting injury or damage. The standard ordinarily applied is that of the reasonably competent practitioner exercising the relevant professional skill, rather than that of an ordinary layperson (*Pope John Paul's Hospital & Another v. Baby Kosozi*, 1974; *Mathenge v. Kenya Hospital Association t/a Nairobi Hospital*, 2025).

Kenyan jurisprudence also recognises that childbirth and obstetric treatment are not exempt from ordinary principles of professional medical responsibility. In *John Mutora Njuguna t/a Topkins Maternity & Clinic v. ZWG* (2017), for example, the High Court considered duties arising in the provision of maternity services, including the duty concerning the selection and administration of an appropriate course of treatment. More recent decisions continue to apply the professional standard of care in medical-negligence claims, while cautioning courts against treating every adverse medical outcome as proof of negligence. This approach is evident in *Nairobi Hospital & Another v. Mumo & 2 others* (2024) and *BJC v. Mochache & Another* (2025).

Against this legal and scholarly background, *Paul Ngetich & Wilfrida Letting Jepkosgei v. Family Care Medical Centre & Maternity & Others*, Eldoret Magistrate's Court Civil Suit No. MC.CC/1102/2018, presents a distinctive procedural question. The claim arose from the death of a pregnant woman following childbirth complications. During the proceedings, however, the 1st and 2nd defendants entered into a consent on liability in favour of the plaintiffs. The consent was adopted by the court. The controversy that subsequently arose was whether the trial court could nevertheless reconsider the question of negligence and ultimately dismiss the entire claim.

The purpose of this case note is therefore to examine whether, on the facts presented, the trial court's subsequent treatment of liability was consistent with Kenyan law governing consent judgments, functus officio, and judicial finality. It further considers the consequences of such an approach for medical-negligence litigation, procedural justice, predictability in civil adjudication, and public confidence in negotiated settlements.

Factual Background

The dispute arose from the medical treatment of Crescentia Jelagat Ngetich at the 1st respondent's medical facility on 29 May 2018. She was approximately 35 weeks pregnant with twins. Following childbirth, she developed serious complications, including severe postpartum haemorrhage and suspected disseminated intravascular coagulation (DIC), and died on 30 May 2018.

The plaintiffs alleged that the death was attributable to negligent medical care. Their allegations included negligent induction of labour, failure to obtain informed consent, and failure to appropriately diagnose and manage postpartum bleeding and the ensuing complications.

The defendants denied negligence. Their position, as reflected in the case narrative, was that the deceased suffered complications that were not attributable to any breach of the applicable medical standard of care and that the death constituted an unavoidable obstetric outcome.

The substantive dispute consequently involved familiar questions in medical-negligence litigation: whether a duty of care existed, whether the applicable professional standard was breached, whether the alleged breach caused the death, and whether the defendants could establish that the adverse outcome resulted from a recognised medical complication rather than negligent treatment.

Under Kenyan law, medical negligence is distinguished from ordinary negligence by the professional standard against which the defendant's conduct is assessed. The courts ordinarily apply the Bolam approach, asking whether the medical professional acted in accordance with a practice accepted as proper

by a responsible body of appropriately skilled practitioners. At the same time, the plaintiff bears the burden of establishing negligence on a balance of probabilities (*Pope John Paul's Hospital & Another v. Baby Kosozi*, 1974; *Mathenge v. Kenya Hospital Association t/a Nairobi Hospital*, 2025).

Procedural History and the Consent on Liability

The procedural history of the matter is central to this case note.

During the trial proceedings, the 1st and 2nd defendants entered into a consent on liability in favour of the plaintiffs on 2 March 2026. The consent was subsequently adopted by the court on 3 March 2026. According to the facts supplied for purposes of this case note, the consent apportioned liability between the two defendants at 50:50 and thereby resolved the question of liability between those parties and the plaintiffs.

The significance of the consent lies in its procedural effect. It was not merely an informal negotiation or an agreement outside court. It was presented to and adopted by the court. The parties subsequently acknowledged its existence in their submissions, and there was no application seeking its setting aside, review, or variation.

Nevertheless, the trial court subsequently proceeded to reconsider the evidence relating to negligence. It ultimately found that medical negligence had not been proved and dismissed the suit in its entirety.

The appellants challenge that approach before the High Court. Their principal argument is that, once liability had been conclusively compromised and the consent adopted by the court, the trial court had no basis for reopening the liability question in the absence of a successful application to set aside or vary the consent.

The precise legal effect of the consent must ultimately depend on the actual wording of the order and the record of proceedings. This case note proceeds on the factual premise supplied by the parties that the consent unequivocally determined liability in favour of the plaintiffs, was adopted as an order of the court, and was never set aside or varied.

The case raises several issues for determination. The principal issue is whether the trial court erred in law by disregarding a valid consent judgment on liability entered in favour of the plaintiffs. This issue is closely related to whether the court improperly reopened a matter that had already been conclusively determined, contrary to the doctrine of *functus officio* and the principle of judicial finality. The case also requires consideration of whether, following the consent on liability, the trial court's remaining mandate was limited to determining the consequences of the established liability, including the assessment of damages where appropriate. A further issue is whether the subsequent judgment dismissing the suit was legally sustainable notwithstanding the subsisting consent. Finally, the case raises broader questions concerning procedural justice, the predictability of civil litigation, and public confidence in negotiated settlements as a means of resolving disputes.

2.0 FINDINGS AND DISCUSSION

Legal Analysis

The Nature and Binding Effect of a Consent Judgment

Kenyan law treats a consent judgment as having a dual character. It is founded upon the agreement of the parties but, once adopted by the court, acquires judicial force.

The classic authority is *Hirani v. Kassam* (1952), whose principles were subsequently restated in *Brooke Bond Liebig (T) Ltd v. Mallya* (1975). The East African Court of Appeal held that a consent order is binding upon the parties and cannot be varied or discharged except on grounds that would justify setting aside a contractual agreement. These grounds include, depending on the circumstances, fraud, collusion, mistake, misapprehension, lack of material facts, or an agreement contrary to public policy.

The Court of Appeal reaffirmed the same approach in *Flora N. Wasike v. Destimo Wamboko* (1985). The case demonstrates that the courts do not ordinarily treat a consent judgment as an invitation to reconsider the substantive dispute. Rather, the consent represents the parties' chosen method of resolving their controversy.

The principle has continued to receive judicial recognition. In *Kenya Commercial Bank Ltd v. Benjoh Amalgamated Ltd* (2017), the Court of Appeal considered the continuing legal effect of a consent order and recognised its status as a judicial determination which remained operative unless properly set aside.

Similarly, in *Michael Mwalo v. Board of Trustees, National Social Security Fund* (2014), the Court of Appeal dealt with a consent judgment that a party subsequently sought to challenge. The case illustrates the procedural necessity of bringing a properly constituted application to impeach a consent rather than simply disregarding it.

Accordingly, where a consent clearly determines liability, the court should ordinarily give effect to that determination unless and until it is set aside through a recognised legal mechanism. A party dissatisfied with the consent cannot ordinarily circumvent the applicable procedure by inviting the same court to reconsider the merits of the liability issue indirectly.

Consent, Contractual Sanctity, and Judicial Authority

The contractual character of consent judgments explains why the court's power to interfere with them is restricted. The principle is not based merely on technicality. It protects party autonomy and the legitimate expectation that negotiated settlements will be respected.

A consent judgment is therefore materially different from a provisional interlocutory order. It represents the culmination of negotiations between parties and, following adoption by the court, becomes enforceable as a judicial order.

This principle is particularly important where the consent is favourable to a plaintiff. If defendants expressly compromise liability and the court adopts that compromise, the plaintiff is entitled to proceed on the basis that the liability issue has been resolved. Permitting the same court subsequently to reconsider whether the defendants were negligent would effectively deprive the consent of the finality for which the parties bargained.

The point is not that a consent judgment is immune from legal challenge. It is not. Fraud, mistake, misrepresentation, want of authority, and other recognised vitiating circumstances may justify intervention. The critical procedural requirement is that such intervention must occur through a legally recognised process and on a legally recognised ground. A court should not ordinarily nullify a subsisting consent merely because, upon reconsideration of the evidence, it reaches a different view of the underlying dispute.

Judicial Finality and the Doctrine of Functus Officio

The doctrine of functus officio reinforces the finality of a concluded determination.

In *Telkom Kenya Ltd v. Ochanda* (2014), the Court of Appeal described functus officio as an enduring principle preventing the reopening of a matter by the court that rendered the final decision.

The Supreme Court's treatment of the doctrine in *Raila Odinga & 2 Others v. Independent Electoral and Boundaries Commission & 3 Others* (2013) is equally important. The Court adopted Pretorius's (2005) formulation that functus officio expresses the principle of finality and ordinarily prevents an adjudicative body from exercising its decision-making power more than once over the same matter.

The doctrine does not, however, mean that a court becomes incapable of performing every act after judgment. Kenyan courts have recognised that functus officio should not be applied mechanically where the court is required to perform consequential or ancillary functions, including execution-related functions or correction of accidental slips and omissions. Section 99 of the Civil Procedure Act expressly permits correction of clerical or arithmetical mistakes and errors arising from accidental slips or omissions (Civil Procedure Act, Cap. 21, 2010, § 99).

The appropriate question is therefore whether the court is being asked to perform a consequential function arising from its decision or to revisit the substance of a matter that has already been finally determined.

On the facts presented in the present case, reconsideration of whether negligence existed after liability had already been compromised would fall within the latter category. The court would not merely be implementing or clarifying its earlier order; it would be substituting a different substantive determination for the one already embodied in the consent.

Was the Trial Court Entitled to Reopen Liability?

The greatest difficulty with the trial court's approach arises from the apparent contradiction between the consent and the subsequent judgment.

If the consent of 2 March 2026 expressly determined liability in favour of the plaintiffs, and if that consent was adopted on 3 March 2026, the subsequent finding that negligence had not been proved creates a direct inconsistency between two judicial acts.

The difficulty is not resolved by observing that the court retained jurisdiction over the case. A court may retain jurisdiction to undertake consequential steps after a consent has been adopted. What it ordinarily cannot do is exercise that remaining jurisdiction in a manner that contradicts a binding determination already made, unless the earlier determination is lawfully varied, reviewed, or set aside.

The proper procedural course for a party seeking to challenge the consent would have been to apply for its setting aside or variation on an established ground. The authorities do not support the proposition that a consent can simply be ignored because the court subsequently considers the evidence insufficient to establish the underlying claim (*Flora N. Wasike v. Destimo Wamboko*, 1985; *Kenya Commercial Bank Ltd v. Benjoh Amalgamated Ltd*, 2017).

Indeed, the very purpose of a consent judgment is to bring the relevant dispute to an end. Nylund (2025) similarly identifies finality and enforceability as central features of the procedural consequences of court settlements.

Consequently, assuming the consent in the present case was clear and valid and covered liability in the manner asserted by the appellants, the subsequent reconsideration of negligence appears difficult to reconcile with the contractual and judicial character of the consent.

The Significance of the Distinction Between Liability and Quantum

The distinction between liability and quantum is particularly important.

Civil litigation ordinarily involves two analytically distinct questions: first, whether the defendant is liable; and second, what relief should follow from that liability. Where parties have compromised liability but not quantum, the compromise removes the first question from the court's adjudicative task. The remaining issue may be assessment of damages and any other consequential matters left unresolved by the terms of the consent.

This does not mean that every consent mentioning liability automatically determines every aspect of the case. The actual terms of the consent remain decisive. If the consent resolved only a particular issue, the court retains jurisdiction over matters not compromised. Conversely, where the consent unequivocally establishes liability, the court should not reopen that issue merely because the underlying evidence might have supported a different result had the case proceeded to judgment.

The appellants' argument that the trial court should have proceeded to assessment of damages therefore depends on the precise wording of the consent. If, as asserted, the consent conclusively resolved liability and left quantum outstanding, then dismissal of the suit for failure to prove negligence would be inconsistent with the consent.

Medical Negligence and the Limits of the Procedural Argument

The procedural argument should not be confused with a substantive finding that the medical providers were medically negligent.

Kenyan courts have consistently recognised the need for clear proof of medical negligence. In *Pope John Paul's Hospital & another v. Baby Kosozi* (1974), the court emphasised that an adverse medical outcome does not by itself establish negligence. The claimant must demonstrate that the injury or death resulted from a failure to exercise the reasonable degree of care expected of a competent practitioner.

Recent Kenyan authorities continue to apply the professional standard reflected in *Bolam v. Friern Hospital Management Committee* (1957). In *Mathenge v. Kenya Hospital Association t/a Nairobi Hospital* (2025),

the High Court considered the professional standard applicable to medical treatment and the question of negligence in a medical setting. The case confirms the continuing importance of examining whether the conduct complained of amounted to a breach of the relevant duty of care.

Likewise, in *Nairobi Hospital & another v. Mumo & 2 Others* (2024), the court considered the professional standard applicable to medical treatment and recognised the importance of determining whether the treatment departed from accepted medical practice.

These principles remain relevant to the background of the present case. The allegations concerning induction of labour, informed consent, and management of postpartum haemorrhage would ordinarily require careful assessment of medical evidence. Yet that substantive inquiry becomes procedurally unnecessary once liability has been validly compromised by consent, unless the consent itself is successfully impeached.

This distinction is important. The issue on appeal is not whether every medical complication constitutes negligence. Rather, it is whether the trial court was entitled to conduct a fresh determination of negligence after the parties had already resolved liability by consent.

Informed Consent as a Dimension of Medical Negligence

The allegation of lack of informed consent also demonstrates the multidimensional nature of medical-negligence litigation. Medical disputes may involve not only the technical quality of treatment but also questions concerning patient autonomy, communication of material risks, and the patient's participation in treatment decisions.

Although the present appeal is primarily procedural, the allegation of lack of informed consent illustrates why medical-negligence claims can involve several overlapping legal interests. The law must protect professional medical judgment while simultaneously respecting patient autonomy and the right to receive appropriate information about significant treatment decisions.

However, once the parties have validly compromised liability, the court's task changes. It is not for the court to reopen every substantive dimension of the original dispute unless the consent has first been lawfully displaced.

Discussion

Judicial Finality, Procedural Justice, and the Integrity of Settlement

Finality as a Component of the Rule of Law

Finality is a foundational requirement of a functioning judicial system. Litigation must eventually produce a point at which the parties know their legal position. The principle of functus officio gives institutional expression to that requirement by limiting repeated substantive reconsideration by the same adjudicative body.

Pretorius (2005) identifies functus officio as a mechanism through which the legal system gives effect to finality and legal certainty. Kenyan courts have expressly adopted this reasoning (*Raila Odinga & 2 Others v. Independent Electoral and Boundaries Commission & 3 Others*, 2013).

A consent judgment strengthens this justification because finality is not imposed solely by judicial determination; it is also the product of party agreement. The parties have voluntarily selected settlement rather than requiring the court to determine the disputed issue after a contested hearing.

Allowing the court subsequently to disregard that agreement would weaken both dimensions of finality: the parties' contractual expectation and the authority of the judicial order.

Predictability in Civil Procedure

Predictability is essential to effective civil litigation. Parties and advocates must be able to anticipate the legal consequences of procedural decisions. If a consent on liability can later be disregarded without an application to set it aside, litigants may become reluctant to negotiate settlements or to consent to partial compromises.

Such uncertainty would have practical consequences. Settlement is an important mechanism for reducing litigation costs, conserving judicial resources, and narrowing the issues requiring trial. A legal system that encourages settlement must also provide credible assurance that settlements, once judicially adopted, will be respected.

The comparative literature supports this proposition. Nylund (2025) emphasises the interaction between contractual and procedural law and identifies the complex procedural consequences that arise once a private settlement is transformed into a court-recognised settlement.

Procedural Justice and Litigant Confidence

The case also raises an important procedural-justice concern.

Procedural justice is not exhausted by the correctness of the final outcome. Litigants are also concerned with whether the process is consistent, respectful, and predictable. Research by Lind et al. (1990) demonstrates that litigants' evaluations of civil justice are influenced significantly by perceptions of procedural fairness and the manner in which their cases are handled.

Welsh (2016) similarly argues that the procedural fairness of judicial settlement depends upon meaningful participation and clarity concerning the role and limits of judicial intervention.

In the present context, a plaintiff who has obtained a judicially adopted consent on liability would reasonably expect that determination to be honoured unless it is lawfully challenged. Reopening the liability question without first addressing the status of the consent risks creating the perception that judicial orders are provisional even after adoption.

That perception would be damaging not only to the individual litigant but also to public confidence in the justice system.

Administration of Justice

The administration of justice is also implicated.

One purpose of settlement is to reduce the burden on courts by allowing parties to resolve disputes without requiring every contested issue to be adjudicated to final judgment. If a court can disregard a settlement after it has been adopted, the efficiency gains associated with settlement are substantially reduced.

The problem is especially acute in courts handling heavy civil caseloads. Respect for properly concluded settlements allows judicial resources to be redirected to genuinely contested disputes.

The principle therefore promotes both individual and institutional justice: it protects the parties' legitimate expectations while enabling courts to manage their limited resources efficiently.

Public Confidence in Negotiated Settlements

The broader institutional implication is perhaps the most important.

The Kenyan constitutional and procedural framework recognises alternative dispute resolution and negotiated settlement as legitimate means of resolving disputes. Article 159(2)(c) of the Constitution expressly recognises alternative forms of dispute resolution, including reconciliation, mediation, and arbitration (Constitution of Kenya, 2010, art. 159(2)(c)).

The effectiveness of this settlement-oriented approach depends upon confidence that agreements adopted by courts will receive meaningful judicial protection. If a plaintiff and defendants settle liability and the court adopts that settlement, the parties must ordinarily be able to rely on the legal effect of that act.

Judicial disregard of a subsisting consent could therefore discourage future settlements. Parties may conclude that even a formally adopted agreement remains vulnerable to later reconsideration by the same court.

The resulting uncertainty would be contrary to the broader objectives of civil justice.

The Case's Contribution to Medical-Negligence Jurisprudence

The principal contribution of the case is therefore procedural rather than doctrinally substantive on the standard of medical care.

Kenyan medical-negligence jurisprudence has developed a relatively settled framework concerning duty of care, professional standards, breach, and causation. Recent decisions continue to refine the application of professional standards to different medical circumstances (*BJC v. Mochache & Another*, 2025; *Mathenge v. Kenya Hospital Association t/a Nairobi Hospital*, 2025).

The present case potentially adds a different dimension: the relationship between substantive medical-liability questions and procedural settlements.

Medical-negligence litigation is particularly suitable for negotiated resolution because expert evidence can be expensive, technically complex, and time-consuming. A consent resolving liability may therefore represent a deliberate litigation strategy by the parties. Once adopted by the court, its procedural

consequences should be determined according to the law governing consent judgments rather than according to a subsequent reassessment of the medical merits.

The case consequently illustrates that procedural law is not peripheral to medical-negligence litigation. It can determine whether a medically contested dispute remains open for adjudication or has already been conclusively resolved by agreement.

3.0 CONCLUSION AND RECOMMENDATIONS

Conclusion: *Paul Ngetich & Wilfrida Letting Jepkosgei v. Family Care Medical Centre & Maternity & Others* presents an important question concerning the intersection of medical-negligence litigation and the law of consent judgments.

The substantive dispute arose from the death of a pregnant woman following childbirth complications, with allegations concerning negligent induction of labour, informed consent, and management of postpartum haemorrhage. Ordinarily, such allegations would require detailed evaluation of medical evidence and application of the professional standard of care applicable to medical practitioners.

The procedural development, however, fundamentally altered the character of the dispute. According to the facts presented, the 1st and 2nd defendants subsequently entered into a consent on liability in favour of the plaintiffs, which was adopted by the court. No application was made to set aside or vary the consent.

If that description accurately reflects the terms and procedural history of the court record, the subsequent reopening of liability presents a substantial question of law. Kenyan jurisprudence establishes that a properly recorded consent judgment is binding and cannot ordinarily be interfered with except on grounds that would justify setting aside a contract (*Hirani v. Kassam*, 1952; *Brooke Bond Liebig (T) Ltd v. Mallya*, 1975; *Flora N. Wasike v. Destimo Wamboko*, 1985).

The doctrine of functus officio reinforces the principle that a court should not substantively revisit a matter that it has finally determined, although the doctrine does not prevent the court from undertaking consequential functions that remain outstanding (*Raila Odinga & 2 Others v. Independent Electoral and Boundaries Commission & 3 Others*, 2013; *Telkom Kenya Ltd v. Ochanda*, 2014).

The central proposition emerging from the case is therefore qualified but significant: where a valid consent expressly determines liability, has been adopted by the court, and remains unchallenged, the trial court should not ordinarily reopen the merits of liability and substitute its own contrary finding. The proper course is to respect the consent and determine the issues that remain outstanding under its terms, including assessment of damages where liability has been conclusively established, and quantum remains unresolved.

The broader significance of the case lies in judicial finality. Respect for consent judgments promotes certainty, procedural efficiency, party autonomy, and confidence in the administration of justice. Conversely, disregarding a subsisting consent risks undermining the predictability of civil procedure and weakening public confidence in negotiated settlements.

The High Court's determination of the appeal will therefore have significance beyond the immediate medical-negligence dispute. It provides an opportunity to reaffirm that settlement is not merely a procedural convenience but an important component of civil justice and that, once parties have validly invoked the authority of the court to record their agreement, judicial finality requires that agreement to be respected unless and until it is lawfully displaced.

Recommendations: On the facts presented, a trial court should not disregard a valid, clear, and unchallenged consent judgment that conclusively determines liability in favour of the plaintiffs and thereafter re-litigate the question of negligence. Once such a consent has been adopted by the court, any substantive challenge to it should ordinarily be pursued through the recognised legal mechanisms for setting aside or varying consent judgments. Where liability has thereby been conclusively resolved, and quantum remains outstanding, the court's remaining role is to determine the unresolved consequential issues, including assessment of damages, in accordance with the terms of the consent.

4.0 REFERENCES

1. *BJC v. Mochache & Another*, [2025] KECA 60 (KLR) (Kenya).
2. *Bolam v. Friern Hospital Management Committee*, [1957] 1 WLR 582 (QB).
3. *Brooke Bond Liebig (T) Ltd v. Mallya*, [1975] EA 266 (EACA).
4. *Flora N. Wasike v. Destimo Wamboko*, [1985] KECA 149 (KLR) (Kenya).
5. *Hirani v. Kassam*, [1952] 19 EACA 131 (EACA).
6. *James Mutuma Kirimi v. P.C.E.A. Kikuyu Hospital & Another*, [2017] KEHC 9459 (KLR) (Kenya).
7. *James Odundo v. Charles Opondo & Another*, [2018] KEHC 1707 (KLR) (Kenya).
8. *John Mutora Njuguna t/a Topkins Maternity & Clinic v. ZWG*, [2017] KEHC 1143 (KLR) (Kenya).
9. *Kenya Commercial Bank Ltd v. Benjoh Amalgamated Ltd*, [2017] KECA 98 (KLR) (Kenya).
10. *Kenya Commercial Bank Ltd v. Specialised Engineering Co. Ltd*, [1982] KLR 485 (Kenya).
11. *Mathenge v. Kenya Hospital Association t/a Nairobi Hospital*, [2025] KEHC 5018 (KLR) (Kenya).
12. *Michael Mwalo v. Board of Trustees, National Social Security Fund*, [2014] KECA 706 (KLR) (Kenya).
13. *Nairobi Hospital & Another v. Mumo & 2 Others*, [2024] KEHC 7657 (KLR) (Kenya).
14. *Paul Ngetich & Wilfrida Letting Jepkosgei v. Family Care Medical Centre & Maternity & Others*, Eldoret Magistrate's Court Civil Suit No. MC.CC/1102/2018 (Kenya).
15. *Pope John Paul's Hospital & Another v. Baby Kosozi*, [1974] EA 221 (EACA).
16. *Raila Odinga & 2 Others v. Independent Electoral and Boundaries Commission & 3 Others*, [2013] KESC 8 (KLR) (Kenya).
17. *Ricarda Njoki Wahome (Suing as Administrator of the Estate of the Late Wahome Mutahi (Deceased)) v. Attorney General & 2 Others*, [2015] KEHC 4929 (KLR) (Kenya).
18. *Telkom Kenya Ltd v. Ochanda (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd)*, [2014] KECA 600 (KLR) (Kenya).
19. Civil Procedure Act, Cap. 21, Laws of Kenya (2010).
20. Civil Procedure Rules, 2010 (Kenya).
21. Constitution of Kenya (2010).
22. Lind, E. A., MacCoun, R. J., Ebener, P. A., Felstiner, W. L. F., Hensler, D. R., Resnik, J., & Tyler, T. R. (1990). In the eye of the beholder: Tort litigants' evaluations of their experiences in the civil justice system. *Law & Society Review, 24*(4), 953–996. https://doi.org/10.2307/3053616

23. Nylund, A. (2025). Procedural effects of court settlements. *Law & Criminology Journal, 2*(2), 32–44. https://doi.org/10.21825/lcj.93853

24. Nylund, A., Galič, A., & Nowak, J. T. (2024). Early resolution, case management and settlement. In B. Hess, M. Woo, L. Cadiet, S. Menétrey, & E. Vallines García (Eds.), *Comparative procedural law and justice* (Part VI, Chap. 3). Comparative Procedural Law and Justice. https://www.cplj.org/publications/6-3-early-resolution-case-management-and-settlement

25. Pretorius, D. M. (2005). The origins of the functus officio doctrine, with specific reference to its application in administrative law. *South African Law Journal, 122*, 832–875.

26. Welsh, N. A. (2016). Magistrate judges, settlement, and procedural justice. *Nevada Law Journal, 16*(3), 983–1060.