



REPUBLIC OF KENYA



**KENYA LAW**  
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**China International Aerotechnology Engineering Co-orporation v Pterit (Civil Appeal E003 of 2023) [2025] KEHC 3410 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3410 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CIVIL APPEAL E003 OF 2023  
RPV WENDOH, J  
MARCH 20, 2025**

**BETWEEN**

**CHINA INTERNATIONAL AEROTECHNOLOGY ENGINEERING CO-  
ORPORATION ..... APPELLANT**

**AND**

**MOSES PTERIT ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the Judgment of the Subordinate court in Kapenguria CMCC E042/2021. The appellant, China International Aerotechnology Engineering Corporation was the defendant in the lower court while the Respondent, Moses Pterit was the plaintiff.
2. The claim arose out of a road traffic accident that occurred on 2/1/2021 between the appellant's motor vehicle Registration Number KCW 253Z Tipper Hawo and motor cycle KMEQ 456A TVS on which the Respondent was a pillion passenger.
3. On 8/3/2023, the parties recorded a consent on liability at the ratio of 85%: 15% in favour of the Respondent.
4. After hearing the parties on quantum, the court entered judgment as follows:-
  1. Liability 85% in favour of the plaintiff against defendant as per the consent.
  2. General damages 2,200,000.00
  3. Special damages 6,500.00Total - 2,206,500.00  
Less contribution 15% 330,975.00  
1,875,525.00



5. Being dissatisfied with the said award the appellant preferred this appeal based on the following four grounds.
  1. That the trial magistrate erred in making an award of Kshs.2,200,000/= which was manifestly excessive in regard to the injuries sustained;
  2. That the trial magistrate adopted wrong principles in determining the damages payable and arrived at an erroneous decision ;
  3. That the magistrate erred by failing to take into account relevant factors and therefore arrived at an erroneous decision;
  4. That the trial magistrate erred by not taking into account relevant authorities and precedents with comparable injuries thereby awarding excessive general damages.
6. The appellant prays that the award on quantum be set aside and the court reassesses the quantum downwards.
7. The appellant was represented by Onyinkwa & Company Advocates while the Respondent was represented by Walter Wanyonyi Advocate. Both Counsels filed submissions.
8. This being a first appeal, it behoves this court to examine all the evidence tendered in the trial court afresh, analyse it and arrive at its own conclusions. This court is guided by the decision in *Selle & Another -V- Associated Motor Boat & Company Limited & others* (1968) EA 123.
9. PW1 Moses Pterit, the Respondent testified that he was involved in an accident on 2/1/2021. He adopted his witness statement in evidence. He further stated that he sustained injuries to the head, a cut on the right jaw, a fracture on the right bone, right knee was grafted. He said that he could not fold his right leg, the right hand was paralyzed, he cannot hold a gun or work and was still attending hospital for treatment. He was examined by Dr. Dennis Mulembo who prepared a report Pexh.5. He also attended Dr. Z. Gaya for a second medical report. As of the time he testified in March 2023, he said he was not fully healed.
10. The appellant did not call any witness, but produced the medical report preferred by Dr. Gaya as D.Exh.1
11. On behalf of the appellant, it was submitted that the medical report by Dr. Mulembo and discharge summary clearly indicated that the Respondent sustained fractures of the scapula, fractures of the right clavicle, cut wound on the right thigh and right knee and unstable neck; that the report done by Dr. Gaya a year later indicated that the Respondent was fully recovered.
12. Counsel also submitted that the trial court did not specify the authorities she relied upon in determining the quantum. Counsel relied on the decisions of *Bhogal -V- Burbridge & Another* (1975) EA 285 and *Kigaraari -V- Aya* (1982-86) 1 KAR where the courts emphasized the need for some uniformity in damages awarded for similar injuries guided by comparable decisions. Counsel suggested that the Respondent be awarded Kshs.280,000/= to 350,000/= guided by the decisions in *Gerald Mwangi Muhuthia -V- John Mburugu & Another* (2022) eKLR; *Morrison Nyaga Ndwiga & Another -V- Ezekiel Khatete Embu* HCCA.E006/2023 where an award was reduced from Kshs.1,200,000/= to 500,000/= for fracture of tibia and fibula. And *Machakos* HCCA.22/2014 *Lyin Kambua Enterprises -V- Edith Vaati Simon Kasika* (2021) eKLR where an award of Kshs.350,000/= was made for fracture of the Clavicle and soft tissue injuries.



13. As respects the Respondent, Counsel relied on the decision of Telkom Orange (K) Limited -V- I S O minor suing through the mother and next of kin J.N. (2018) eKLR where Judge Majanja observed that comparable injuries should be compensated by comparable awards; that in the lower court, the Respondent relied on the decisions of Yobesh Makori -V- Elmerick Mobisa Bota (2021) eKLR and Dickson Githae -V- Lucy Wanjiku Nderito (2019) eKLR.
14. I have considered the grounds of appeal and submissions by both counsel. The only issue before the court is whether the award by the magistrate was excessive and whether the trial court took into account irrelevant factors in arriving at the said award.
15. Assessment of damages is an exercise of the discretion of the court and an appellate court will always be slow to interfere with the exercise of the trial courts discretion unless it is apparent that in the exercise of that discretion, the court proceeded on wrong principles and arrived at an erroneous decision. In Butt -V- Khan Civil Appeal 40/1977 (1978) eKLR Madan Judge of Appeal stated as follows; - “An Appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and arrived at a figure which was either inordinately high or low.”
16. The above principles were restated in Kemfro Africa Ltd t/a Meru Express Service & Another -V- A.M. Lubia & Olive Lubia (1982-1988) 1 KAR 728.
17. In Telkom Orange (K) Ltd -V- ISO Justice Majanja aptly captured what else the court should consider in assessing damages. He stated as follows, “General damages are damages at large and the court does the best it can in reaching an Award that reflects the nature and gravity of the injuries. The Judge further stated that the general method of approach should be that comparable injuries should as far as possible – be compensated by comparable award, but it must be recalled that no two cases are exactly alike.”
18. In the Medical Report prepared by Dr. Mulembo, the Doctor found that the Respondent had been knocked down by a lorry, became unconscious, was admitted in ICU for two (2) weeks. He sustained fracture of the scapula, cut on the right thigh, and right knee joint, had unstable neck and fracture of right clavicle. He underwent a open fixation and internal fixation with nails and screws for the clavicle and scapula, wound stitching, skin grafting at knee area. On examination, the Doctor observed that the right knee joint was limited in movement due to skin grafting, and the right upper limb was not able to lift against gravity and could not write properly. The Doctor observed that the Respondent was to continue with dressing at the site of grafted wound and continue with physiotherapy.
19. Dr. Gaya saw the Respondent on 1/7/2022 over one year since the first medical report. He opined that the Respondent sustained soft and skeletal (fractures) injuries from which he had recovered with weakness of the right upper limb. He did not find any permanent injuries.
20. I have considered the case of Gerald Muhuthia (Supra) that was relied upon by the appellant. In that case, the appellant suffered the following injuries – fracture of the distal right clavicle with superior displacement of the shoulder and soft tissue injuries to the back. The same cases applies to Morrison Nyaga Case (Supra) I find that the injuries in the above two cases were minor and are not comparable to those in the instant case.
21. In the case of Yobesh (Supra), the award was made in 2021 and I find that the appellant suffered more serious injuries that resulted inter alia in amputation of the leg below the knee. Similarly in Dickson Githae Kibue case, the decision was made in 2019, The injuries were more serious than those sustained by the



22. Respondent in the instant case. However, I find the Respondent's injuries more proximate to those suffered in the cases relied on by the Respondent. In my considered view the award of Kshs.2,200,000/= was on the higher side. I hereby set aside the award and instead make an award of general damages Kshs.1,800,000/=. Special damages were not disputed.

23. In the end, I enter judgment for the Respondent against the appellant as follows:-

1. Liability 85%: 15% as per consent
  2. General damages – 1,800,000.00
  3. Special damages 6,500.00
- total 1,806,500.00
- Less 15% contribution 270,975.00
- 1,535,525.00

24. The appellant will have half ( $\frac{1}{2}$ ) the costs of the appeal.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 20<sup>TH</sup> DAY OF MARCH, 2025**

**R. WENDOHO.**

**JUDGE.**

Judgment delivered in open court before

Appellant – Ms. Were

Respondent – Ms. Kaya

Court Assistants – Juma/Hellen

