



**Machine v Kalii (Civil Appeal E219 of 2023)
[2025] KEHC 11767 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 11767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E219 OF 2023
DO CHEPKWONY, J
MAY 5, 2025**

BETWEEN

ERASTUS KARANI MACHINE APPLICANT

AND

VERONICA NDAMBUKI KALII RESPONDENT

*(Appeal from the Judgment of Hon. C. Asuna (PM) in Ruiru
CMCC No.E147 of 2022 delivered on the 15th June, 2023)*

JUDGMENT

1. This Appeal emanates from the Judgment of Ruiru CMCC No. E219 OF 2023 of Hon C. Asuna (PB) delivered on 15th June, 2023 in respect of a road traffic accident which occurred on 15th April, 2023 involving Motor Vehicle Registration No.KCY 026G belonging to the Appellant.
2. The facts that gave rise to the case are a road traffic accident which occurred on 15th April, 2022 involving Motor Vehicle Registration Number KCY 026G belonging to the Appellant, which motor vehicle lost control and knocked the Respondent, who was a pedestrian and she sustained bodily injuries.
3. By way of a Plaint dated 19th April, 2022, the Plaintiff herein (referred to as ‘the Respondent’) instituted a suit against the Defendant (herein referred to as ‘the Appellant’) seeking for Judgment for:-
 - a. General damages
 - b. Special damages of Kshs.572,204/=
 - c. Costs and interest of this suit
 - d. Any other suitable relief that the court may deem fit to grant in the circumstances.



4. At Paragraph 4 of the Plaint, the Respondent pleaded that on or about 19th April, 2022 at around 1930 hours, she was going on in the ordinary course of her lawful duties and or activities when the Defendant's Motor Vehicle Registration No.KCY 026G Honda was so recklessly, negligently and or carelessly driven, managed, and or controlled by the Defendant, his authorised driver, agent, servant, and or employee that it lost control and hit the Plaintiff/Respondent who was walking as a pedestrian that she sustained serious bodily injuries.
5. According to the Respondent, the said accident occurred as a result of the negligence on the part of the Appellant and or his driver, servant, employee or agent as particularised at Paragraph 5 of the Plaint. It is the Respondent's pleading that she sustained bodily injuries as a result of the said accident as particularised in Paragraph 6 of the Plaint.
6. In response, the Appellant filed a statement of defence dated 19th September, 2022 in which he denied that the accident occurred and blamed its occurrence on the Respondent's negligence as particularized at Paragraph 3 of the defence. It is the Appellant's averment that if at all the accident occurred, then the same was caused by the negligence of the Respondent. He further denied that the Respondent suffered any injuries.
7. The matter proceeded for hearing. However, the counsel for the parties recorded a consent which was adopted as an order of this court on 22nd March, 2023 in the following terms:-
 - a. Liability be and is hereby entered in the ratio of 80:20 in favour of the Plaintiff as against the Defendant.
 - b. The Plaintiff's documents on record be adopted as Plaintiff's exhibit without calling the maker.
 - c. That each party to take seven (7) days to file and serve written submission on quantum.
8. On 12th April, 2023, the counsel for the parties confirmed filing of submissions and on 15th June, 2023, the trial court delivered a Judgment in favour of the Respondent as against the Appellant in the following terms:-
 - a. Liability 80:20
 - b. Special damages – Kshs.562,154/=
 - c. General damages – Kshs.2,000,000/=Total – Kshs.2,562,154/=
Less 20% - Kshs.2,049,723.20
Together with costs and interest.
9. Being aggrieved with this Judgment, the Appellant lodged the present appeal on the following grounds:-
 - i. That the Learned Trial Magistrate erred in law and fact by awarding the Respondent special damages of Kshs. 562,154/=.
 - ii. That the Learned Trial Magistrate misdirected herself and based her findings of special damages on wrong considerations.
 - iii. That the Learned Trial Magistrate erred in awarding the sum of Kshs. 2,000,000/= as general damages.



- iv. That the Learned Trial Magistrate erred and misdirected herself in fact and law by awarding general damages to the Respondent that were manifestly excessive in the circumstance and thus failed to appreciate the principles applicable in the award of damages.
 - v. That the Learned Trial Magistrate erred in law and in fact by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
10. The Appellant thus seeks this court to set aside the Judgment and reassess the special damages and general damages payable to the Respondent.

Determination

6. This being a first appeal it is the duty of this court to re-assess and re-analyse the evidence that was adduced before the trial court and come to its own Judgment. This is in line with the decision in the case of *Selle & another –vs- Associated Motor Boat Co. Ltd. & others* [1968] EA 123 in the following terms:-

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hammed Saif – vs- Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270).”

11. I have read through the original Record of Appeal in consideration of the grounds set out in the Memorandum of Appeal and find the issues for determination being:-
- a. Whether special damages awarded by the trial court were based on wrong consideration.
 - b. Whether the general damages awarded are excessive in the circumstances of this case.
12. In regard to whether or not the special damages were awarded on wrong considerations, it is important to appreciate that it is settled law that special damages must be specifically pleaded and strictly proven. In the case of *Hahn –vs- Singh*, Civil Appeal No. 42 Of 1983 [1985] KLR 716, the Court of Appeal held held:-

“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.”

13. In the instant case, the Respondent claimed the following items as special damages:-
- a. Medical report Kshs. 5,000/=
 - b. Kenyatta Hospital report Kshs. 5,000/=



- c. Drugs Kshs. 2,200/=
 - d. Surgical fees Kshs. 10,000/=
 - e. Police abstract Kshs. 200/=
 - f. Treatment fees Kshs. 549,254/=
 - i. Motor vehicle search Kshs. 550/=
- Total Kshs. 572,204/=
14. The evidence of the specific items claimed as special damages were presented before the trial court by way of receipts, bills and or reports which were admitted as Plaintiff (Respondent's) exhibits by consent of counsel for both parties on 22nd March, 2023. That notwithstanding, the documents required scrutiny by the trial court to ascertain their validity authenticity.
 15. In its Judgment delivered on 15th June, 2023, the trial court noted that the Respondent produced receipts amounting to Kshs.562,154/=. In his submissions dated 25th June, 2024, the Appellant stated that only a sum of Kshs.103,254/= was based on a draft bill which cannot be said to be proof of payment and thus the only acknowledged sum was Kshs.80,000/=. In her submissions dated 28th June, 2024, the Respondent submitted that the amount of Kshs.469,254/= is a debt owed to the hospital which will be paid upon compensation.
 16. Upon perusing the documents produced as exhibits in support of their claim for special damages, the court has noted receipts for the sums of Kshs.24,000/=, Kshs.3,000/=, Kshs.3,000/=, Kshs.20,000/=, Kshs.30,000/= and Kshs.700/=, all amount to Kshs.80,000/=. The total treatment bill claimed was Kshs.549,253.94 and now less Kshs.80,000/= renders the balance of Kshs.469,253.94, surgical fees of Kshs.10,000/=, drugs bill of Kshs.2,000/=, Kshs.200/= for police abstract, medical report from Kenyatta Hospital of Kshs.5,000/=, medical report fees of Kshs.5,000/= and costs of Motor Vehicle Search of Kshs.550/= bringing the total of Kshs.572,004/= as unproven.
 17. This Court concurs with the argument by the Appellant that a document being a draft bill is not proof of payment. And the arguments by the Respondent that the sum of Kshs.469,254/- is a debt owed is not substantive enough as she has not provided any evidence of the same either through a demand Notice or even a letter for the hospital to confirm the discharge of the Respondent, notwithstanding the debt owed.
 18. In the case of Total (Kenya) Limited (formerly Caltex Oil (Kenya) Limited –vs- Janerays Limited [2015]eKLR, the Court stated that:-

“It is also a well settled principle of law that an invoice is not proof of payment and that special damages can only be proved by providing actual receipts or invoice endorsed with the word “PAID”
 19. The trial court awarded a sum of Kshs.562,154/= as special damages. However, the court finds that this was erroneous as a substantive amount thereof was not specifically pleaded and proven. Thus, the Court proceeds to set aside the award of Kshs.562,154/= and substitutes it with an award of Kshs.102,750/=.
 20. On general damages, it is trite law that this Court can only interfere with discretion of the court in awarding damages only if it is based on wrong principles of law or is manifestly excessive or low. This



principle was adopted with approval by the court in the case of Butt –vs- Khan [1981]KLR 349, where it was held per law, J.A that :-

“An appellate court will not disturb an award of damages unless it is so inordinately high or low so 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 so arrived at a figure which was either inordinately high or low”.

21. It is also trite that in awarding general damages, the court should award damages that are commensurate to the injuries that he or she sustained. In the case of Charles Oriwo Odeyo –vs- Appollo Justus Andabwa & Another [2017]eKLR, the Court of Appeal set out the principles to be considered in awarding damages as follows:-

“The assessment of damages in personal injury case by a court is guided by the following principles:

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- 2) The award should be commensurable with the injuries sustained.
- 3) Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.
- 4) Previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account.
- 5) The awards should not be inordinately low or high”

22. According to the medical report by Dr. Anthony Mubisi Swaro, the Respondent sustained the following injuries:

- a. Head injury with subarachnoid bleeding leading to loss of consciousness and headaches.
- b. Fracture of the right lateral malleolus leading to pain and swelling.
- c. Fracture of pelvic rami and sacroiliac bones leading to pain, deformity and loss of function.
- d. Blunt soft tissue injury in the neck.
- e. Generalised bruises on the right arm, mostly on the elbow joints.
- f. Laceration on the left thigh and lacerations on both hips.
- g. Blunt soft tissue injuries on the chest.
- h. Left pariental lobe leading to acute haemorrhagic contusion injury.
- i. Bruises on the right leg.

23. Having considered the said injuries, the trial court awarded Kshs. 2,000,000/= as general damages. In the submissions, the Appellant argues that the appropriate award ought to have been Kshs. 800,000/= and has relied on the following cases to support this: Joseph Njeru Luke & 3 Others –vs- Stellah Muki Kioko [2020] eKLR, Peter Gakere Ndiangui –vs- Sarah Wangari Maina [2021]eKLR and Joseph Kimathi Nzau – vs- Johnson Macharia [2019].



24. On the other hand, the Respondent has urged the court to maintain the sum of Kshs. 2,000,000/= and relied on the case of Terry Kanyua Marangu -vs- Wells Fargo Ltd [2014] eKLR and Andrew Kimani Mwaura & Anor -vs- Nyangute Moraa Verah alias Ferah Moraa [2021] eKLR to support this quantification.
25. The court has considered the injuries sustained by the Respondent in line with the findings in the case of Dorcas Wangaithi Nderi -vs- Samuel Kiburu Mwaura & Another [2015] eKLR where an award of Kshs. 2,000,000/= was upheld on appeal for multiple injuries, blunt injury to the head and multiple fractures. And in the case of Millicent Atieno Ochuonyo -vs- Katola Richard [2015] eKLR, the Plaintiff was awarded Kshs 2,000,000/= for injury to the pelvis involving fracture of ramus and diastasis of the symphysis pubis. In view of these findings, the Court finds the injuries sustained by the Respondent are commensurate to the award of Kshs.2,000,000/= hence the same is upheld.
26. The upshot is that the Appeal partially succeed in the following terms:-
- a. The award of special damages of Kshs.562,154/= is hereby substituted with an award of Kshs.102,750/=.
 - b. The award of Kshs.2,000,000/= as general damages is hereby upheld.
 - c. The Appellant shall bear the costs of the trial court and half of the costs of this appeal since the appeal has partially succeeded.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Odhiambo counsel for Respondent

Mr. Omagwa counsel for Appellant

Court Assistant - Martin

