



REPUBLIC OF KENYA



**Nangulu & 2 others v Wekesa (Civil Appeal E037 of 2024)
[2025] KEHC 10927 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E037 OF 2024**

REA OUGO, J

JULY 24, 2025

BETWEEN

LILLIAN MAJORIE WESONGA NANGULU 1ST APPELLANT

CHARLES SIMIYU NANGUL 2ND APPELLANT

WAMALWA CLEOPHAS MARUTI 3RD APPELLANT

AND

EDWAIN WASWA WEKESA RESPONDENT

*(Being an Appeal from the judgment and decree of Hon. W.K. Onkunya
(SPM) delivered on 6th March, 2024, in Kimilili SPMCC NO. E0186 OF 2021)*

JUDGMENT

1. This appeal is on the outcome of the judgment of the subordinate court where Edwain Waswa Wekesa, the Respondent herein, was the Plaintiff while Lillian Majorie Wesonga Nangulu, Charles Simiyu Nangulu and Wamalwa Cleophas Maruti, the Appellants herein, were the Defendants.
2. The Respondent vide a plaint dated 14/09/2022 instituted a suit against the Appellants stating that on 03/06/2022, while riding a motorcycle Registration No. KMDH 413U along Kikai-Kiptanui road at Shihundu area, the Appellants' driver negligently drove motor vehicle Reg. No. KAU 821L caused it to veer off the road into his lane and ram into his motorcycle, thereby occasioning him severe bodily injuries, i.e. open fracture of the left tibia, open fracture of the left fibula and cut wounds on the left leg. He claimed for general damages, special damages plus costs and interests.
3. The Appellants filed a statement of defence dated 04/03/2023 denying the Respondents' allegations and claimed that if at all any accident occurred, the same was caused by the Respondents' negligence.
4. The trial court, upon determining the case, entered judgment in favour of the Respondent in the following terms: Liability-100%, general damages-Kshs.1,000,000/=, special damages-14,950/=,



future medical expenses-Kshs.150,000/= totalling to Kshs. 1,164,950/= plus costs and interests of the suit.

5. Aggrieved by the said judgment, the Appellants filed the current appeal on the following grounds;
 - a. That the learned trial magistrate erred in law and in fact by adopting the wrong principles in the assessment of damages awardable to the respondent thereby arriving at an erroneous decision.
 - b. That the learned trial magistrate erred in law and in fact in failing to be guided by relevant authorities and/or precedents with comparable injuries to the ones sustained by the respondent thereby awarding an excessive amount of general damages.
 - c. That the learned trial magistrate erred in law and in fact in making an award of Kshs. 1,000,000/= which was manifestly excessive in view of the injuries sustained by the respondent.
 - d. That the learned trial magistrate erred in law and in fact in making an award of Kshs. 150,000/= for future medical treatment when the same was not proved.
 - e. That the learned trial magistrate erred in law and in fact by failing to consider the submissions by the appellants on the issue of quantum.
6. The Appellants sought to have the appeal allowed, the award on quantum set aside and re-assessed downwards, and the award for future medical treatment set aside entirely. They also sought for costs of the appeal.
7. Directions were taken for the appeal to be canvassed by way of written submissions.
8. The Appellant filed submissions dated 11/09/2024 where it was submitted that the measure of damages in a such a case as this is based on the principle of restitution in integrum and must reflect the comparable trends/awards. They pointed out that the trial magistrate relied on the case of Alphonse Muli Nzuki v Brian Charles Ochuodho (2014) eKLR, where the court awarded Kshs. 1,000,000/= for injuries the Appellant claimed were more severe than those sustained by the Respondent herein. They urged the court to rely on the cases of Daniel Otieno Owino & Another v. Elizabeth Atieno Owuor (2020) eKLR, Ndwiga & Another v. Mukimba (2022) eKLR and Pride Kings Security v. Ekaalet (2023) eKLR where on appeal the appellate courts revised awards by the trial courts and awarded Kshs.400,000/=,500,000/= and 450,000/= respectively for similar injuries.
9. As for the award of future medical expenses, they argued that this is special damage and ought to be specifically pleaded and strictly proved, as was held in Tracom Limited& Another v. Hassan Mohamed Adan (2009) eKLR. They argued that although, in the medical report produced by the Respondent, Dr. Sokobe indicated that Kshs . 150,000/= will be required for removal of implants, the said doctor was not called to testify to this effect, more so because in the medical report by Dr. Gaya, the Respondent had recovered well. They relied in the case of Ombeti & Another v. Muthuure (2024) eKLR. They urged the court to revise the award of general damages to Kshs. 350,000/= to Kshs. 400,000/= and for the setting aside of the award of Kshs. 150,000/= as award for future medical expenses.
10. The Respondents filed submissions dated 30/11/2024 where he submitted that the injuries he suffered were similar to those suffered by the Plaintiff in Alphonse Muli Nzuki Vs Brian Charles Ochuodho{2014} Eklr And Francis Ndungu Wambuii & 2 Others Vs VK (a minor suing through next friend and mother MCWK) {2019} where the courts awarded general damages of Kshs. 800,000/= and 1,000,000/= respectively thus the award of the trial court was proper. As for the award of future medicals, it was submitted that the Respondent ha metal implants in his left leg which will require to be removed at a future date. He therefore urged the court to dismiss the appeal with costs.



Analysis and Determination.

11. The appellants contested the amount awarded for pain and suffering. The general principle upon which an appellate court can interfere with an award of damages was stated in the case of *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 is that 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 so arrived at a figure which was inordinately high or low.
12. In determining general damages, the trial court has to examine the extent and gravity of the injuries suffered by the plaintiff, relevant and comparative case law to ensure fairness and, where necessary, take into account the rate of inflation. The Court of Appeal stated in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR that, “comparable injuries should attract comparable awards.”
13. The Respondent sustained an open fracture of the left tibia, an open fracture of the left fibula and cut wounds on the left leg. Notably, the first authority quoted by the Respondent was decided in the year 2014 and in my view cannot be said to be comparable and the injuries therein cannot be said to be close to those in this case. As for the case of *Francis Ndungu Wambuii & 2 Others Vs VK* (a minor suing through next friend and mother MCWK) {2019} the respondent suffered soft tissue injuries to the upper limbs, compound fracture of distal tibia fibula shaft as well as loss of consciousness after the accident and the appellate court upheld the award of Kshs.1,000,000/= as general damages. However, it is key to note that the Respondent therein was a minor and that the doctor noted that due to the severity of the fracture, the Respondent was at risk of secondary stress fractures on the same site.
14. On the other hand, the authorities quoted by the Appellants for instance *Daniel Otieno Owino & another v Elizabeth Atieno Owuor* [2020] eKLR the respondent had suffered a fracture of tibia and fibula bones of the right leg, deep cut wound and tissue damage of the right leg, head injury with cut wound on the nose, blunt chest injuries and soft tissue injury on the lower left leg and the High Court set aside the award of Kshs 600,000/= and replaced the same with Kshs 400,000/= In *Ndwiga & Another v. Mukimba* (2022) eKLR the respondent suffered comparable injuries to those sustained by the respondent herein i.e. tenderness and swelling of the left leg and fracture of tibia and fibula left leg and the appellate court set aside the award of Kshs 600,000/= and replaced the same with Kshs 400,000/=
15. The trial court in this case awarded the respondent herein Kshs. 1,000,000/= as general damages, which I find a bit high compared with the cited comparable authorities. Therefore, I set aside the sum of Kshs 1,000,000 awarded as general damages and substitute it with a sum of Kshs 500,000/- as general damages.
16. Future medical expenses are commonly based on medical opinion. They, as such, constitute an amount of pecuniary loss which the Plaintiff can prove based on the facts pleaded. I am persuaded by the reasoning of Odunga J, (as he then was) in *Bash Hauliers Limited v Peter Mulwa Ngulu* [2020] eKLR, where the learned Judge stated as follows:

“Future medical expenses are therefore, though based on medical opinion, is an amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”



17. It was also held by the Court of Appeal in Jackson K Kiptoo vs. The Hon Attorney General [2009] KLR 657 that:

“The court is conscious that the degree of certainty and particularity of proof required depends on the circumstances and the nature of acts complained of.”

18. The nature of the injuries sustained by the Respondent and the treatment administered support his claim for future medical expenses related to the removal of metal implants. This position is corroborated by the treatment notes and medical report of Dr. J. Sakobe produced by the Respondent. In addition, the medical report by Dr. Z. Gaya, produced by the Appellants, confirms that the Respondent underwent open reduction and internal fixation, indicating the presence of metal implants in situ, which would ideally require removal.

19. For the foregoing reasons, I find no reason to interfere with the trial court’s award on the same.

20. In conclusion , the appeal partially succeeds, and I make the following orders:-

- a. The judgment of the trial court on general damages is set aside and substituted with an award of Kshs. 500,000/=.
- b. The award for future medical expenses shall remain as assessed by the trial court.
- c. The Appellants shall have costs of the appeal, which I assess at Kshs . 50,000/=.
- d. The Respondent shall have the costs of the lower court.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 24TH DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:

Miss Langat For the Appellant

Edwin Wekesa in person

Wilkister C/A

