



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ng'ang'a v Muinde (Civil Appeal E030 of 2022)  
[2025] KEHC 9977 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9977 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CIVIL APPEAL E030 OF 2022**

**CW MEOLI, J**

**JULY 10, 2025**

**BETWEEN**

**ELIZABETH MWIHAKI NG'ANG'A ..... APPELLANT**

**AND**

**FESTUS MWANZIA MUINDE ..... RESPONDENT**

*(Being an appeal from the Judgement of Edwin Mulochi (RM)  
delivered on 30th March 2022 in Kajiado CMCC No. 180 of 2019)*

**JUDGMENT**

1. This appeal emanates from the judgment delivered on 30.03.2022 in Kajiado CMCC 180 of 2019. The suit was instituted on 24.09.2019 by Festus Mwanzia Muinde, the plaintiff in the lower court (hereafter the Respondent), against Elizabeth Mwihaki Ng'ang'a (hereafter the Appellant). The Respondent's claim was for damages on account of injuries he sustained in a road traffic accident that occurred on 16.06.2018.
2. It was averred that at all material times the Appellant was the registered owner of motor vehicle registration number KCJ 543W. That on or about 16.06.2018 the Respondent was travelling as a pillion passenger on motorcycle registration no. KMDf 233Q along Namanga Road when the Appellant's motor vehicle which was negligently driven, hit the motor cycle, as a result of which the Respondent sustained injuries.
3. The Appellant filed a statement of defence on 22.10.2019 denying the key averments in the plaint and liability. She averred that the accident occurred due to negligence on the part of the Respondent. The suit proceeded to full hearing during only the Respondent adduced evidence. In its judgment, the trial court found in favour of the Respondent, holding the Appellant wholly liable for the accident.



4. The court proceeded to award damages as hereunder: -

General damages – Kshs. 1,800,000/-

Loss of earning capacity - Kshs. 1,507,766.40/-

Special damages – Kshs. 147,755/-

Total Kshs. 3,455,541.40/-

5. Aggrieved with the outcome, the Appellant preferred this appeal based on the following grounds: -

- a. The Learned Magistrate erred and misdirected himself in law, principles and facts when he misapprehended and misunderstood the applicable principles and the law in assessing loss of earning capacity thereby arriving at an award that is so manifestly and inordinately high as to constitute an entirely erroneous estimate of the damages in the circumstances of the case.
- b. The Learned Magistrate erred and misdirected himself in law, principle and facts when he misapprehended and misunderstood the applicable principles and law in assessing general damages thereby arriving at an award that is so manifestly and inordinately high as to constitute an entirely erroneous estimate of the general damages in the circumstances of the case.
- c. That the Learned Magistrate erred in law and fact by arriving at a decision that was not based on the evidence on record particularly by dismissing the degree of permanent incapacitation in his computation of loss of earning capacity.
- d. The Learned Magistrate erred in law and fact in arriving at a decision that was against the weight of evidence on record and weight of law and as a result, he arrived at an erroneous decision.
- e. The Learned Magistrate erred in law and fact by taking into account irrelevant and extraneous factors hence he reached an erroneous verdict.

6. On his part, the Respondent being equally dissatisfied with the judgement filed a cross-appeal on 1.03.2023, raising the following grounds-

- a. That the Learned Magistrate erred in law and fact by misapplying and misapprehending the principles in award of general damages and loss of earning capacity whereof it resulted in a low award of damages.
- b. That the Learned Magistrate erred in law and in fact in calculation of damages for loss of earning capacity whereof the wrong multiplier of 9 years was applied.
- c. That the Learned Magistrate erred in law and in fact in failing to consider the cross-Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
- d. That the Learned Magistrate erred in law and in fact in failing or ignoring to consider the inflationary trends and passage of time in respect to award of damages.
- e. That the Learned Magistrate erred in law and in fact in failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages which were in any event inordinately or unproportionately low.

7. The appeal was canvassed by way of written submissions. In the submissions dated 28.06.2024, the Appellant identified two key issues for determination, namely, whether the learned magistrate erred and misdirected himself in law, principle and facts in failing to include the degree of permanent



incapacity in his computation of loss of earning capacity and whether the learned magistrate erred and misdirected himself in law, principle and facts in assessing general damages hence arriving at an inordinately high award.

8. While supporting the multiplier and multiplicand of 9 years and Kes. 13, 960.80/-, respectively as applied by the trial court, the Appellant stated that courts will not ordinarily interfere with the trial court's assessment of damages merely because the award was high. And cited in support of the latter proposition the case of Ken Odoni & 2 others -vs- James Okoth Omburah T/a Okoth Omburah & company advocates [2013] eKLR. Reiterating that the Respondent's permanent incapacity was assessed at 50% by Dr. Wokabi, the Appellants contended that this degree of permanent incapacity should have been applied in the computation of loss of earning capacity. The Appellant relied on the case of Uchumi Supermarket Limited & another-vs- Boniface Ouma Were [2021] eKLR. Thus, she posited that the award for loss of earning capacity should have been calculated as follows:  $\text{Kes. } 13,960.80 \times 12 \times 9 \times 50\% = 753,883.20/-$
9. Regarding general damages of Kes. 1,800,000/- it was asserted that the award was so inordinately high as to constitute an entirely erroneous estimate of the damages in the circumstances of this case. Counsel arguing that the authorities relied upon by the Respondent were not suitable as the injuries sustained therein were not comparable in severity to the Respondent's, counsel reiterating reiterate submissions in the lower court that an award of Kes. 800,000/- on this head was sufficient. Here citing several cases including Evans Osuga Mboi -vs- James Lesaaya & another [2021] eKLR.
10. As regards the grounds of the cross-appeal challenging the award of general damages and loss of earning capacity, which the Respondent attacked as being inordinately low, the Appellant contends that the awards were appropriate and based on the trial court's consideration of authorities cited by the Respondent.
11. On his part, the Respondent's counsel by the submissions dated 19.02.2024 asserted that the appeal was on liability and quantum, although the Appellant did not by the grounds of appeal or submissions expressly address the question of liability. The court will therefore not deal with the extraneous submissions on liability.
12. In opposing the appeal and urging the cross-appeal, the Respondent's counsel attacked the award of general damages at Kes. 1,800,000/-, and complained that the trial court failed to consider his authorities thereon. Here citing the Court of Appeal decision in Ram Gopal Gupta -vs- Nairobi Tea Packers Ltd & 2 others, Civil Appeal No 65 of 2006. It was contended that an amount of Kes. 2,300,000/- would be adequate considering the inflation rate in 2018 when the accident happened.
13. Further, regarding the award for lost earning capacity, counsel submitted that the trial court misapprehended the relevant factors and principles and cited the case of Nyatogo -vs- Mini Bakeries Limited (Civil Appeal E38 of 2021) [2023] KEHC 1593(KLR). The Respondent's counsel reiterating the medical report by Dr. W. M Wokabi showing the extensive injuries suffered by the Respondent including 50% permanent disability.
14. Further reiterating evidence at the trial that the Respondent was a 38 years old mason, and that the accident left him disabled and walking with the aid of crutches, rendering him incapable of continuing with his masonry work. And thus, asserting that he is entitled to loss of earning capacity, and describing the multiplier of 9 years used by the trial court as erroneous, urged a multiplier of 15 years considering the retirement age of 60 years.
15. The Respondent also relying on the Regulation of Wages (General Amendment) Order 2018 indicating a salary of Kes. 23,039.45 p.m. for a mason (actually stated to be the salary of grade 3 artisans,



as proposed by the Appellants in the lower court). Thus, contending that the award under this head should be calculated as follows; Kes.23,039.45 x 12months x 15 years x 50% = 2,073,550.50/-.

### **Analysis and Determination**

16. The court has considered the record of appeal, the pleadings and entire record of the proceedings as well as the submissions by the respective parties. This is a first appeal. The Court of Appeal for East Africa set out the duty of the first appellate court in *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

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.”

17. An appellate court will not ordinarily interfere with a finding of fact made by a trial court unless such finding was based on no evidence, or it is demonstrated that the court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another vs Duncan Mwangi Wambugu* [1982 – 1988] IKAR 278
18. Upon review of the grounds of appeal in the main appeal and the cross- appeal as well as the parties’ submissions, the court is of the view that this appeal turns on the issue of quantum in respect of general damages and lost earning capacity.
19. Having read through the two records of appeal herein, I noted that some pages of the lower court proceedings especially on the trial were missing and the court had to rely on the original record, and initial typed proceedings which appears complete.
20. The record shows that only the Respondent called witnesses at the trial. A total of three witnesses testified. The Respondent testifying as PW1 adopted his written statement before giving a brief testimony. The sum total of his evidence was that on 16.06.2018 at 10.25 pm, he was travelling along Namanga Road from Mavoko, heading to Isinya on motorcycle registration no. KMDF 233Q. That at a place called Yukos near Kitengela, the Appellant’s motor vehicle registration no. KCJ 543 was so negligently driven that it hit him, occasioning him serious injuries, including partial loss of his right pinna, loss of the left pinna, fractures to the left femur, tibia and fibula and was consequently admitted at Machakos level 5 hospital for over 4 months and later at Bishop Kioko Catholic Hospital.
21. The Respondent produced in evidence his medical records (presumably as P.Exh. 6) appearing as item 6 in his list of his documents filed on 29.07.2019. There is however no list of exhibits on the lower court record or record of appeal, and neither were the documents produced by the Respondent individually marked upon production as required. Stating that he was a mason by profession earning Kes. 1500/- daily, the Respondent testified that the injuries left him functionally disabled and unable to work and to support his family
22. During cross examination, he reiterated that he worked as a mason earning Kes. 1500/- per day but admitting that he did not have evidence to this effect.



23. Scholastica Mueni (PW2) produced the police abstract dated 9.05.2019 (P. Exh 1) and stated that she visited the scene of the accident and that the driver of the vehicle KCJ 543W was to blame for the accident. The last witness, Dr. Wokabi (PW3) testified that he examined the Respondent on 11.06.2019 and prepared the report which he produced as exhibit (presumably P.Exh 7(a)).
24. The main contention in the main appeal relates to the quantum of damages awarded by the lower court under the heads of general damages and damages for loss of earning capacity, which are viewed by the Appellants as being either inordinately high or erroneous. In contrast, the cross-appeal challenges both awards, which the Respondent claims to be inordinately low. That said, the court will consider the appeal and cross-appeal under the respective heads of damages.
25. In considering the appeal, the court will be guided by the principles enunciated by the Court of Appeal in the case of *Kemfro Africa Limited t/a as Meru Express Service, Gathogo Kanini vs A.M Lubia and Olive Lubia* (1987) KLR 30. It was held in that case that:
- “The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”
26. The same court stated in *Bashir Ahmed Butt -v- Uwais Ahmed Khan* [1982 – 1988] I KAR 5 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 either inordinately high or low”.
- See also *Lukenya Ranching and Farming Co-operative Society Limited –v- Kavoloto* (1979) EA 414; *Catholic Diocese of Kisumu v Sophia Achieng Tete Kisumu Civil Appeal No. 284 of 2001; (2004) eKLR*.
27. In the latter case, the Court of Appeal reiterated the discretionary nature of the exercise of assessing damages and exhorted that:
- “An appellate court is not justified in substituting a figure of its own for that awarded by the court below, simply because it would have awarded a different figure if it had tried the case in the first instance”.
28. As observed by the English Court in *Lim Poh Choo v Health Authority* (1978)1 ALL ER 332 and echoed by Potter JA in *Tayib v Kinany* (1983) KLR 14, quoting dicta by Lord Morris Borth-y-Gest in *West (H) v Shepard* (1964) AC 326, at page 345:
- “But money cannot renew a physical frame that has been battered and shattered. All the courts can do is to award sums which must be regarded as giving reasonable compensation. In the process, there must be the endeavor to secure some uniformity in the method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said and done, it still must be that amounts which are awarded are to a reasonable extent conventional.”



See also *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* [2013] eKLR and *Kigaraari v Aya* (1982-88) 1 KAR 768.

29. Starting with the question of general damages, it was uncontested that following the accident, the Respondent sustained the following injuries:-
- a. Partial loss of the right pinna
  - b. Compound fracture of the left femur
  - c. Compound fracture of the left tibia
  - d. Compound fracture of the left tibia
  - e. Traumatic loss of left pinna
30. The medical report by Dr. Wokabi dated 18<sup>th</sup> June 2019 and produced as P.Exh. 7(a) indicates that as a result of the skeletal injuries sustained, the Respondent suffered disability of 50%, and as of the date of trial, was still walking with the aid of crutches, all rendering him incapable of working as a mason. He has urged an amount of 2,300,000/- as general damages for his injuries.
31. According to the medical report P. Exh. 7 (a) above, the Respondent sustained open fractures to three bones in the left leg, namely, the femur, tibia and fibula, and the initial treatment involved fixation with metal fixators and later metal implants, the latter which failed due to infection and had to be removed. New metal fixators were then applied. These treatments involved surgical interventions. The report further states that:
- “In the process of treating the infection, large portions of bone were removed from the femur and fibula leaving large gaps between the bone fragments... Follow up X-rays show that the fractures of the tibia have not united. There is extensive bone loss of the fibula. With a long gap between the upper and lower fragment....He suffered a lot of pain and blood loss.....(and) after each of the surgical procedures that he underwent on various occasions”.
32. The surgeon’s prognosis is equally grim:
- “Going forward, I see him encountering a lot of difficulties managing the large bone defect on the right (sic) femur.... Any bone transfers may not work as the gap is too big. Possibility of him ever (sic) being able to walk effectively on this leg is very slim indeed. He may actually end up losing (sic) this leg. However, the fractures of the left tibia will unite.
- As he is now, I assess disability at 50% ...I do not foresee (sic) him being gainfully employed any time soon”.
33. As of July 2021, when he testified, the Respondent was walking with the aid of crutches, as he was at the time of examination by Dr. Wokabi.
34. The trial court in its assessment of general damages appeared to consider as more relevant the case of *Kurawa Industries* (supra) where the plaintiff sustained a crush injury to the left leg leading to amputation, fracture of the shaft left radius, compound comminuted fracture to the left radius and fracture to the 5<sup>th</sup> to 8<sup>th</sup> left ribs, inter alia. An award of Kes. 2,000,000/- in general damages in 2015 was upheld in the subsequent appeal. That case and *Joseph Seremani & Anor v Stellah Bosibori Moreka* (2019) eKLR, also cited by the Plaintiff were not only more recent but appear to compare well with the injuries sustained by the Respondent.



35. In the lower court and before this court, the Appellant urged an award of Kes.800,000/- based on the case of Evans Osuga Mboi v James Lesaaya & Anor (2021) eKLR. There, a similar sum in general damages was confirmed on appeal in respect of a plaintiff whose injuries involved the distal 1/3 fracture of the right femur and soft tissue injuries to right thigh. The Appellant contending that the 50% permanent disability assigned to the Respondent only applies where there is amputation of a limb.
36. First, the Appellant could have but did not adduce any evidence to counter the findings of Dr. Wokabi. Nor arrange for a second medical examination of the Respondent. Ex facie, the injuries in the case of Evans Osuga were not quite comparable in severity to those sustained by the Respondent herein, and while it is true that the Respondent did not suffer amputation as in the Kurawa Industries case, the report by Dr. Wokabi reveals that the sequela attending the skeletal injuries sustained by the Respondent was almost as severe.
37. Reviewing the authorities cited by the parties in the lower court, this court is of the view that despite the lower court not expressly stating its rationale, it was justified in relying on the case of Kurawa Industries in assessing general damages. As important as consistency in awards for similar injuries might be, this Court appreciates that it is nigh impossible to find two cases reflecting injuries that are similar in every respect and the Court's duty is to do its best to assess appropriate damages, based on the most reasonably comparable authorities.
38. However, the complaint by the Respondent that the court failed to consider inflationary trends in making the award of general damages may have some merit; the award in Kurawa decision was made in 2015 while the judgment which is the subject of this appeal was delivered in March 2022, some seven years later. The trial court did not advert to inflationary factors or undertake any discussion regarding the injuries in the two cases, the medical procedures endured, the period of morbidity and admission in hospital or resultant consequences. The court merely stating to have "taken cue" from the Kurawa case. Had the court given consideration to key factors in the two cases as well as inflation, it would have probably found that the two cases had a lot of common features and hence arrived at a higher award in general damages.
39. In the circumstances, the court is of the considered view that the award of Kes. 1,800,000/- failed to consider key factors, and especially the inflationary trends since 2015. The court therefore feels justified to intervene by raising the award of general damages to the sum of Kes. 2, 100,000/- (Two Million One Hundred Thousand), while rejecting the Appellant's plea to reduce the award.
40. That said, the court has noted that the Respondent while addressing the question of assessment of damages has on this appeal introduced new authorities such as decisions Nyatogo -vs- Mini Bakeries Limited (Civil Appeal E038 of 2021) [2023] KEHC 1593(KLR) which were not canvassed before the lower court. In that regard, the court entirely agrees with the disapproval expressed towards such conduct by Ochieng J (as he then was) in his judgment in Silas Tiren & Another v Simon Ombati Omiambo [2014] eKLR.
41. The learned Judge in taking exception to the introduction of new authorities at the appeal stage, stating inter alia that:

“None of these 3 cases were placed before the trial court ... in effect the learned trial magistrate was not given the benefit of the case law which has now been placed before me, on this appeal. That means that this court has been invited to assess a decision arrived at by the trial court using a yardstick that was not made available to that court. In my understanding of the law an appeal process is intended to correct the errors made by the trial court ... it should determine the correctness or otherwise of the decision being challenged, using the



same material which had been placed before the trial court... The appellate court is not, ordinarily, expected to receive new or further evidence. To my mind, the exercise of placing wholly new authorities before the appellate court and using them to either challenge or to otherwise support the decision of the trial court is not a proper use of the mechanism of an appeal.”

42. Turning now to the question of damages for loss of earning capacity, the Respondent had asserted that he was a mason earning Kes. 1500/- per day but did not tender any firm proof to the claims. That is not to say that he had no income at all. The Court of Appeal in Civil Appeal No. 203 of 2001 *Kimatu Mbuvi v Augustine Munyao Kioko* [2001] eKLR stated inter alia that:

“But there is dicta in decided cases that a victim does not lose his remedy in damages because its quantification is difficult ... we do not subscribe to the view that the only way to prove the profession of a person must be by way of production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things.”

43. In *Wambua -v- Patel* [1986] KLR 336 cited in *Kimatu’s* case, the Court grappled with the quantification of loss of earnings of a cattle trader who had sustained injuries in a road traffic accident. Even though the Court found the Plaintiff’s earnings to be rather low, and that he kept no records, the court, Apaloo J (as he then was) stated:

“Nevertheless. I am satisfied that he was in the cattle trade and earned his livelihood from that business, a wrong doer must take his victim as he finds him. The Defendants ought not to be heard to say the Plaintiff should be denied his earnings because he did not develop a more sophisticated business method ... But a victim does not lose his remedy in damages because the quantification is difficult.”

44. In submissions, the Respondent had proposed a multiplicand of Kes. 13,960.80 and a multiplier of 15 years. The multiplicand was in line with the Regulations of Wages (General) Amendment Order of 2017. This multiplicand is what the lower court considered in its assessment under this head, making no reference to the proposal by the Appellant of a multiplicand of Kes. 23,039.45 payable to a grade 3 artisan under the Regulation of Wages (General Amendment) Order 2018, and a multiplier of 16 years at 50% incapacity. Equally, despite adopting the multiplier method rather than a global award, the trial court failed, as asserted on this appeal by the Appellant, to apply the 50% disability in the quantification.

45. The Court of Appeal in *SJ -v- Francesco Di Nello & Another* [2015] eKLR, cited in the Appellant’s submissions held that:-

“Claims under the heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand, loss of earning capacity is compensated by an award in general damages, once proved. This was the position enunciated in *Fairley V John Thomson Ltd* [1973] 2 Lloyd’s Law Reports 40 at pg. 14 wherein Lord Denning M.R. said as follows: “It is important to realize that there is a difference between an award for loss of earnings as distinct



from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.”

46. While the Respondent did not tender evidence of his trade or earnings, it is apparent that the correct multiplicand was that proposed by the Appellant under the Regulation of Wages (General Amendment) Order 2018 which was in force at the time of the accident in 2018. This proposal relating to a grade 3 artisan was as follows;  $\text{Kes. } 23,0939.45 \times 12 \text{ months} \times 16 \times 50\% = 2, 211,787.00$
47. The Respondent was 38 years old when the accident occurred. Although no firm proof of the Respondent’s trade as a mason was tendered, the trial court asserting that the work of a mason required a lot of energy, held the view that the Respondent would work as a mason until the age of 45 years. The Court therefore used a multiplier of 9 years and multiplicand of Kes. 13,960.80 being the pay of a mason under the 2017 Regulations, while omitting the disability percentage from the calculation.
48. It is not clear whether this omission was intentional or due to error, as no mention of the disability percentage is mentioned in the portion of the judgment under the header Loss of earning Capacity. Evidently unhappy with his own multiplicand in the lower court, the Respondent has on this appeal seized upon the Appellant’s proposal in the lower court as his own, save for the multiplier, that is,  $\text{Kes. } 23,039.45 \times 12 \text{ months} \times 15 \text{ years} \times 50\% = 2,073,550.50/-$ .
49. In the court’s view, under the circumstances, the trial court ought to have applied the Regulations in force in 2018 and used the multiplicand proposed by the Appellant. And further applied the 50% disability finding. As for the multiplier proposed by the Respondent, it was one year less than that offered by the Appellant. Being aged 38 years and an artisan or handyman, at the material time, it is conceivable given the official retirement age of 60 years, that the Respondent would have, barring the vicissitudes of life, worked for another 15 years until the age of 53 years.
50. The assumption by the trial court that the Respondent would only have worked until the age of 45 years does not seem to consider that were it not for the disability, the Respondent would probably have continued doing menial artisanal or other odd jobs, and not necessarily masonry work, after the age of 45 in order to support himself. The multiplier of 9 years therefore appears unrealistic. More so as the Appellant herself had proposed a multiplier of 16 years.
51. Equally, the court views the Appellant’s proposal on this appeal to halve the award in the lower court by applying the disability percentage to the computation of loss of earning capacity as both opportunistic and unrealistic, given her submissions on the question at the trial. To accept such a proposal would result, in the circumstances of this case, to an award that is manifestly so inordinately low as to represent an entirely erroneous estimate.
52. Hence, in the court’s view, in order to reflect the true realities and to fairly compensate the Respondent in accordance with his position after the accident, the award under this head should be calculated as follows;  $\text{Kes. } 23,039.45 \times 12 \text{ months} \times 15 \text{ years} \times 50\% = 2,073,550.50/-$ , which sum is lower than the sum of Kes. 2,211,787.002/- proposed by the Appellant before the trial court, citing the case of John Kipkemboi & Anor v Morris Kedolo (2019) eKLR.
53. In the result, the main appeal must fail and is hereby dismissed, while the cross-appeal is allowed. Consequently, the judgment of the lower court is hereby set aside and the court substitutes therefor, judgment for the Respondent and against the Appellant as follows: -

General Damages – Kes. 2,100,000/-

Loss of earning capacity - Kes. 2,073,550.50/-



Special Damages – Kes. 147,755/-

Total - Kes. 4,321,305.50

(Four Million Three Hundred and Twenty-One Thousand, Three Hundred and Five Cents Fifty)

54. The Respondent is awarded the costs of the suit in the lower court and of the main appeal and cross-appeal.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**C. MEOLI**

**JUDGE**

In the presence of:

For the Appellant: Ms. Mwangangi

For the Respondent: Mr. Maingi

C/A: Lepatei

