



REPUBLIC OF KENYA



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**Wanyoike v Machaa alias Mwangi & another (Civil Appeal E089 of 2023)
[2025] KEHC 12627 (KLR) (25 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E089 OF 2023
GL NZIOKA, J
AUGUST 25, 2025**

BETWEEN

ANTONY KARANJA WANYOIKE APPELLANT

AND

ANTHONY MACHAA ALIAS ANTHONY MWANGI 1ST RESPONDENT

FRANCIS KURIA MUHIA 2ND RESPONDENT

*(Being an appeal from the judgment delivered on 26th September 2023 by
Hon. J. Ndeng'eri (PM), Chief Magistrate's Court Civil Case No. E018 of 2022)*

JUDGMENT

1. By a plaint dated 20th January 2022 and amended on 15th September 2022, the plaintiff [herein “the appellant”] sued the defendants [herein “the respondents”] seeking for judgment against the respondents jointly and severally for the following orders: -
 - a. General damages for pain and suffering and loss of amenities;
 - b. Special damages Kshs. 137,460;
 - c. Future medical expenses of Kshs 250,000;
 - d. Interest in [a], [b] and [c] above as at the time of filing the suit;
 - e. Costs of the suit.
2. The background facts of the case are that the appellant was riding a motorcycle registration number KMDJ 959S along Mai Mahiu- Naivasha Road on or about 23rd June 2020. That at the same time the respondent’s agent and/or driver was driving motor vehicle registration number KBN 700K Toyota Hilux along the same road.



3. It is the appellant's case that the respondent's agent drove the said motor vehicle violently and negligently and caused it to veer off to his lane whereby it threw him into the air and he landed on the tarmac, and was injured seriously.
4. The particulars of the injuries that the appellant sustained are tabulated at paragraph 6 of the amended plaint as follows:
 - a. Coma for 3 weeks
 - b. Fracture of the left femur
 - c. Fracture of the left radius
 - d. Bruises – left parietal scalp
 - e. Wound on the base of the left thumb
 - f. Subdural Haemorrhage – left parietal region
 - g. Swollen, painful, tender chest left side
 - h. Swollen, painful, tender – left arm
 - i. Swollen, painful, tender left thigh
 - j. Fracture of the skull
 - k. Brain swelling
 - l. Loss of consciousness
 - m. Left hematoma
5. However, the respondents opposed the appellant's claim and denied being the registered and/or insured proprietors of said motor vehicle. The occurrence of the accident and the manner in which the accident is alleged to have occurred was also denied. Similarly, the particulars of negligence attributed to the respondent's agent and/or driver were denied
6. The respondents averred that in the alternative and on without prejudice basis that, if the accident occurred, then the same was either solely caused by and/or substantially contributed to by the appellant. The particulars of negligence attributed to the appellant are stated at paragraph 6 of the statement of defence.
7. Be that as it may, on the 13th day of February 2022, the parties by consent entered judgment on liability in the following terms;
 - a. That judgment on liability be and is hereby entered in favour of the plaintiff against the defendants, jointly and severally, in the ratio of 75%:25%.
 - b. That the court does proceed and assess damages on reliance on the parties' respective documents.
 - c. That the medical report by Dr. Wambugu be filed and produced as defence exhibit.
 - d. That the plaintiff's counsel to file and serve his written submissions within seven [7] days from the date of filing/adoption of this consent.



- e. That the defendant's counsel to file and serve written submissions within seven [7] days of receipt of the plaintiff's submissions.
 - f. That the matter be fixed for mention to confirm filing of submissions and to take a judgment date after the lapse of the timelines specified above and special damages less 25% contribution.
8. Subsequently, the case proceeded to hearing on quantum, but before it was fully heard, the case against the 2nd respondent was withdrawn. The appellant's case was supported by the evidence of; Dr. Walter Wakabi who produced a medical report he filled after examining the appellant.
 9. The appellant also testified relying on the statement he filed alongside the amended plaint and produced the documents in support of his case.
 10. The respondent did not call any witnesses but the parties agreed that the medical report by Dr. Wambugu be admitted as a respondent's exhibit.
 11. By a judgment dated 26th September 2023, the court judgment in favour of the appellant in the following terms: -
Liability: 75:25 in favour of the plaintiff
General damages: Kshs 900,000.
Special damages: Kshs 137,460.
Kshs. 1,037,460.
Total: Kshs 778,095.
 12. However, the appellant is aggrieved by the decision of the trial court on the following grounds: -
 - a. The Learned trial magistrate erred in law and fact by failing to award general damages under the head of future medical costs whereas the same was specifically pleaded and proved by sufficient evidence.
 - b. The Learned trial magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently arriving to a wrong conclusion on the same in that:
 - i. The Learned trial magistrate misdirected herself by purporting to interpret the contents and the language used in the discharge summary and thereby declined the claim for loss of conscious/coma in spite of the uncontroverted evidence and testimony of the Appellant's Doctor and thereby arriving at an award that was inordinately low in the circumstances.
 - ii. The Learned trial magistrate erred in law and fact by finding that loss of consciousness was not proved despite the uncontroverted evidence of the Appellant's doctor and the supporting medical reports on record
 - iii. The Learned trial magistrate erred in law and fact by totally ignoring the contents of the F3 form, Medical Reports by Dr. G.K. Mwaura and Dr. W. M. Wokabi and the unchallenged evidence by PW1 on the injuries suffered by the Appellant thereby awarding inordinately low awards.



- iv. The Learned trial magistrate erred in law and fact by ignoring the evidence of the Appellant's Doctor [PW1] in its entirety and thereby arriving at manifestly low awards on quantum.
 - v. The Learned trial magistrate erred in law and fact by totally ignoring that the 3 weeks coma suffered by the Appellant were indicative of a higher degree on the severity of the head injuries.
 - c. The Learned trial magistrate misdirected herself by ignoring the principles applicable and the passage of time in the authorities she relied on.
 - d. The Learned trial magistrate erred in law and fact by not only relying on a 20 years old precedent but also failing to factor the inflationary trends.
 - e. The Learned trial magistrate erred in law and fact by ignoring the authorities submitted by the Appellant and thereby arriving at a manifestly low award.
 - f. The Learned trial magistrate proceeded on wrong principles, when assessing damages awarded for comparable injuries to the Appellant.
 - g. The Learned trial magistrate award was so manifestly low in the circumstances as to amount to an erroneous estimate of the loss suffered by the appellant with the resultant miscarriage of justice to the Appellant.
13. The appellant prays that upon hearing this appeal the court issues the following orders: -
- a. That the appeal be allowed.
 - b. The Judgement on quantum in Naivasha MCCC/E018 of 2022 be set aside and assessed afresh.
 - c. That cost of this appeal be borne by the Respondents.
 - d. That such further orders may be made by this Honourable Court as the court may deem fit to grant.
14. The trial court also awarded costs to the appellant and stated that special damages would attract interest from the date of filing suit while general damages would attract interest from date of judgment till payment in full. That costs would attract interest from the time they would be determined.
15. The appeal was disposed of vide filing of submissions and in submissions dated 15th March 2024, the appellant referred to the case[s] of, *Kemfro Africa Limited t/a Meru Express Service & another v A. M. Lubia and another* [No.2] [1982-88] L KAR 727 page 703 and *Bhutt v Khan* [1981] KLR 349 on the factors that an appellate court should to consider before interfering with an award on damages.
16. That the afore factors are that; the trial court applied the wrong principles by taking into account or leaving out of account or misapprehended the evidence so as to arrive at an inordinately high or low figure as to represent an erroneous estimate.
17. The appellant submitted that the trial Magistrate did not give a reason for her failure to award the future medical expenses, yet it was pleaded at paragraph 10[c] of the amended plaint and proved by the medical report of Dr. Wokabi and Dr. G. K. Mwaura indicating a sum of Kshs 80,000 and 250,000 respectively.



18. He referred to the cases of, *Tracom Limited & Another v Hassan Mohamed Adan* [2009] eKLR, and *Kenya Bus Services Ltd v Gituma* [2004] 1 EA 91 where the courts stated that, although future medical expenses fall within general damages, it is a special claim that must be specifically pleaded and proved.
19. That the award Kshs. 900,000 as general damages is inordinately low taking into account the nature and severity of injuries the he sustained. Further that the trial court misinterpreted the discharge summary and erroneously held that there was no loss of consciousness contrary to the evidence of Dr. Wokabi who testified that the appellant sustained a fractured skull, loss of consciousness/ three [3] weeks coma, left subdural haematoma, brain swelling and fracture of the left radius and femur. Yet there's no contrary evidence.
20. The appellant relied on several authorities to support his claim of Kshs. 6,000,000 as general damages. The said authorities as include the cases of;
 - a. *Duncan Kimathi Karaagania v Ngugi David & 3 others* [2016] eKLR where the plaintiff sustained blunt head injury with loss of consciousness for over 2 hours lacerations over the face on both sides, comminuted fractures of the maxilla bilaterally at the Le fort 11 level, compound fracture of the mandible, comminuted fracture of the right humerus, articular region of the elbow surface of the radio carpal, multiple lacerations of the hands and forearms and the High Court awarded Kshs. 4,000,000 for pain, suffering and loss of amenities.
 - b. *Re Estate of ESMK* [2017] eKLR where the plaintiff suffered head injuries with loss of conscious, severe brain oedema intraventricular haemorrhage and the High Court awarded Kshs. 5,000,000.
 - c. *Kangaroo Shuttle v Joshua Maina Ng'ang'a* [2020] eKLR, where the High Court awarded Kshs. 5,000,000 to the plaintiff who sustained severe head injuries with loss of conscious for 2 months, skull fracture, loss of teeth and paralysis of left limb.
 - d. *Tijan Kisilu v Bonfide Clearing and Forwarding Company Limited* [2018] eKLR where the plaintiff sustained blunt chest injuries, fractured ribs, bilateral fracture femur, profuse bleeding, compound fracture of the mandible and was awarded Kshs. 5,000,000 by the High Court.
21. That, the trial Magistrate ignored the afore authorities and instead relied on authorities that were decided twenty [20] years ago and did not consider inflationary trends and current jurisprudence.
22. The cases of; Terrell's Law of *Running Down Cases* 3rd Edition London Butterworths [1964] and *West [H] & Son Ltd v Shepherd* [1964] AC 326 were cited where Lord Morris Borth-y-Gest stated that, in awarding reasonable compensation, awards must be reasonable and be assessed in moderation and that it is desirable that comparable injuries should be compensated with comparable awards and to a reasonable extent be conventional.
23. However, the respondent in submissions dated 4th April 2024, referred to the case of; *Cecilia W. Mwangi & Another v Ruth W. Mwangi* [1996] eKLR where the Court of Appeal cited with approval the case of, *West [H] & Son Ltd v Shepherd* [1964] AC 326 where the court held that money cannot renew a physical frame that has been battered and shattered and that all courts can do is to award reasonable compensation.
24. He further referred the court to the case of, *Hassan v Nathan Mwangi Kamau Transporters & 5 others* NBI CACA No. 123 of 1985 where the Court of Appeal stated that inordinately high award will lead to high premiums for insurance and should be avoided for the sake of everyone in the country.



25. The respondent further relied on the case of, *Susan Kipturu v Susan Chepkatam Limarus* [2019] eKLR which state that future medical costs are in the nature of special damages and must be pleaded, but the figure need not be indicated as stated in the case of, *Tracom Limited & Another v Hassan Mohamed Adan* [2009] eKLR as it depends on several other factors and is unknown until treatment is carried out but the approximate figure can be indicated.
26. The respondent cited the case of, *Zacharia Waweru Thumbi v Samuel Njoroge Thuku* [2006] eKLR where the court stated that damages for future medical costs are irregular and outside the known established heads of damages under the law of torts. That even if it was pleaded it cannot be proved and its only treatment is carried out and paid for one cannot tell the actual cost as it is futuristic.
27. The respondent supported the award on general damages arguing that the trial Magistrate applied the right principles in arriving at the award and was guided by the nature of injuries sustained and the medical evidence adduced. That Dr. Wokabi confirmed in cross-examination that the head injury was managed conservatively and had no effect, that the appellant was fully conscious, the fractures had healed and his mental acuity was well.
28. Further, that the appellant conceded in cross-examination and re-examination that there was no mention of a comma/loss of consciousness for three [3] weeks in the discharge summary.
29. The respondent proposed an award of Kshs. 500,000 as general damages and relied on the cases of;
 - a. *Specialized Aluminium Renovators Ltd v Stephen Mutuku Musyoka* [2021] eKLR where the respondent suffered fracture to the frontal nasal bones, right orbit, frontal lobe haemorrhage contusion and bleeding into sinuses with the High Court awarding him Kshs, 500,000 as general damage
 - b. *Barnabas v Ombati* [2022] eKLR where the plaintiff suffered head and chest contusion, bruises on the right hand and waist, fracture of the right femur and right humerus, and fracture of the pelvic and the High Court awarded Kshs. 800,000 in general damages.
 - c. *Joseph Kimanthi Nzau v Johnson Macharia* [2019] eKLR where the appellant sustained fractures to the skull, clavicle and 1st and 2nd ribs, and multiple soft tissue injuries where the High Court enhanced the award of general damages from Kshs. 500,000 to 800,000.
 - d. *Gabriel Maina Mungai v Jane Wanjiku Mwaura* [2019] eKLR where the respondent suffered a head injury with loss of consciousness for three [3] weeks, fracture of the clavicle bone, cut wound on the head, soft tissue injuries to the abdomen, termination of a six [6] month pregnancy and permanent incapacity of 15%. The High Court revised downwards the award of general damages from Kshs. 1,000,000 to Kshs. 750,000.
30. The respondent submitted that the appellant relied on old authorities and which involved more severe injuries than he sustained and prayed that the appeal be dismissed.
31. At the conclusion of the arguments by the parties I note that the role of the 1st appellate court as stated by the Court of Appeal in the case of; *Selle & Another v Associated Motor Boat Co. Ltd. & Others* [1968] EA 123, is to re-evaluate the evidence afresh and arrive at its own conclusion.
32. The court stated as follows: -

“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 demeanour of a witness is inconsistent with the evidence in the case generally."

33. Pursuant to the aforesaid, I have considered the appellant's pleadings vide the amended plaint, the evidence that was adduced by the parties in relation to the claim for quantum, the submissions tendered by the parties and the judgment delivered by the trial court.
34. A perusal of grounds of appeal, reveals that the appeal is on the award on general damages and future medical expenses. In relation to general damages, I note the appellant pleaded the injuries he sustained at paragraph 6 of the amended plaint, which are already indicated herein.
35. In support thereof he, produced the following documents:
 - a. A P3 form,
 - b. A discharge summary from Nakuru County Training and Referral Hospital,
 - c. A medical report by Dr. G.K. Mwaura,
 - d. A medical report by Dr. W.M Wokabi,
 - e. A medical report by Dr. Zabron Ogutu, a radiologist.
36. On the other part, medical report prepared for the respondent's insurance company by Dr. P.M. Wambugu was produced by consent of the parties.
37. In addition, they relied on several authorities in their respective submissions, and proposed an award for general damages in the sum of; Kshs 6,000,000 and Kshs 500, 000 by the appellant and respondent respectively.
38. The judgment delivered by the trial court, indicate that the court relied on two authorities and stated at paragraph 18 thereof that;

"The court considered the injuries and factored that there was not record of loss of consciousness in the discharge summary produced".
39. It is the afore finding that the appellant faults the court on the ground that the court misdirected itself by purporting to interpret the contents and the language applied in the discharge summary and declining to take into account the injury of loss of consciousness or coma, despite that uncontroverted evidence and testimony by his doctor.
40. Pursuant to the aforesaid, I have considered the medical documents produced by the appellant to establish whether any makes reference to the fact that, the appellant was unconscious and/or in coma.



41. To start with, the P3 form filled on 7th of January 2022, indicates in section B that, the appellant was in coma for three [3] weeks with hematoma on the left parietal region. Notably, the P3 classifies the injuries as harm. In that regard, grievous harm is defined in the P3 form to mean;

“any harm which amounts to maim or endangers life or seriously or permanently injures health or which is likely to so injure health or which extends to permanent disfigurement or to any permanent or serious injury to the external or organ”.
42. The discharge summary gives details of the history the patient as presented, physical examination, investigations and treatment given while in ward. It indicates that, the patient was referred from Naivasha Level 5 Hospital where he was presented with severe headaches, inability to use lower and upper limbs, history of road traffic accident where he was hit by a car as he was riding a motorcycle. That he was ejected from motorcycle and landed on the side. Notably, the rest of that discharge summary is in medical language and a lay person cannot make much out of it.
43. Be that as it were, the content of the P3 form does not make reference to loss of consciousness. However, it is noteworthy that the appellant was treated in two other facilities at Mai Mahiu and Naivasha Sub-County Hospital before referral to Nakuru Referral Hospital.
44. Furthermore, the discharge summary in my considered opinion, is a mere summary of the treatment and/or process that was undertaken in treating the appellant. For one to conclusively rely on this discharge summary, they will require the raw data which is normally in the patient's file. Therefore, it is not conclusive.
45. The third document is by Dr G.K. Maura's medical report dated 5th January 2022. He indicates that he relied on the P3 form and the discharge summary from Nakuru Level 5 Hospital and states that the appellant sustained injuries including being in a coma for three weeks.
46. The other medical report that has been availed by the appellant is by Dr M. W. Wokabi dated 16th August 2022, which states that the appellant was involved in a road was admitted and treated for major head injuries that consisted of: loss of consciousness, left subdural hematoma, fracture of the skull and r brain swelling.
47. The 4th report is by Dr Zablou Ogotu a radiologist who took appellant's CT Scan of the head that revealed intracranial crowding due to the brain oedema, skull fracture of the vertex and scalp STI.
48. Based on the afore medical reports, it is clear that the appellant suffered unconsciousness and/or was in coma for 3 weeks. In the light of this evidence, it is the finding of this court that the trial court erred by relying entirely on the discharge summary per se and failing to consider medical documents produced by the appellant in totality.
49. Furthermore, the medical report by Dr. P.M. Wambugu produced by the respondent indicates that, the appellant suffered head injury although the doctor could not establish to what extent in the sense that he did not have the benefit of the X-rays and CT Scan which Dr. Wokabi did.
50. Moreover, both Dr. Wambugu and Dr. Wokabi were in agreement that the appellant suffered permanent disability of 8% and 10% respectively. This factor was not considered by the trial court. It suffices to note that the appellant is 24 years old and will be so permanently disadvantaged for long depending on how long he lives.
51. In addition, Dr. Wokabi also observed that the appellant was still complaining of recurrent headaches and he is likely to have them for a long indefinite period of time and like in similar cases of head injuries



possibility of him developing epilepsy will be higher than in normal circumstances. In addition, the appellant was discharged on crutches for 6 weeks after admission of 45 days.

52. On the authorities cited by the parties, I find that the authorities cited by the appellant were distinguishable in terms of injuries sustained save for the decision in the case of; Duncan Kimathi Karanja v Ngugi David & 3 Others [2016] eKLR where the injuries are comparable herein but are still distinguishable. In that case the plaintiff suffered 30% permanent disability unlike herein where the appellant suffered at most 10%. Again the plaintiff therein went through surgery and required further plastic surgery, unlike the case herein.
53. On the other part, the authorities cited by the respondent were in relation to extremely less severe injuries. Finally, the authorities relied on by the court were quite old having been delivered in the year 2004 and 2013 respectively yet the trial court failed to consider the issue of inflation and awarded even less amount after that long period.
54. As regards future medical expenses, the same was pleaded and proved by the evidence of both Dr. Wokabi and Dr. Wambugu and yet the court did not address it at all. The aforesaid reports were in concurrence that Kshs 80,000.00 is sufficient.
55. The upshot of the above is that, for reasons stated herein, I set aside the award on general damages of Kshs 900,000 and substitute it with a sum of Kshs 1, 800,000 taking it account the sum awarded as special damages and Kshs 80, 000 for future medical expenses.
56. The final judgment on quantum is as follows:
 - a. General damages-----Kshs 1, 800,000
 - b. Special damages-----Kshs 137,460
 - c. Future medical expenses-----Kshs 80,000Total-----Kshs 2,017,460
Less 25% -----Kshs. 504,365
Total sum----- Kshs. 1,513,095

The costs in trial court is awarded to the appellant. Interest on the unpaid sum is from date of judgment in the trial court.

DATED, DELIVERED AND SIGNED ON THIS 25TH DAY OF AUGUST 2025.

GRACE L. NZIOKA

JUDGE

In the presence of: -

Ms Mathu H/B for Mr Mwangi for the Appellant

Mr Karanja for the Respondent

Mr Komen: Court Assistant.

