



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bahati Agro Processors Limited v JK (A Minor Suing Through His Father and Next Friend MKN) (Civil Appeal E036 of 2024) [2025] KEHC 13121 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13121 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CIVIL APPEAL E036 OF 2024  
KW KIARIE, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**BAHATI AGRO PROCESSORS LIMITED ..... APPELLANT**

**AND**

**JK (A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND  
MKN) ..... RESPONDENT**

*(Being an appeal from the judgment and decree in the Ol Kalou Principal Magistrate's Court, PMCC No. E052 of 2024 by Hon. L.A. Mwera (Resident Magistrate))*

**JUDGMENT**

1. Bahati Agro Processors Limited, the appellant, was the defendant in Ol Kalou Principal Magistrate's PMCC No. E052 of 2024. They had been sued for a claim of general and special damages following a road traffic accident involving motor vehicle KCG 962T and the bicycle the minor was riding. As a result of the accident, the minor sustained injuries. The appellant was held 100% liable. The respondent was awarded Kshs. 20,255.00 in special damages and Kshs. 600,000.00 in general damages.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Matiri Mburu & Chepkemboi Advocates. He raised the following grounds for appeal:
  - a. The learned magistrate erred in law and fact in finding that the plaintiff/respondent had sustained a fracture when the defendants/appellants' second medical report tendered in evidence had disputed the presence of any fracture.
  - b. The learned trial magistrate erred in law and fact in awarding the respondent manifestly excessive damages.
  - c. The learned trial magistrate erred and misdirected herself regarding the principles applicable to damages awards and ignored the appellants' doctors' second medical report.



- d. The learned magistrate erred in disregarding the appellants' second medical report that had discounted the presence of a fracture.
  - e. The learned magistrate erred in finding that the plaintiff /respondent had sustained a fracture without clear evidence to that effect.
  - f. The learned magistrate's award on damages was so inordinately high.
  - g. The learned magistrate's award was based on no evidence.
  - h. The learned magistrate erred in failing to critically analyze the submissions made on behalf of the defendant/appellant and thus arrived at an unjustifiably high.
3. The respondent was represented by Chebii & Company Advocates. He argued that the award was not excessive and should not be disturbed.
  4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
  5. The appellant appealed on quantum in general damages.
  6. There are two medical examination reports with two different findings. The first report is by Dr Wellington Kiamba, dated 24<sup>th</sup> October 2023. At the time of the examination, Dr. Kiamba observed injuries as follows:
    - a. Fracture of the right tibia and fibula;
    - b. Soft tissue injuries of the right knee joint;
    - c. Soft tissue injuries of the left elbow joint;
    - d. Lacerations on the left ankle; and
    - e. Bruises on the right temporal region.
  7. When the respondent was examined on 20 June 2024 by Dr M.S. Malik, the following were his findings:
    - a. Bruises on the right side of the head;
    - b. Abrasion on the left elbow joint;
    - c. Pain in the right knee joint;
    - d. Pain in the right lower leg; and
    - e. An abrasion on the left ankle joint.
  8. These examinations were eight months apart. The accident in question occurred on October 16, 2023.
  9. The respondent called a doctor who examined the injuries. Dr Ngotho (PW3), who testified on behalf of Dr Kiamba, confirmed that the respondent sustained a fracture. MKN (PW1) informed the court that the respondent's right leg was in plaster of Paris (POP) after the accident.



10. Dr Malik opined that the respondent did not suffer any fracture, but was not called for cross-examination. The discharge summary from J.M. Kariuki Hospital also supported Dr Kiamba's report. Therefore, the learned trial magistrate arrived at the correct conclusion.
11. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint vs Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.
12. In their submissions in the trial court, the appellant proposed an award of Kshs. 80,000. The authorities on which they based their case were soft tissue injuries, whereas it was clear that the respondent sustained a fracture.
13. The respondent proposed an award of Kshs. 800,000 and cited several decisions in support of his proposal. I have reviewed the cited decisions and note that awards range from Kshs. 500,000 to Kshs. \$ 700,000 for injuries, which closely aligns with the respondent's sustained injuries. I am not persuaded that the award was excessively high. I will not interfere with the learned magistrate's award.
14. Consequently, the appeal is dismissed with costs.

**DELIVERED AND SIGNED AT NYANDARUA, THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

