



REPUBLIC OF KENYA



**Lasalo v Waruingi (Civil Appeal E079 & E080 of 2023 (Consolidated))
[2025] KEHC 12636 (KLR) (8 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E079 & E080 OF 2023 (CONSOLIDATED)
GL NZIOKA, J
SEPTEMBER 8, 2025**

BETWEEN

ZAKAYO KINYANJUI LASALO APPELLANT

AND

ISAAC MWANGI WARUINGI RESPONDENT

(Being an appeal against the decision of Hon. E. Cherop (RM) delivered on 23rd August 2023 vide Naivasha Chief Magistrate's court civil case suit E532 of 2018)

JUDGMENT

1. By a plaint dated 3rd May 2018, the plaintiff [herein “the appellant”] sued the defendant [herein “the respondent”] seeking for judgment against the respondent for:
 - a. General damages for pain and suffering and loss of amenities;
 - b. Special damages of Kshs 87,650.00;
 - c. Loss of earnings, future earnings, future medical medical expenses of Kshs 200,000 and earning capacity.
 - d. Costs and interests
2. The appellant’s case is that on or about 18th April 2017, he was travelling along the Naivasha-Kinangop road as a pillion passenger on motorcycle registration number KMDA 201Y. That when he reached Kinamba area, a motor vehicle registration number KCC 893U managed, controlled and/or driven by the respondent collided with the motor cycle.
3. That the respondent drove the vehicle carelessly and/or negligently at a very high speed that he lost control causing the accident and serious bodily injuries the he suffered.



4. The appellant pleaded that the respondent was negligent by: -
 - a. Failing to keep any or any proper outlook for other road users;
 - b. Driving the motor vehicle at a speed that was too fast in the circumstances;
 - c. Filing to have any or any proper control of the motor vehicle;
 - d. Driving without any due regard and attention;
 - e. Failing to have any or any sufficient regard for the safety of other road users and in particular the appellant herein;
 - f. Failing to brake, stop, serve, slow down or in any other manner manage or control the said motor vehicle so as to avoid the accident subject matter;
 - g. Driving recklessly and dangerously.
5. That as a result of the accident he suffered the following injuries:
 - a. Fracture-right femur;
 - b. Paralysis-right upper limb;
 - c. Injury-right brachial plexus [nerves];
 - d. Blunt injury-right shoulder.
6. However, the respondent opposed the appellant's claim and denied all averments in the plaint vide a statement of defence dated 13th August 2018. He stated that in the alternative and without prejudice basis, if there an accident occurred as the appellant may prove the same occurred without negligence on the respondent's part and was due to an inevitable accident. That, further in the alternative and without prejudice basis, if the accident occurred it was caused solely and/or substantially contributed to by the negligence deceased. The respondent tabulates the particulars of negligence of the "deceased" at paragraph 4 of plaint
7. The respondent further avers that in the alternative and without prejudice basis that if the accident occurred as alleged then it was caused solely and/or substantially contributed to by the negligence of the cyclist on whose bicycle the appellant was riding as a pillion passenger.
8. At the close of the pleading, the case proceeded to hearing. The appellant's case was supported by the evidence of [PW1] No. 76934 PC Rodgers who produce the police abstract [P.exh 1] to confirm inter alia the occurrence of the accident and P3 form [P.exh 2].
9. The appellant's case was further supported by the evidence of; [PW2] Dr. George Mwaura who produced the medical report as [P.exh 3] he filed after examining the appellant on 22nd February 2018. The report indicates that the appellant's upper limb paralysed and injuries classified as sustained grievous harm injuries.
10. The appellant on his part, adopted his witness statement as evidence in chief where he reiterated the averments in the plaint. He blamed the respondent for causing the accident as he was over-speeding and did not indicate when overtaking. That the rider of the motorcycle could not avoid it, as the accident occurred suddenly.



11. Further, that the accident occurred on the left lane where the motorcycle was being driven and they were shoved off the road. The respondent stated that he had not fully healed and feels pain in the hand and leg. Furthermore, the implants in the leg are yet to be removed.
12. However, the respondent called [DW1] No. 84867 PC Rachael Lotukon, who produced the occurrence book [D.exh 1]. and testified that the rider of the motorcycle was blamed for the accident as he swerved onto the right-lane and collided with the respondent's subject vehicle.
13. That the scene was visited by PC Kiproo and PC Kabiru and incident booked in the Occurrence Book [OB] vide No. 18/4/2017. However, she conceded that it is not clear from the OB who was to blame for the accident.
14. At the conclusion of the trial, the court delivered a judgment dated 23rd August 2023 and entered judgment in favour of the appellant as follows:
 - a. Liability----- 100% [against the defendant]
 - b. General damages-----Kshs 600,000.00
 - c. Future medical expenses-----Kshs 100,000.00
 - d. Loss of future earning capacity-----Nil
 - e. Special damages-----Kshs 87,650.00
 - Total-----Kshs 787,650.00
 - f. Costs and interest thereon from the date of this judgment
15. However, both parties are aggrieved by the decision of the trial court and appeals against it. The appellant vide a memorandum of appeal dated 24th August 2023, lists the following grounds:
 - a. That the Learned Trial Magistrate erred in law and in fact in finding that the appellant was entitled to general damages of Kshs. 600,000.00.00 which was on the lower side in view of the injuries suffered by the appellant that it presents a miscarriage of justice.
 - b. That the Learned Trial Magistrate erred in law and fact by failing to consider the appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
 - c. That the Learned Trial Magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low.
 - d. That the Learned Trial Magistrate erred in law and in fact when making his award by failing to consider the passage of time and incidence of inflation.
 - e. That the court erred by rendering a judgment that was not based on proper consideration of the applicable law and principles on award of general damages payable to the appellant herein.
16. However, the respondent in cross appeal relies on the following grounds filed vide a memorandum of appeal dated 27th September 2023:
 - a. That the Learned Trial Magistrate erred in law and in fact in failing to consider the Appellant's evidence on liability hence finding him 100% liable for the said accident which is erroneous comparable to the evidence on record.



- b. That the Learned Trial Magistrate erred in law and in fact when she disregarded the Applicants' evidence on points of law and facts with respect to quantum based on the injuries sustained by the Respondent, thereby awarding the plaintiff general damages which were inordinately high.
 - c. That the Learned Trial Magistrate erred in law and in fact in failing to pay due regard to submissions and authorities filed by the Defendants/ Applicants which were instructive on the amount of quantum that is appropriate and applicable on similar injuries as the case she was deciding.
 - d. That the Learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has thus occasioned a miscarriage of justice.
17. The appeal was disposed of vide filing of submissions. The appellant, in submissions dated 11th July 2024, argued that the appeal was on quantum, specifically the award of Kshs. 600,000 as general damages for pain, suffering, and loss of amenities.
 18. The appellant relied on the case of; Sheikh Mustaq Hassan v Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457, where the court outlined the principles an appellate court should consider before interfering with an award of damages rendered by the trial court.
 19. The appellant stated that the afore factors are that; an appellate court may interfere with an award of damages only where it is so inordinately low or high as to represent an entirely erroneous estimate, or where the trial court acted on wrong principles or misapprehended the evidence in some material respect.
 20. The appellant further submitted that the trial court did not accord sufficient weight to the medical evidence adduced in awarding the general damages of Kshs. 600,000 which was inordinately low given the nature and severity of the injuries sustained.
 21. That the medical evidence adduced demonstrates he sustained a fracture of the right femur, paralysis of the right upper limb, injury to the right brachial plexus, and blunt trauma to the right shoulder. Further, the medical report by Dr. Mwaura assessed permanent incapacitation of the the upper limb at 50% and 10% for the lower limb. That the evidence was uncontroverted and clearly demonstrates significant physical and emotional suffering.
 22. The appellant faulted the trial court for failing to apply the correct legal principles and consider the precedents cited. He argued that it is settled law that money cannot renew a shattered physical frame, however damages for pain and suffering aim to compensate and restore, as far as money can, the victim to the position he was in prior to injury.
 23. The appellant referred to Halsbury's Laws of England, 4th Edition, Vol. 12[1], page 348–883, which states that damages are awarded to compensate for physical and mental distress caused by the injury, including pain from the injury itself, intended treatment, embarrassment from disability or disfigurement, or anxiety over potential deterioration of the condition.
 24. The appellant further submitted that, in assessing quantum, awards must be moderate and assessed within a general framework of uniformity. Further courts are guided by the principle of comparability, ensuring that similar injuries attract similar awards, as was held in the case of; Tayab v Kinanu [1983] KLR 114. The appellant proposed an award of Kshs. 5,000,000 as general damages.
 25. That the following legal authorities support the proposed award of Kshs. 5,000,000 as general damages:



- a. In *Charlene Njeri Kuria v Githu Geoffrey & Another* [2016] eKLR, where the plaintiff suffered partial paralysis of the lower limbs with 60% disability and was awarded Kshs. 5,000,000.
 - b. In *Emmanuel Kombe Nzai v Basari Company Limited & Another* [2017] eKLR, where the plaintiff was awarded Kshs. 6,000,000 as general damages for; lower limb paralysis; Intestinal paralysis; Loss of bladder control; Compression of fractures of the vertebral bones T5 and T6; Fracture dislocation of the chest centre bone [manubro-sternum]; Cut wound on the head [scalp]; and Loss of consciousness with disability of the lower limbs assessed at 80%.
 - c. In *Bernard Mutisya Wambua v Swaleh Hashil* [2017] eKLR, where the High Court awarded Kshs. 6,500,000 in general damages for: fractures to the right hand side collar bone, right hand metacarpals, complete paralysis of right limb, dislocation of the right shoulder, and compound fractures to the right tibia and fibula, fractured of the left femur was also. That due to nerve injury on right hand, the hand cannot be used. The compound fractures in the right leg developed infection and was oozing pus two years since the accident. That despite many surgical interventions including K-nails implants his injured right hand and limbs have not been rehabilitated. Permanent disability was assessed 80%.
26. The appellant urged the court to set aside the award of Kshs. 600,000 and substitute it with a sum of Kshs. 5,000,000 as general damages together with costs of the appeal and interest at court rates.
 27. The respondent did not file any submissions as directed by the court and consequently the court dispensed with the same.
 28. 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.
 29. 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.”
 30. To revert to this matter herein the appeal rests on both liability and quantum. On the first issue of liability, the appellant pleaded that the respondent was to blame. The respondent blamed “the deceased” and cyclist for the accident. At no time did he nor the two officers who testified blame the appellant.
 31. Furthermore, the appellant who was an eye witness testified as to how the accident occurred. No defence witness controverted that evidence. PW1 and DW1 were not investigating officers and neither did they blame the appellant.



32. The respondent having blamed a third party, the cyclist for the accident he should have enjoined him in the case.
33. Pursuant to the aforesaid, I find that the finding of the trial court on liability is proper, correct and well founded and I find no justifiable cause to interfere with it. To that extent the appeal on liability fails.
34. As regards quantum, parties appeal against amount awarded as general damages which the appellant states to be too low whereas the respondent argues that it is too high.
35. The main reasons the parties advance is that the trial court failed to consider the authorities, cited by the parties, the conventional awards in similar cases, and inflation factors.
36. In dealing with the issue of quantum I have considered injuries the appellant suffered as tabulated at paragraph 6 of the plaint, the medical documents produced by the appellant; undated medical report from Kinoo Medical Clinic prepared by Dr. G.K Mwaura in which he indicates the injuries suffered as;
 - a. Blunt injury – right shoulder
 - b. Injury- right brachial plexus [nerves]
 - c. Paralysis – right upper limb
 - d. Fracture – right femur
37. The report further states that healing is incomplete as evidenced by:
 - a. Permanent degree of incapacity assessed at 50% [upper limb] and 10% [lower limb].
 - b. Developed abscess at the implant site.
 - c. Limping gait – right lower limb. Pain and tenderness – right thigh. Paralysis – right upper limb.
 - d. Sustained grievous harm injuries
 - e. Future costs – removal of implants at a cost of Kshs. 200,000.
38. The appellant also produced a PCEA Kikuyu Hospital Patient Referral Form dated 22nd June 2017 prepared by Dr Karanja which gives the history of the injuries the appellant sustained as:

“Patient had a right femur fracture x6/52 ago and had a distal femur locking plate done at x6/52 ago. Now complains of pain and swelling at implant site.”
39. In addition, the appellant availed a P3 form which indicates injuries sustained as: - paralysis of the right upper limb due to injury of right brachial plexus; had distal and right femur fracture and classified injuries as grievous harm.
40. It is noteworthy that the respondent did not avail any medical evidence on the injuries the appellant suffered.
41. At the hearing of the case the appellant case was supported by the evidence of PW2 Dr George Mwaura already referred to herein with significant finding that the appellant suffered 50% disability on upper limb and 10% disability on the lower limb
42. Pursuant to the afore the appellant sought for general damages of Kshs 5, 000,000 and relied on two authorities but did not indicate the detailed injuries that, the victims in those cases suffered so that they can be compared with the injuries, the appellant herein suffered. The defendant on the other part suggested a figure of Kshs 200, 000 as general damages and similarly cited two authorities.



43. The trial court found authorities cited by appellant to be of severe injuries and those of defendant comparable. However, I note that, none of the victims in the authorities cited by the defendant/respondent suffered any paralysis or degree of permanent disability. Yet the appellant herein suffered considerably high degree of permanent disability. Consequently, authorities cited by the respondents relate to less severe injuries compared to those suffered by the appellant.
44. In deed the trial court noted that the “cases cited by the defence though they relate to similar injuries” but the plaintiff’s injuries “were more severe noting that he was still unable to use and/or lift his hand”.
45. On the other part, I concur the injuries in the cases cited appellant are more severe as indicated in the judgment of the trial court. If a party wants to assist the court they should not cite authorities that are of injuries that are out of character.
46. However, the other fact not considered is the period the appellant was hospitalized and the degree of disability suffered by the appellant and in particular the paralysis in the upper limb assessed at 50%.
47. Notably again the respondent did not even file any submissions in this appeal and therefore the appeal on quantum by the appellant is unopposed.
48. Having considered the injuries, the appellant suffered, the degree of permanent disability on both lower and upper limbs, the period this matter has been pending in court and the factors of inflation, I set aside the amount of Kshs 600, 000 awarded as general damages and substitute it with a sum of Kshs 1, 500, 000 as general damages.
49. The rest of the judgment is upheld. The sum awarded shall attract interest from the date of this judgment until payment in full. Each party to meet its costs of appeal.
50. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 8TH DAY OF SEPTEMBER, 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Kasiangani for the Appellant

No appearance for Respondent

Ms Hannah: Court Assistant

