



**Super Metro Limited v Ndayikengurutse (Civil Appeal E259 of 2024)
[2025] KEHC 12622 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E259 OF 2024
A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

SUPER METRO LIMITED APPELLANT

AND

CLOVINS NDAYIKENGURUTSE RESPONDENT

JUDGMENT

1. By a statement of claim dated 27/6/2024 and amended on 29/8/2024, the respondent claimed for compensation for an accident that allegedly occurred on 29/1/2024. He alleged that he was a fare paying passenger aboard Motor Vehicle Reg. No. KDG 188H belonging to the appellant which was involved in a collision with Motor Vehicle Reg. No. KBX 354W. That he sustained injuries for which he claimed general damages and special damages of Kshs.156,474/-.
2. Vide a statement of defence dated 22/7/2024, the appellant denied the claim in toto. It claimed that the respondent contributed to the accident and that the accident was caused by Motor Vehicle Reg. No. KBX 354W. That the claim was fraudulent.
3. After trial, the trial court found for the respondent and entered judgment for Kshs.650,000/- general damages and Kshs.146,074/- special damages. Interest and costs of the suit was also awarded.
4. Aggrieved by that decision, the appellant preferred this appeal vide a Memorandum of Appeal dated 13/12/2025. It set out 5 grounds of appeal that can be collapsed into 3 as follows: -
 - a. That the trial court erred in awarding Kshs.650,000/- as general damages which was excessive.
 - b. That the trial court erred in awarding Kshs.146,074/- special damages that were not proved.
 - c. That the trial court erred in finding that the respondent sustained a fracture of the clavicle during that accident.



5. This being a first appellate Court, its jurisdiction is well set out. It is supposed to analyse the evidence afresh and come to its own independent conclusions and findings. See *Selle & Another v Associated Motor Boat Ltd* [1968] EA 123. It will not ordinarily interfere with the findings of fact arrived at by the trial court unless it finds that the same was based on no evidence, was a misapprehension of the evidence or that it acted on wrong principles. See *Mwana Sokoni v Kenya Bus Service Ltd* [1982-88] 1KAR 278.
6. The respondent testified and called one more witness. His case was that on the material day, he was aboard Motor Vehicle Reg. No. KDG 188H when it was involved in an accident at Othoo along Awasi-Ahero road. He was rushed to hospital and was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital, Ahero County Hospital, Rabuor Sub-County Hospital and Ladnan Hospital. He suffered bruises to the forehead, knee joint, elbow joint and fracture of the left clavicle. He produced a Police Abstract and receipts for medication. That he underwent surgery of the chest in Nairobi.
7. PW 2 George Mwita told the Court how he filled the P3 Form and the Medical Reports dated 6/2/2024, respectively. That he did not note the fracture at the time of filing the P3 Form and making the initial Medical Report.
8. The appellant closed its case without calling any evidence.
9. The parties filed their respective submissions which I have considered. The appellant submitted that the Statement of Claim set out the nature of the injuries sustained by the respondent. That he admitted not having produced the initial X-ray report to prove fracture of the shoulder joint. That the report at page 19 of the record from Jootrh did not disclose a fracture of the clavicle. That in the circumstances the damages awarded were excessive. The cases of *Kigaraari v Aya* [1982-88] 1KAR 768 and *Michael Okello v Priscilla Atieno* [2021] eKLR were relied on in support of that proposition.
10. Further, the cases of *PF v Victor O. Kamadi & Another* [2018] eKLR, Blue *Horizon Travel Co. Ltd v Kenneth Njorge* [2020] eKLR were also relied in the proposition that the damages should be Kshs.80,000/-.
11. As regards special damages, it was submitted that the respondent had only pleaded special damages of Kshs.16,000/-. The case of *Richard Okuku Oloo v South Nyanza Co. Ltd* [2013] eKLR was cited for the proposition that special damages should not only be specifically pleaded but must be strictly proved.
12. For the respondent, it was submitted that the issues for determination were whether the trial court erred in awarding quantum and whether an award for future medical expenses should have been made.
13. That the fracture of the clavicle was not shown because no x-ray had been done at Jootrh or Ahero. That the Court gave the appellant an opportunity to call its doctor but it failed. That there was evidence that the respondent had not completely healed and required future medical treatment. That the defence having failed to call evidence, the respondents evidence remained uncontroverted. The cases of *Ngigi Kuria & Another v Thomas Ondili Oduol & Another* [2019] eKLR, *Shaneebal Ltd v County Government of Machakos* [2018] eKLR, *Janet Kaphiphe Ouma & Another v Marie Stopes International (K)* Ksm HCC No. 68 of 2007 amongst others, were cited in support of those submissions.
14. On quantum, it wa submitted that the award was fair and commensurate with the injuries sustained. The cases of *UAP Assurance Ltd & 2 Others v Rachael Warigia Ndungu* [2022] eKLR and *Roy Mackenzie v Cartrack Kenya Ltd & Another* [2012] eKLR were cited in support of that proposition. That Kshs.200,000/- should have been awarded for future medical expenses.
15. The first ground I will consider is that the trial court erred in awarding special damages of Kshs.146,074/- that were not proved. The general rule without exception, is that, special damages must



be specifically pleaded and strictly proved. See *David Bagine v Martin Bundi* [1997] eKLR. A claimant must specifically plead the pecuniary loss suffered and strictly prove the same.

16. In the present case, the respondent pleaded in his amended pleadings special damages of Kshs.156,474/-. At the trial, he produced receipts and invoice totaling Kshs.145,974/-. The fact that there was no receipt for the invoice of Kshs.130,000/- does not invalidate the claim. There is no evidence to disapprove that the respondent was attended to at the facility in question. An invoice is evidence of a financial obligation, and therefore special damage incurred. That ground fails.
17. The second ground for consideration is that the trial court erred in finding that the respondent sustained a fracture of the clavicle during the accident. That the initial medical treatment notes and report did not contain this particular injury. That it was only introduced after the respondent visited Ladnan Hospital in Nairobi.
18. The Court has considered the evidence in totality. In the Plea, the respondent alleged that one of the injuries he sustained was injury on the shoulder joints. The Referral Form from Ahero County Hospital, which was the initial medical institution where the respondent was treated showed that the diagnosis was a possible fracture to the left shoulder. It referred the respondent to Jooth for X-ray (Left) shoulder and for further management.
19. Where the problem arose, which was sheer negligence was at Jooth. Instead of carrying out an X-ray of the left shoulder as requested by the Referral Form from Ahero Hospital, Jooth carried out an X-ray of the abdomen. That is why there was no discovery of the fracture. The respondent had no control of where the X-ray was to be undertaken. He had surrendered himself as a Lay person to the expertise of the personnel at Jooth who did their own X-ray and not as requested. He testified that it is because of the continued pain on the shoulder that he sought medical attention at Ladnan Hospital Nairobi, 12 days later. That is where an X-ray revealed the fracture of the clavicle.
20. Indeed, the testimony of CW 2 was that, a fracture cannot be discovered readily without an X-ray. That the continued and persistence pain on the shoulder was an indication that there may have been a fracture.
21. In view of the foregoing, the Court rejects the appellant's contention that the fracture may have been as a result of an independent injury not connected to the accident. That ground also fails.
22. The third and final ground was that the award of Kshs.650,000/- in general damages was excessive. The principles applicable for an appellate Court to interfere in an award by a trial court has been settled by the Court of Appeal. In *Kemfro Africa Ltd t/a Meru Express Services Gathogo Kanini v A. M Lubia & Another* [1982-88] 1KAR 777, the Court of Appeal held:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be 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 wholly erroneous estimate of the damages.”

23. In *Stanely Maore v Geoffrey Mwenda* [2004] eKLR, the Court of Appeal held: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should



be that comparable injuries should as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

24. In the present case, the pleaded and proved injuries were, bruises on the forehead, knee joint, elbow joint and fracture of the left clavicle. In *Seth Kipkoech Muttai & Another v John Simiyu Nalunyu* (CA 56 of 2023) (2025) KEHC 3837 (KLR), the High Court upheld an award of Kshs.400,000/- for fracture of right clavicle amongst other injuries.
25. In *H. Young & Company E. A Ltd v Edward Yumasi* (2016) eKLR, the High Court upheld an award of Kshs.500,000/- in 2016 for deep cut wound on the elbow joint, wrist, pain in the head and chest and fracture of the right clavicle.
26. In Board of Trustees Anglican Church of *Kenya Diocese of Marsabit v Adano Isacko* [2019] eKLR, the High Court upheld an award of Kshs.700,000/- for deep cut wound on the head, bruises on the knee, cerebral concussion, fracture of the right clavicle bone and deep cut wound on the left elbow.
27. In *Jazon Chomba Thiaka v Samuel Maina Warui & Another* [2024] KEHC 13847 (KLR), the High Court set aside an award of Kshs.120,000/- and substituted the same with Kshs.400,000/- for a cut on the left eye, bruises on the forehead abrasions on the left elbow and knee and fracture of the left shoulder.
28. Considering the aforesaid authorities juxtaposed with the proved injured in this case, viz, bruises on the forehead, knee joint, elbow joint and fracture of the left clavicle bone, the award of Kshs.650,000/- is excessive. The Court will set it aside and substitute the same with an award of Kshs.500,000/-.
29. The respondent claimed that the court awards Kshs.200,000/- for future medical expenses. Although that was pleaded in the amended plaint and testified on by CW2, there was no Cross-appeal in this appeal to warrant its consideration. The same is therefore rejected.
30. Accordingly, the appeal is partially successful. The same is allowed as follows:-
 - a. General damages of Kshs.500,000/- together with interest from the date of judgment until payment in full.
 - b. Special damages Kshs.145,974/- together with interest from the date of the suit until payment in full.
 - c. Each party to bear own costs of the appeal.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

