



REPUBLIC OF KENYA



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**Lochab Transport Ltd & another v Kosgei (Civil Appeal  
51 of 2020) [2023] KEHC 4006 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 4006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL 51 OF 2020**

**SM MOHOCHI, J**

**MAY 4, 2023**

**BETWEEN**

**LOCHAB TRANSPORT LTD ..... 1<sup>ST</sup> APPELLANT**

**ROBERT KIPKOECH KIRUI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PAUL KIMUTAI KOSGEI ..... RESPONDENT**

*(Being an Appeal from the Judgement of Hon. Charles Obulutsa (Chief Magistrate) delivered on 26th May, 2020 in Eldoret CMCC NO. 329 of 2018)*

**JUDGMENT**

1. The appeal is on quantum.
2. On 22<sup>nd</sup> March, 2018, Paul Kimutai Kosgei (Deceased), the Respondent herein filed suit by way of a Plaint dated 15<sup>th</sup> March, 2018, seeking general damages for pain, suffering and loss of amenities and loss of future earning capacity, special damages and future medical expenses for injuries he sustained from a road traffic accident that occurred on the 17<sup>th</sup> July, 2016 at around 3:00pm along Eldoret-Webuye road at Maili Tisa.
3. The accident involved motor vehicle registration number KBK 960H Trailer that was being driven by the deceased and motor vehicle registration number KBE 902H Trailer said to have been driven by the 1<sup>st</sup> Defendant and owned by the 2<sup>nd</sup> Defendant, now Appellants.
4. In a joint statement of defence dated 4<sup>th</sup> March, 2018, the Appellants herein denied the occurrence of the said accident. In the alternative, they blamed the Respondent for occasioning the said accident.
5. The trial Court in its Judgment delivered on 25<sup>th</sup> day of May, 2020, found the Appellants 90% liable and assessed damages as hereunder:-



- a. General Damages..... Kshs.3,000,000/=
  - b. Special Damages..... Kshs.131,432/=
  - c. Loss of earnings.....Kshs.2,000,000/=
  - d. Future medical expenses..... Kshs.1,500,000/=
  - e. Less 10% contribution .....Kshs.663,143.20/=
  - f. Total .....Kshs.5,968,288.80/= Plus, costs and interests
6. The Appellants were aggrieved by the Judgment of the lower Court and filed a memorandum of appeal dated 17<sup>th</sup> June, 2020 citing the following grounds: -
1. That the Trial Magistrate erred in law and fact in awarding general damages that inordinately high that were not commensurate with the injuries sustained.
  2. That the Trial Magistrate erred in law and fact in awarding future medical expenses that was neither specifically pleaded nor strictly proved thereby arriving at an erroneous award.
  3. That the Trial Magistrate erred in law and fact in applying wrong principles and approached in the assessment of loss of earnings and or future earning capacity which had neither been specifically pleaded.
  4. That the Trial Magistrate erred in law and fact in failing to evaluate all the evidenced adduced and take into accounts documents tendered vis a vis the pleadings especially medical report prepared by Dr. Sokobe dated 21<sup>st</sup> January, 2020 and produced by the defence and thereby coming into a wrong conclusion leading to awarding higher damages which were unjustified in the premises.
  5. That the Trial Magistrate erred in law and fact in failing to take into account the evidence and submissions of the Appellants which lead to a wrong conclusion,
  6. That the Trial Magistrate erred in law and fact in failing to consider the evidence in totality hence arriving at erroneous award of damages due to the Respondent.
7. The appeal was canvassed by way of written submissions. The Appellants filed their submission on 9<sup>th</sup> January 2023, whereas the Respondent filed his submissions on 17<sup>th</sup> January, 2023.

### **Appellants' Written Submissions**

8. The Appellants submitted that award on general damages was not commensurate to the injuries that were sustained by the Respondent. They urged the Court to set aside the Award of Ksh. 3,000,000/= as general damages and substitute the same with Ksh. 1,000,000/=.
9. In support of their submissions, the Appellants relied on the case of Jesky enterprises Limited and another V Nancy Wachinga Wanjiru and another [2019] where the Court awarded general damages of Kshs.850,000/= for bilateral tibia fibula compound fractures, right hip dislocation, chest pain, multiple bruises and cut wounds on both limbs, multiple cut wounds on the trunk posteriorly and the case of George Ombakho & another V Fidelis Mayende [2019] eKLR where an award of Kshs.1,000,000/= was upheld for a clamant suffered segmental tibia-fibula compound fractures on both legs. Pain and suffering and loss of amenities Kshs. 1,000,000/=.



10. On loss of future earnings, the Appellants argued that the Respondent did not plead that he was rendered useless as a result of the said accident and thus could not generate income or secure alternative employment. The Appellants maintain that a claim on loss of future earning capacity should have been sustained under the award of general damages. To buttress their submissions, the Appellants cited the case of *SJ V Francesco Di Nello & another* [2015] eKLR.
11. The Appellants contend that, the Respondent now deceased is neither entitled to damages for loss of earnings or loss of future earning capacity. The Appellants maintain that the said award was made without a basis and should therefore be set aside.
12. Regarding future medical expenses, the Appellants contend that the same was baseless and unfounded. The Appellants argued that special damages must not only be pleaded but also strictly proved. The Appellants submitted that in his prayers, the Respondent sought costs of further treatment to be assessed by the Court guided by a medical report. The Appellant further submitted that the Respondent had relied on the medical report by Dr. Omuyoma which did not indicate the basis or the amount proposed for further treatment or the nature of treatment. From the report that was done by Dr. Sokobe, the Appellants maintain that future medical expenses were assessed at Kshs. 100,000/= which amount was only required for purposes of removing implants.
13. The Appellants urged the Court to set aside the award of Kshs. 1,500,000/= that had been given by the trial Court as costs for future treatment and in its place substitute it with the award of Kshs. 100,000/=.

#### **The Respondent's Submissions.**

14. On the issue of quantum, the Respondent submitted that the award of damages in exercise of discretion by the trial Court. The Respondent cited the case of *Henry Hiday Kanga V Manyem, a Manyuka* [1961] E.A 705 at 713 and *Kemfro Africa Ltd T/A Meru Service Gathongo Kanini V A.M Lubia and Olive Lubia* [1982-88] KAR 727 in support of their submissions.
15. The Appellants argued that for an Appellate Court to disturb the general damages awarded by the trial Court, then it must be satisfied that the trial Court in assessing the said damages applied a wholly erroneous principle of law and or the amount awarded was inordinately low or inordinately high that it must have been an erroneous estimate of damages. The Respondent cited the case of *Simon Taveta V Mercy Mutitu Njeru* [2014] eKLR to support his arguments.
16. From the record the Respondent submitted that he sustained the following injuries; fracture proximal end of right tibia, compound fracture of the left tibia and fibula, severe soft tissue injuries of the right and left legs. The Respondent contends that upon being examined by Dr. Obed Omuyoma, he classified the injury as grievous harm and assessed disability from the injuries sustained at 50%. The Respondent maintains that it was in his professional opinion that the Respondent who was using a wheelchair at the time was still in need of future medical treatment estimated at approximately Kshs. 2,000,000/= as it was the opinion of the doctor that the Respondent had become permanently disabled.
17. The Respondent contends that as a result of the said accident, the Respondent then who was a driver by profession had been rendered cripple and could not continue with his driving career and thus could not provide for his young family.
18. The Respondent contended that the findings by Dr. Omuyoma was similarly echoed by Dr. Lodhia whom in his report indicated that; 'though his injuries are healing well, he will be left with considerable deformity.' That the report also affirmed the fact that the left tibia had shown non-fusion at the upper fracture part which non-fusion could invite future surgery to correct and had thus rendered



- the Respondent with a permanent leg deformity that in the long run denied an opportunity to get employment as a driver.
19. The Respondent urged the Court that from the evidentiary proof, the trial Court deemed it fit in its discretion and upon consideration of the injuries sustained to award Kshs. 3,000,000/= as general damages for pain and suffering which was fair to the circumstances. The Respondent cited the case of Zipporah Nangila V Eldoret Express Limited and 2 Others {2016} eKLR where the Court awarded Kshs. 2,400,000/= as general damages for similar injuries.
  20. The Respondent urged that Court to uphold the award of Kshs. 3,000,000/= as general damages.
  21. Regarding future medical expenses, the Respondent submitted that the same was expressly pleaded and supported by the medical reports by Dr. Omuyoma and Dr. Lodhia marked as PEXH-5 and DEXH-1 respectively. The Respondent case of Simon Taveta supra and Tracom Ltd & Another V Hassan Mohamed Aden [2009] eKLR.
  22. The Respondent contended that it is thus clear from the findings in the two reports that the two medical practitioners reached a consensus that indeed the Respondent was not fully healed and that he needed further medical attention. The Respondent maintains that the only bone of contention was that whereas Dr. Omuyoma deemed it fit to provide an estimate of the medical fees that could be expected to cover the future medical needs of the Respondent, Dr. Lodhia on the other hand chose to so conveniently fail to give an alternative estimate to counter that presented by the Respondent. The Respondent cited the case of Guardian Coach Ltd & Another V Kiptoo (Civil Appeal No. 34 of 2020 [2022] in which Honourable Justice G.W Ngenye. Macharia cited the case of Tracom Limited (supra) where the Court held that “..... We think all that will necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future expenses will require.”
  23. In light of the foregoing the Respondent urged the Court that finding on future medical expenses is legally sound and thus should not be disturbed by this Court.
  24. Regarding loss of future earnings, the Respondent cited the case of Simon Ano Mua V Kioga Mukwano (t/a Kioga Mukwano Transporters) and 2 Others [2013] eKLR.
  25. The Respondent submitted that at the trial Court, as evidenced by the payslips that were produced and marked as exhibit PEXH-7, it was established that, he was employed and used to earn Kshs. 27,920/= on a monthly basis. That it was on the basis of the said payslips that the trial Court calculated the loss of future earnings.
  26. In addition, the Respondent submitted that at the time of the accident, he was (53) years old and had (7) years to work before he could attain the age of (60).
  27. The Respondent further maintains that the claim of future earnings was expressly pleaded in the plaint and could not be termed as baseless.
  28. The Respondent argued that with a net salary of Kshs. 27,940/= the trial Court adopted the multiplier of (7) years before arriving at the sum of Kshs. 2,000,000/=.

### **Issues for Determination**

29. After going through the record, the written submissions as well as the authorities cited by both parties, I opine that the following are the issues for determination: -
  1. Whether the Respondent pleaded for loss of earnings



2. Whether the respondent pleaded and proved loss of future earnings and whether the he was entitled to the same as a separate award
3. Whether the sum of Ksh. 1,500,000/= awarded by the trial court as Future Medical expenses was inordinately high.
4. Whether the sum of Kshs. 3,000,000/- awarded by the trial court as general damages to the respondent was inordinately high.

### **Analysis**

30. The Court of Appeal in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, cited the case of *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v. A.m. Lubia and Olive Lubia* (1982 –88) 1 KAR 727 at p. 730 where Kneller J.A. said: -

“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 a wholly erroneous estimate of the damage. See *Ilango v. Manyoka* [1961] E.a. 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltd V. Kavoloto* [1970] E.A., 414, 418, 419. This Court follows the same principles.”

31. The Court further refers to the case of *Gicheru V Morton and Another* (2005) 2 KLR 333 where the Court stated: -

“In order to justify reversing the trial judge on the question of the amount of damages, it was generally necessary that the Court of Appeal should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the Appellant was entitled.”

32. Madan, JA (as he then was), on the difficulties that confront a judge in assessment of general damages in the context of personal injuries claims as follows in *Ugenya Bus Service v Gachiki*, (1976-1985) EA 575, at page 579: -

“General damages for personal injuries are difficult to assess accurately so as to give satisfaction to both parties. There are so many incalculables. The imponderables vary enormously. It is a very heavy task. When I ponderingly struggle to seek a reasonable award, I do not aim for precision. I know I am placed in an inescapable situation for criticism by one party or the other, sometimes by both sides. I also therefore do not aim to give complete satisfaction but do the best I can.”

33. On the basis of the above authorities, I will now proceed to analyse the aforementioned issues.



## Issue No.1

34. It is trite that parties are bound by their pleadings. In the case of Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR it was held: -

“It is now very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”

35. The Appellants in this case contend that the respondent did not plead for loss of earnings and therefore the trial Court erred in awarding the same.

36. This position is misplaced. A perusal of the plaint clearly shows that the Respondent did plead for the same. Precisely at paragraph 7 of the plaint the Respondent pleaded thus “the plaintiff prior to the said accident was in good health was a driver and 55 years of age at Motrex Limited earning a salary of Ksh.27, 920/= a month which the plaintiff has lost”.

37. The trial Court therefore did not err in considering the same.

## Issue No.2

38. The Appellant contended that the Respondent did not plead that he was rendered useless from the accident and therefore he could not generate any income or secure alternative employment.

39. It was also the Appellants’ contention that claims for loss of future earning capacity should be absorbed under general damages.

40. The latter position is incorrect. I am guided by the authority of SJ vs. Francesco Di Nello & Another [2015] eKLR where the Court of Appeal made a distinction between loss of earning capacity and loss of future earnings in the following terms: -

“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 vs. 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.”

41. Similarly, in the Court of Appeal in Butler vs. Butler [1984] KLR 225, as follows: -

- a. A person’s loss of earning capacity occurs where as a result of injury, his chances in the future of any work in the labour market or work, as well paid as before the accident are lessened by his injury;



- b. Loss of earning capacity is a different head of damages from actual loss of future earnings. The difference is that compensation for loss of future earnings is awarded for real assessable loss proved by evidence whereas compensation for diminution of earning capacity is awarded as part of general damages;
- c. Damages under the heads of loss of earning capacity and loss of future earnings, which in English law were formerly included as an unspecified part of the award for pain, suffering and loss of amenity, are now quantified separately and no interest is recoverable on them;
- d. Loss of earning capacity can be a claim on its own, as where a claimant has not worked before the accident giving rise to the incapacity, or a claim in addition to another, as where the claimant was in employment then and/or at the date of the trial;
- e. Loss of earning capacity or earning power may and should be included as an item within general damages but where it is not so included it is not improper to award it under its own heading; and
- f. The factors to be taken into account in considering damages under the head of loss of earning capacity will vary with the circumstances of the case, and they include such factors as the age and qualifications of the claimant; his remaining length of working life; his disabilities and previous service, if any.

42. It is thus apparent from the above precedent that it is the loss of earning capacity that can be absorbed under general damages and not the loss of future earnings. Loss of future earnings should be considered separately as the trial Court did.
43. So did the Respondent plead loss of future earning capacity? The Court should make an award for loss of future earning capacity once it is satisfied that the same was specifically pleaded.
44. I have perused the Complaint dated 15<sup>th</sup> March 2018 and I do note that the Respondent did not specifically plead for future earning capacity and the trial Court thus erred in making an award on it.
45. The relief not founded on the pleadings should not be made. In *Gandy V. Caspar Air Charters Ltd [1956] 23 EACA*, 139 the former Court of Appeal for Eastern Africa expressed itself as follows on the purpose of pleadings:

“...the object of pleadings is, of course, to secure that both parties shall know what are the points in issue between them; so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent. As a rule relief not founded on the pleadings will not be given.”

**\* Issue No.3**

46. The law on future medical expenses is well settled. The Court of Appeal in the case of *Tracom Limited & Another –vs-Hasssan Mohamed Adan [2009] eKLR* stated: -
- “...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can



award it. In the case of *Kenya Bus Services Ltd vs. Gituma* (2004) 1 EA 91, this Court, stated:

“And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require...”

47. In the instant case, the Respondent prayed for future medical expenses to be assessed by the Court guided by the Medical Report.
48. The Appellant urged this Court to substitute the trial Court’s award of Ksh. 1,500,000/= as future medical expenses with Ksh. 100,000/= on the strength of the Medical Report by Dr. Sokobe.
49. According to the Respondent the aforesaid doctor clearly stated that the Respondent would require Ksh. 100,000/= for removal of implant whereas Dr. Omuyoma in his medical report did not indicate the basis for the amount proposed for further treatment or the nature of treatment.
50. The lower Court granted Ksh. 1,500,000/= under this head on grounds that the respondent had not healed and would require further treatment. The court relied on the medical report by Dr. Omuyoma for reasons that unlike Dr. Lodhia he had given an estimate. The trial Court did not consider the medical report by Dr. Sokobia which by consent of the parties was to be attached to the submissions of the Appellants.
51. The record of Appeal at page 48 indicates the contents of the aforementioned consent. The Respondent was to undergo further medical examination and the medical report thereof to be attached to the submissions within 14 days of the examination.
52. The trial court therefore erred by not considering the medical report by Dr. Sokobia which was prepared subsequently and attached to the Appellants’ submissions pursuant to the Parties’ consent recorded in court on 6.1.2020.
53. I have perused all the medical reports on record. I do note that Dr. Omuyoma just gave an estimate of Ksh. 2,000,000/= for further treatment. He did not state the basis of the proposed amount and the nature of treatment as correctly submitted by the Appellants.
54. Dr. Sokobe report was substantive on this issue as he specified the nature of the treatment and the basis for the proposed figure of Ksh. 100,000/= This court should thus be persuaded by this report and proceed to set aside the award under this head and substitute it with Ksh. 100,000/=.



#### Issue No. 4

55. It is trite that similar injuries should attract comparable awards. In the case of Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [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.”

56. As a result of the accident, the respondent sustained the following injuries: -

1. Fracture proximal end of the right tibia
2. Compound Fracture of the left tibia and fibula
3. Severe soft tissue injury of the right leg
4. Severe soft tissue injury of the left leg.

57. The Respondent before the lower court submitted for ksh.3,000,000/= as general damages placing reliance on the case of Razi Amin Kulaten vs 1. Claus Kruger 2. Rosemary Nyakinyua [2004] eKLR where the court awarded General damages of Ksh. 600,000/= for a claimant who had sustained Fracture of tibia/fibula and patella on the right leg; Potts fracture on left ankle; Severe strain with rupture of cruciate ligaments (left knee); & Fracture of metatarsal bone (left foot). The Doctor herein recommended operation of “cruciate ligament repair”. There was continued pain on left ankle and foot. The Doctor found that the Plaintiff had prolonged treatment for 6 months and could not continue to work as a driver. He was walking in crutches at the time of trial.

58. Whereas the Appellants proposed Ksh. 500,000/= as general damages. They relied on Tirus Mburu Chege & another v J K N (minor suing through the next friend and mother D W N & another [2018] eKLR where the High Court on Appeal substituted the sum of Ksh. 800,000/= as general damages with Ksh. 500,000/= for a claimant who had sustained Fractures tibia and fibula on both legs; Blunt injury on the forehead; Broken upper right second front tooth; & Broken upper right second front tooth and the case of Civicon Limited v Richard Njomo Omwancha & 2 others [2019] eKLR where the High court awarded Kshs, 500,000/= to the 3<sup>rd</sup> a party who sustained the injuries of fracture of four upper teeth, cut wound on the upper and lower lips, swollen and tender upper lip, bruises on the chin, dislocation on the left shoulder, bruises on right knee, fracture of the right tibia and fibula in addition to a 30% permanent disability as she was unable to walk without support.

59. The authorities relied on by the Appellants before the lower court and in this Appeal are not comparable. The injuries sustained by the claimants in those cases were less severe compared to the injuries sustained by the Respondent herein.

60. The injuries in the Authority relied on by the Respondent before the lower court were almost similar to those of the Respondent in the present case.

61. In this Appeal the Respondent relied on the case Ziporrah Nangila v Edoret Express Limited & 2 others (supra) in this case the claimant sustained Bilateral leg injuries; right wrist injury; Fracture dislocation of the right ankle; comminuted compound fracture of the distal and fibular; Fracture of the left distal and tibia and fibular; Extensive skin loss with bones exposed in the right tibia. The degree of incapacitation was assessed at 70%, and the claimant had experienced a lot of pain having undergone 28 operations.



62. It is apparent therefore that the injuries in the above case were more severe compared to the injuries sustained by the Respondent herein.
63. I have looked at the following comparable authorities: -
- a. David Mutembei v Maurice Ochieng Odoyo [2019] eKLR, the respondent suffered injuries of a fracture of the right femur and a proximal fracture of the left tibia and was awarded general damages of Kshs. 1, 600, 000.00 had the same reduced on appeal to Kshs. Kshs. 800, 000.00
  - b. Godfrey Wamalwa Wamba & another vs. Kyalo Wambua [2018] eKLR, where the appellant sustained a compound fracture of the right distal tibia/fibula, cut wounds on the scalp and chest and a cut on the lower lip, he was in hospital for three weeks, he underwent surgery for repair of the fibula. The doctor testified that his leg had shortened and needed corrective surgery. The trial court awarded him general damages at Kshs. 700, 000.00, which the appellate court upheld
  - c. Wakim Sodas Limited vs. Sammy Aritos [2017] eKLR, the respondent sustained a fracture of the fourth rib and a compound fracture of the left tibia/fibula. The trial court awarded Kshs. 400, 000.00, which was upheld on appeal
  - d. James Gathirwa Ngungi vs. Multiple Hauliers (EA) Limited & Another [2015] eKLR the plaintiff suffered compound commuted fracture of the right tibia Compound Comminuted fracture of the right fibula, fracture of the left proximal radius, fracture of left ulna, head injury, deep cut wound of the parietal region about 4cm, soft tissue injury and bruises of both hands' multiple facial cuts and lacerations and pathological/ re-fracture of the right leg. Court awarded Kshs. 1,500,000/=.
64. It is not in doubt that the Respondent herein sustained severe injuries, which resulted in permanent disability. Both doctors concurred that the Respondent had not fully healed and would require further treatment.
65. Taking into consideration the more recent decisions on similar injuries cited above and the inflationary trends, it is my view that the award by the trial court was on the higher side. I opine that an award of Kshs. 850,000 would suffice as general damages.
66. In the end, I find this appeal successful. I set aside the award of general damages of Kshs. 3,000,000/= and substitute the same with an award of Kshs. 850,000/= and the award of Ksh. 1,500,000/= for future medical expenses and substitute the same with Ksh. 100,000/= which are subject to the percentage on liability as agreed by the parties herein.
67. The Award on Future earning capacity of Ksh. 2,000,000/= should be set aside. The same is unmerited for reasons given above.
68. As the Appellants have succeeded in substantially setting aside the awards in the lower court they should get the costs of this appeal.

**SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 4TH DAY OF MAY, 2023.**

**MOHOCHI S.M (JUDGE)**

