Bhachu Industries Ltd v Kyendi (Appeal E363 of 2024)
[2025] KEELRC 2654 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2654 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL E363 OF 2024

JW KELI, J

SEPTEMBER 26, 2025

BETWEEN

BHACHU INDUSTRIES LTD ..... APPELLANT

AND

ERICKSON KIETI KYENDI ..... RESPONDENT

(Being an Appeal from the Judgment of the Hon. Ruguru Selina N. Muchungi (S.R.M) delivered on 13th December, 2024, Nairobi in MCC No. 153 of 2017)

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. Ruguru Selina N. Muchungi (S.R.M) delivered on 13th December, 2024 in MCC No. 153 of 2017 between the parties, filed a Memorandum of Appeal dated the 17th December, 2024 seeking the following orders: -

    a. The Appeal herein be allowed and the Judgment and Orders of Honourable Selina N. Muchungi (S.R.M) in the original MCCC No. 153 of 2017 delivered at Nairobi on 13th day of December, 2024 be set aside, varied and or reviewed;

    b. That the Judgment on assessment of general damages and liability made on the 13th day of December, 2024, be set aside and afresh assessment be made by this Honourable court;

    c. Such further and or other relief be granted as this Honourable court may deem fit and expedient; and

    d. The costs of this Appeal and suit before the lower court be awarded to the Appellant.

Grounds Of The Appeal

2. The Honourable Magistrate erred in Law and in Fact in finding that the Respondent was entitled to the damages awarded and finding that the Appellant was 100% liable for the accident when the Respondent was furnished with all the necessary Personal Protective Equipment (PPE).

3. The Honourable Magistrate erred in Law and in fact in finding that the nature of the injuries sustained by the Respondent warranted general damages of Ksh 450,000 for such a minor injury.

4. The Honourable Magistrate erred in Law and in fact in failing to consider the case laws, submissions and authorities cited by the Appellant against that of the Respondent in making an award for general damages.

5. The Honourable Magistrate erred in Law and in fact by applying wrong principles of law while assessing general damages which is manifestly high and excessive in the circumstance.

6. The Honourable Magistrate erred in Law and in fact in failing to consider the medical reports and medical documents tendered in regards to the injuries suffered by the Respondent herein and treatment notes supplied.

Background To The Appeal

7. The Plaintiff Respondent filed a suit against the Defendant Appellant vide a Plaint dated 25th July, 2017 seeking the following orders:-

    a. Special damages Kshs. 2,000 =;

    b. General damages for pain and suffering; and

    c. Costs and interests.

    (pages 3-4 of Appellant's ROA dated 7th May, 2025).

8. The Plaintiff filed his Verifying Affidavit dated 12th October, 2016,witness statement dated 30th August, 2016, list and bundle of documents together with the bundle of documents attached, dated 12th October, 2016 (see pages 5-16 of ROA).

9. The claim was opposed by the Defendant Appellant who entered appearance and filed a Statement of Defence dated 25th July, 2017 (pages 17-19 of ROA). They also filed a bundle of documents of even date; List of witnesses of even date and a Preliminary Objection dated 26th November, 2020(pages 20-22 of ROA). The Defendant also filed a further list of documents, a supplementary list of witnesses, a witness Statement of Amritpal Bahra Singh all dated 24th July, 2024 (pages 25-30 of ROA).

10. The Plaintiff's case was heard on the 16th September. 2024 where the Plaintiff testified in the case, relied on his witness statement as his evidence in chief, produced the documents attached to his list of documents, and was cross-examined by counsel for the Defendant Mr. Kori (pages 110-112 of ROA).

11. The Respondent's case was heard on even date with the Respondent calling one (1) witness, Amritpal Bahra Singh, to testify on its behalf. He relied on his filed witness statement, and produced the Respondent's documents. He was cross-examined by counsel for the claimant Mr. Kamau (pages 112-115 of ROA).

12. The parties took directions on filing of written submissions after the hearing. The parties complied.

13. The Trial Magistrate Court delivered its judgment on the 13th December,2024 in favour of the Plaintiff awarding the Plaintiff a tune of Kshs. 452,000 - comprised of general damages and special damages (judgment at pages 85-87 of Appellant's ROA).

Determination

14. The appeal was canvassed by way of written submissions. Both parties complied.

Issues for determination

15. The Appellant submitted generally on the substance of appeal in its written submissions dated 4th June, 2025.

16. Conversely, the Respondent submitted two(2) issues for the Court's determination namely: whether there was an error by the trial court in finding the appellant 100% liable for the accident; and whether the quantum of damages was inordinately excessive.

17. The court on perusal of the grounds of appeal finds the issues placed by the parties before it for determination in the appeal are-

    i. Whether there was an error by the trial court in finding the appellant 100% liable for the accident;

    ii. Whether the quantum of damages was inordinately excessive.

Whether there was an error by the trial court in finding the appellant 100% liable for the accident;

Appellant's submissions

18. The Appellant submitted that it produced into evidence a PPE(protective gear) issuance record dated 26th of February, 2016. The document confirmed that the said Respondent was issued with a pair of leather gloves. (See page 27 of the Records of Appeal) During Pre-trial Conference, there was never an issue raised as to the legitimacy or authentication of the signatures of the document. The same was only raised during trial, a manner prejudicial and unfair to the Appellant. The Document formed part of the records pertaining to the Respondent herein and was produced accordingly to prove that indeed the latter was issued protective gear at work. The appellant, to buttress the foregoing, relied on the decision in Kenya Akiba Micro Financing Ltd v Ezekiel Chebii & 14 others [2012] eKLR, where the court dealt with issues of document authenticity and admissibility. The Plaintiff challenged the authenticity of certain documents, arguing that the signatures on them were not genuine. The Court allowed the documents to be admitted as evidence, noting that questions about authenticity go to the weight of the evidence rather than its admissibility. The Plaintiff's allegations required evidence to support the claim, and the court stated that it would consider all evidence before determining the credibility of weight of the documents. In this case, no evidence, rather than the Respondent's sentiments, had been adduced to rebut the credibility of the said PPE issuance document. Secondly , looking at the circumstances of the case as to how the Respondent got injured, he admitted at Page 7 of the Records of Appeal, that he supposedly noticed that the shaft holding the stabilizer was allegedly defective but failed to disclose the same to his foreman (See page 111). He literally started working for the company in 2012 and got injured on August, 2016, 4-years-experience should have been enough and sufficient for him to attain some sort of credible experience at his work-place. His failure to adapt should not fall upon the Appellant. The latter should not have suffered 100% liability if not any. The appellant submitted that the Respondent admitted that he usually negligently and carelessly chose not to wear his leather

gloves and overalls to circumvent the extent of his alleged injury during the course of his work. The Court of Appeal case of Purity Wambui Murithi v. Highlands Mineral Water Co. Ltd (2015) eKLR stated thus; "It, therefore, follows that as a general rule the employer is liable for any injury or loss that occurs to his employees while at the workplace as a result of the employer's failure to ensure their safety. Does this mean that the employer would always be liable in all circumstances regardless of what caused the accident in question? We do not think so. We say so because where an accident happens due to the employees own negligence it would be unfair to hold the employer liable. Further Section 13(1) (a) of the *akn ke act 2007 15 Occupational Safety and Health Act* provides: - "13(1) Every employee shall, while at the workplace - (a) ensure his own safety and health and that of other persons who may be affected by his acts or omissions at the workplace." the Defendant cannot be fully held liable for the negligent acts of the Plaintiff. It would be unfair and a complete injustice. The Plaintiff had the experience and accidents of this nature are unforeseeable. But they can be averted by means of being careful at work and wearing the necessary protective gear. The Plaintiff shares a certain amount of blame.

Respondent's submissions

19. On liability, the respondent told the lower court that on 20th August 2016, he was assigned duties of fitting a stabilizer into a truck. The stabilizer is used in lifting the body of a tipper lorry. He further told the trial court that he was fitting the stabilizer using a shaft. It was the respondent's evidence that the shaft was old and weak and in the process it broke making the stabilizer to fall on his right hand and crash it.it was the respondent's evidence that while performing the said duty of fitting the stabilizer onto the tipper lorry using a shaft he had not been provided with any protective devices by the appellant and in particular hand gloves. That conversely, the appellant informed the trial court that the respondent had been provided with hand gloves. According to the appellant, the said hand gloves were issued to the respondent on 26th February 2016. The appellant went further to produce a document named as PPE Issuance Record which it alleged that the respondent acknowledged receipt of the listed protective devices by signing thereon. The list of the protective devices allegedly issued to the respondent is to be found at page 27 of the record of appeal.

20. During the hearing of this matter in the lower court, the respondent denied having been issued with the protective devices contained in the PPE Issuance Record dated 26th February 2016. The respondent further denied having signed the PPE Issuance Record dated 26th February 2016. It was the respondent's evidence that the signature appearing on the PPE Issuance Record that the appellant wanted to rely on was a forgery. The PPE Issuance Record was a document that was introduced in the proceedings by the appellant. It was the appellant that wanted to rely on the PPE Issuance Record in support of its case. It was the appellant which was alleging that it had issued protective devices to the respondent. It is the appellant that introduced the PPE'S issuance records as an exhibit before the trial court. The respondent had throughout the proceedings denied having been issued with protective devices. The respondent also denied that the signature appearing in the PPE'S issuance record belonged to him. The appellant was the one alleging and which allegation had been denied by the respondent. Your lordship it is trite law that he who alleges must proof. Section 107 of the *akn ke act 1963 46 Evidence Act* states as follows:- (i) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists. (ii) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Section 109 of the *akn ke act 1963 46 Evidence Act* goes further and states as follows:- Proof of particular fact. The burden of prove as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person... Section 70 of the *akn ke act 1963 46 Evidence Act* states as follows: - If a document is alleged to be signed or to have been written wholly or in part by any person, the signature

or the hand writing of so much of the document as is alleged to be that person's handwriting must be proved to be in his hand writing. The burden of proving that the signature in the PPE'S issuance record belonged to the respondent was on the appellant. The appellant was not able to discharge that burden as it did not call in any expert witness, it did not also call a witness who was familiar with the respondent's hand writing signature, it did not also call a witness who had witnessed the respondent appending the said signature. That the appellant only called one witness DW1 who as submitted earlier had already informed the court that he joined the appellant in August 2021. He was therefore not present when the alleged hand gloves were issued to the respondent. DW1 therefore did not witness the accident occurring, he did not witness the respondent being issued with the PPE's and he did not witness the respondent signing the PPE's records dated 26th February 2016. The respondent denied having signed the PPE's issuance records dated 26th February 2016. The appellant had a burden of proving that the said signature belonged to the respondent. That the only way the appellant would have proved that the said signature had been made by the respondent was either by calling a person who was present when the said signature was made and or to call a handwriting expert to examine the said signature for purposes of confirming that it had been made by the respondent. The respondent relied on the decision in JENIFFER NYAMBURA KAMAU –VS- HUMPREY MBAKA NANDI (2013) eKLR. In that case the court of appeal while dealing with burden of proof stated as follows:- ".....we have considered the rival submissions on this point and states that section 107 and 108 of the *akn ke act 1963 46 Evidence Act* places the evidential burden upon the appellant to prove that the signature on this forms belong to the respondent. Section 107 of the *akn ke act 1963 46 Evidence Act* provides that however desires any court to give judgment to any legal right and liability dependent on the existence of facts which he asserts must prove that those facts exists. Section 109 stipulates that the burden of proof as to any particular facts lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness.The appellant did not discharge the burden under section 108 of the *akn ke act 1963 46 Evidence Act* which provides, the burden lies on that person who would fail if no evidence at all were given on either side....."

21. Further the respondent contended that the investigation report is dated 18th January 2019 approximately 3 years after the respondent sustained injuries. The said investigation report was done before DW1 joined the appellant since he joined in August 2021. The investigation report covers the period between the year 2012 and the year 2017. That the investigation report which was an internal document by the appellant clearly painted a grim picture of the working condition at the appellant's premises. That from the investigation report it is clear that the appellant did not issue its workers with protective devices and in particular hand gloves. The report by the investigator indicts the appellant for failing to issue hand gloves to its workers which had significantly increased the number of accidents to its workers. That It is therefore not true when DW1 tried to paint a rosy picture of the working environment yet the picture portrayed by the investigation report paints a different scenario on the ground all together. In his observations the investigation report at the conclusion stated as follows at paragraph 6 headlined conclusion found at page 36 of the record of appeal. Based on the above highlighted facts we opine that the insured employees have been sustaining injuries of varying degrees but usually minor some due to lack of protective gears while at work. It is therefore crystal clear that the appellant was not providing its employees with protective devices and any evidence to the contrary would be misleading. That under Section 10 (1) of the Occupation and Safety *akn ke act 2017 21 Health Act*, 2007 obligates the appellant as the employer to maintain a safe working environment by providing suitable protective clothing and appliances where necessary. As a general rule, the employer is liable for any injury or loss that occurs to his employees at the work place as a result of the employer's failure to ensure that there is safety. The second reason why the respondent blamed the appellant for his injuries was that the shaft holding the stabilizer was weak and old. The respondent told the court

that it was the first time he was working with the said shaft. He further told the court that he noted that the said shaft was old, weak and worn out due to its age and when he brought up the issue with his supervisor so that he can be provided with an alternative shaft, the supervisor dismissed his concerns and forced him to continue working with the weak and worn out shaft.

Decision on issue 1

22. The lower court on the issue of liability found as follows:- 'It is common ground that the plaintiff was an employee of the defendant at the material time and defective and old and collapsed due to the weight of the stabilizer and crushed his right hand. This as regards who was to blame, the plaintiff's evidence was that the shaft holding the stabilizer was evidence was not controverted. He also stated that he had not been issued with protective gear. He denied signing the PPE issuance form. No evidence was led to prove that he contributed to the occurrence of the accident. The defendant dwelt on the fact that they had records showing that the plaintiff had been issued with all the protective gear but their own investigator's report contradicts their evidence that they issued employees with PPEs. The report covers the period between 2012 and 2017 the same year the plaintiff got injured. The Investigators noted that there was negligence in provision of safety gear to the workers. They noted that a good number of employees did not have all the protective gear that could protect them from injuries. Their shoes were torn and were not compatible with the work they do. For the hand gloves they noted that there were none. The report concludes that the employees sustained injuries because of lack of protective gear. In any case, the protective gear listed as having been issued to the plaintiff could not have averted the injury the plaintiff sustained because the stabilizer was too heavy and could still have crushed he plaintiff's hand whether he had gloves on or not. The plaintiff sufficiently proved that the defendant breached their statutory duty of ensuring he worked in a safe environment. I therefore find the defendant 100%"

23. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. Ltd [1968] EA 123 that:- "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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 the 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 demeanor of a witness is inconsistent with the evidence in the case generally."

24. The court is further guided by the principles on appeal decisions in Mbogo v Shah [1968] EA De Lestang V.P (as he then was) observation at page 94: "I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

25. The ground of appeal on the liability was –'The Honourable Magistrate erred in Law and in Fact in finding that the Respondent was entitled to the damages awarded and finding that the Appellant was 100% liable for the accident when the Respondent was furnished with all the necessary Personal Protective Equipment (PPE)."During the hearing at the trial court, the respondent told the court that the signature on the PPEs issuance list produced by the appellant was not his. During cross-examination the respondent told the court that the shaft was old and he did not know it was defective. That even if he had worn the gloves they would not have helped as the stabilizer was too heavy. He

said it was the foreman who directed him to use the shaft. That he feared the foreman. The appellant through their witness said that if the respondent the had worn the gloves the accident would not have been severe. During cross-examination RW1 told the trial court that as per the PPE issuance record the respondent had been issued with PPEs. RW1 was not the one who issued the PPEs. He had not seen the respondent sign. That there was a safety officer James Masinde who issued the PPEs but his name and signature were not on the form. The form had signature of a former human resources manager who had not sworn a statement as he no longer works with the appellant.

26. The PPE form dated 26th February 2016 was produced before the lower court by the appellant(page 27 of ROA) . The trial court considered the weight of the evidence of the said form by consideration of the content of the investigation report produced before it. At page 35 (of ROA) one of the findings was negligence at shop floor of the appellant in provision of safety clothing. The report stated that the workers did not have gloves. The report covered the period 2012-2017. The respondent was injured in 2016. Taking the following into account the foregoing I found no basis to fault the finding of the trial court on 100% liability against the appellant. The investigation report was by the insurer of the appellant, and it established the workers had no hand gloves. The court finds on a balance of probability the forms on issuance of PPEs forms was not authentic and there was no basis to doubt the testimony of the respondent that he did not sign for the same. The appellant has not challenged the finding that the shaft was old and hence could not support the stabilizer leading to the fracture of the right hand of the respondent(see medical report at page 10 of ROA). I find no basis to disturb the finding of 100% liability(Mbogo V Shah).

Whether the quantum of damages was inordinately excessive.

Appellant's submissions

27. The appellant contended that the injury suffered by the respondent was minor and that the Trial court was incredibly too generous to award Kshs. 450,000 -. That the award is extremely exorbitant and unfair and relied on the case of Eva Karemi, Rebecca Mwonja, Judy Lebute Mwiti, Tony Gitonga, Kenfrey Mwiti Mbae & John Lumiri v Koskei Kieng & Wu Xiang (Civil Appeal 56 of 2019) [2020] KEHC 5940 (KLR) (7 May 2020) (Judgment); where Honourable Justice F. Gikonyo outlined the proper compensations for certain injuries while dismissing the Appeal. From paragraph 14 to 20 of the Judgment, the Court held; "14. In road traffic accidents, scarcely, if at all, will two individuals suffer exactly the same injuries. Thus, assessment of general damages for injuries suffered is left to the discretion of the court. Decided cases on comparable injuries, therefore, act as a guide in assessment of damages. The aim is to achieve fair compensation. 15. The 1st appellant was awarded Kshs. 70,000 -. She sustained injuries to her right thigh and bruises on her lower and upper limbs. 16. The 2nd appellant was awarded Kshs. 40,000 - for injuries on the right shoulder pain and cut wound on her mouth. 17. The 3rd appellant was awarded Kshs. 45,000 - for injuries on and pain on her back and right shoulder pain. 18. The 4th appellant was awarded Kshs. 40,000 - for cuts on the chin and right shoulder tenderness. 19. The 5th appellant was awarded Kshs. 60,000 for injuries sustained; 2cm cut on the forehead, cut wound on the right elbow and right limb (leg and ankle joint). 20. The 6th appellant was awarded Kshs. 65,000 - for injuries sustained being bruising on the forehead, hip and left ankle." In another more extreme case of Triad Coaches Limited & Another vs. Mary Mutheu Kakemu [2020] eKLR; the Injuries sustained were fractured hand, blunt injury to the wrist and ankle and finally a dislocated Ankle. The Court initially awarded Kshs. 300,000 -and then reduced to Kshs. 250,000 -. According to the Appellate Court, the trial Magistrate misapprehended the injury's nature, leading to an excessive award.

Respondent's submissions

28. Conversely, the respondent submitted that he sustained the following injuries as a result of the accident that occurred on 20th August 2016-

    a) Fracture of the metatarsal bone of the right hand

    b) Blunt trauma to the right wrist joint

29. That at the hearing hereof two medical reports were produced. The 1st medical report was by Dr. A. K. Mwaura by the respondent (found at pages 10 and 11 of the record of appeal) while the 2nd medical report was by Dr. Cyprianus Okoth Okere dated 12th June 2024(found at page 26 of the record of appeal.) That the two medical reports by the two doctors were produced by consent of both parties. The medical report by Dr. A.K. Mwaura was done on behalf of the respondent while the 2nd medical report by Dr. Cyprianus Okoth Okere was done on behalf of the appellant. The two medical reports are in agreement that the respondent sustained a fracture of the metatarsal bone of the right hand as well as blunt trauma to the right wrist joint. That the appellant's witness in his evidence admitted that the respondent was injured. He could not be expected to know the extent of the injury suffered by the respondent for two main reasons. Firstly, he was not present when the accident occurred and he did not therefore have the advantage of seeing the injury. Secondly, he is not trained medical expert. The two doctors who are trained experts in that field carried out their medical examinations and came up with the nature of the injury which both of them indicated as fracture of the metatarsal bone of the right hand. The medical reports by the two doctors were produced by consent as exhibits. It is the two medical reports that the lower court relied on in making an award on general damages. The lower court awarded the respondent Kshs. 450,000 - as general damages. That there are certain principles that guide the court when it comes to appeals on quantum. It is now settled that an appellant court will not interfere with an award of damages by the lower court unless it is satisfied that the lower court acted on wrong principles of law or made an award of damages which is inordinately high or low as to represent a wholly erroneous estimate of damages. This was stated in the case of Mugambi and Silas -Vsisaiah Gitiru Civil Appeal No. 130 OF 2002. That the trial court seriously considered the respondent's injuries. In assessing the damages the trial court did not take into account an irrelevant fact and did not leave out a relevant factor nor did it misapprehend the evidence. The appellant has not pointed out to this court the irrelevant factor the court took into account and or relevant factor the court failed to take into account in arriving at the judgment herein. The trial court was clear that it had taken into account the submissions by both parties before arising at the decision it made. The respondent's injuries as stated by the two doctors consisted of a fracture of the metacarpal bone of the right hand, Kshs. 450,000 - as general damages for a fracture of the right metacarpal bone is not excessive by all standards and compares with similar awards for similar injuries before the courts. Nairobi Civil Appeal No. 571 of 2016 Njora Samuel -Vs- Richard Nyangau Orech. The plaintiff respondent sustained a closed fracture right metatarsal bone. He was awarded Kshs. 500,000 - on 3rd August 2016. The appeal on quantum was dismissed on 3rd October 2018 and the award on quantum confirmed. Voi Civil Appeal No. 28 Of 2017 Joseph Maina Kinuthia & Another -Vs- Hannah Wanjiku Thuo. The plaintiff respondent sustained multiple cut wounds on the right hand as well as dislocation of the right small finger at the proximal interphalangeal joint. The lower court awarded general damages of Kshs. 700,000 - on 15th May 2017. The appeal on quantum was dismissed by the High court on 23rd September 2022. In Civil Appeal No. 35 Of 2020 Richard & Another -Vs-Ngomo, the respondent sustained a distal fracture of the 5th metacarpal bone and blunt trauma to the head and right elbow. He was awarded Kshs. 400,000 - as general damages. On appeal, the High Court refused to interfere with the said award, stating that the same was reasonable and did not warrant any interference.

Decision on quantum

30. The test as to when an appellate court may interfere with an award of damages was stated by Law J. A. in Butt –vs- Khan (1977)1 KAR 1 as follows:- "An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent and entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low." The court is also are guided by comparable awards. The lower court considered the authorities cited by the parties and stated that taking into account the injuries sustained by the plaintiff and residual effects and the degree of permanent incapacity, and inflation an award of Kshs. 450000 was appropriate general damages. The court noted in the decision relied on by the appellant in Triad Coaches Ltd & another v Mary Mutheu Kakemu [2020] KEHC 3271 (KLR) the injuries were stated as – 'The Appellants submitted that the medical report by Dr. Mwadena confirmed that the Respondent only suffered a fracture of the distal tibia fibula and soft tissue injuries on the wrist, which soft tissue injuries healed without any incapacity on appeal the award was Kshs. 250000 in decision delivered on the 10th September 2020.'' In the instant case, the respondent was certified by Dr. Mwaura as a disabled person with disability incapacity of 10%. The court finds that the instant injuries were more severe. The court for the foregoing reasons does not find the damages awarded as excessive. The Learned Magistrate explained the award substantially. I find no basis to interfere with the award (Butt v Khan).

31. In the upshot the appeal is held to be without merit and is dismissed with costs to the respondent.

32. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26 TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Appellant – absent

Respondent- Kamau