



**Mwaura v GMS (Civil Appeal E007 of 2023)
[2025] KEHC 13422 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E007 OF 2023
H NAMISI, J
SEPTEMBER 30, 2025**

BETWEEN

RICHARD KARIUKI MWAURA APPELLANT

AND

GMS RESPONDENT

(Being an Appeal from Judgement of Hon. W. Ngumi, Senior Principal Magistrate in Gatundu Civil Suit No. 38 of 2022 delivered on 11 September 2022)

JUDGMENT

1. This appeal arises from a suit filed by the Respondent against the Appellant and KNRT Sacco for:
 - i. General damages;
 - ii. Special damages of Ksh 11,955/=;
 - iii. Future Medical expenses of Kshs 50,000/=;
 - iv. Loss of earnings;
 - v. Costs of the suit
 - vi. Interest
 - vii. Any other relief deemed fit to grant by this Honourable Court
2. The particulars of the suit are that on 12 December 2021, the Respondent was lawfully driving his motor cycle registration number KMDT 522M along Kimbo – Kiganjo Road when he collided with motor vehicle registration number KBN 740H Nissan Matatu, which was negligently, carelessly and recklessly driven by the Appellant. As a result of the said accident, the Respondent sustained injuries involving fractured left acetabular, fractured left superior pubic ramus and haematoma left thigh.



3. In its judgement, the trial court found the Appellant 85% liable for the accident, with the Respondent shouldering 15% contributory negligence. The trial court awarded damages as follows:
 - General Damages for pain and suffering - Kshs 1,700,000/=
 - Future medical expenses - Kshs 50,000/=
 - Special Damages - Kssh 11,965/=
4. The gross award of Kshs 1,761,965/= was subjected to the 15% contribution, resulting in a net award to the Respondent of Kshs 1,497,670.25, together with costs of the suit and interest thereon.
5. Being aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
 - i. That the learned trial Magistrate erred in fact and law and misdirected herself in finding that the Respondent is entitled to general damages for pain and suffering Kshs 1,445,000/=, future medical Kshs 42,500/=, special damages Kshs 10,170/= with costs and interest;
 - ii. That the trial magistrate erred in law and in fact and misdirected herself when she failed to consider the Appellant's submissions on both points of law and facts;
 - iii. That the learned trial Magistrate misdirected herself in ignoring the principles applicable in awarding quantum of damages and relevant authorities on quantum cited in the written submissions presented and filed by the Appellant;
 - iv. That the learned trial Magistrate proceeded on wrong principles when assessing the damages to be awarded to the Respondent (to apply precedents and tenets of law applicable);
 - v. That the learned trial Magistrate failed to apply herself judicially and to adequately evaluate the evidence and exhibits tendered on quantum and liability thereby arriving at a decision unsustainable in law;
 - vi. That the learned Magistrate erred in law and fact in arriving at the said decision;
 - vii. That the learned trial Magistrate's decision was unjust, against the weight of the evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice;
 - viii. That the learned Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
6. Parties were directed to file submissions in respect of this appeal. Despite numerous opportunities to do so, the Appellant did not file any submissions.

Analysis and Determination

7. The duty of a first appellate court is well settled. It entails revisiting, re-evaluating and considering afresh the evidence presented before the trial court for the appellate court to make its own independent conclusions bearing in mind that unlike the trial court, it did not have the benefit of seeing or hearing the witnesses and give due allowance for that disadvantage. This was set out in the case of *Selle & Another vs Associated Motor Boat Company Limited*, [1968] EA 123.
8. It is trite that though an appellate court has mandate to interfere with findings of fact made by a trial court, this mandate should be exercised cautiously and only when it is clear that the trial court's



decision or finding of fact was not based on any evidence or was based on a misrepresentation of the evidence or on wrong legal principles.

9. On the issue of damages, I am guided by the celebrated case of *Kemfro Africa Limited T/a Meru Express Service Gathogo Kanini -versus- A.M. Lubia & Olive Lubia (1982-1988)*KLR 727, where 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 wither that 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 to inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

10. In the case of *Power Lighting Company Ltd & Anor -vs- Zakayo Saitoti Naingola & Anor [2008]* eKLR, the Court held:

“On quantum, the court in determining whether to interfere with the same or not, the court has to bear in mind the following principles on assessment of damages:

1. Damages should not be inordinately too high or too low;
2. They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered;
3. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts;
4. Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of Kenyan Shilling, then at the time of the judgement...”

11. Turning back to the grounds of appeal, the Appellant contends that the learned trial Magistrate erred in failing to consider his submissions. However, a meticulous review of the Record of Appeal and Supplementary Record of Appeal reveals a contrary state of affairs. At the close of the defence case on 15 May 2023, the trial court directed parties to file their submissions, granting 14 days each. The Appellant did not file any submissions despite being accorded sufficient time. It is, therefore, disingenuous for the Appellant to found grounds of appeal on the basis of the trial court’s failure to consider submissions that were never placed before it. Therefore, grounds 1 and 3 of the appeal are without basis.

12. I have keenly read the contents of the Record of Appeal and the submissions by the Respondent. The appeal herein is on one issue; quantum of damages.

13. The Respondent testified that he sustained severe injuries. The medical evidence, which was consistent across the report of Dr. G.K. Karanja and Dr. Ichamwenge Ruth, the P3 Form and the Discharge Summary from Kenyatta National Hospital confirmed the injuries. The Respondent’s treatment was extensive and arduous. He was hospitalised at Kenyatta National Hospital for one month. He underwent a major surgical procedure known as Open Reduction and Internal Fixation, during which metal plates and screws were implanted to stabilize the fractured pelvic bones. The medical reports document his ongoing complaints of pain and swelling on sitting for long hours, and occasional numbness in the left leg. He was left with multiple surgical scars on his pelvis.



14. The trial court awarded Kshs 1,700,000/= as general damages. To determine if this award is excessive, this Court must have regard to comparable awards for similar injuries.
15. In the case of Florence Hare Mkaha – Vs – Pwani Tawakal Muni coach & Another (2012) eKLR, the plaintiff fractured her right superior and inferior ramus of pubis fracture of ischium, fracture of right acetabulum, fracture lateral condyl of femur, dislocation of left knee with torn collateral ligament, skin graft surgery on left leg, shortened left leg by 4 cm. The Court awarded her Sh. 2,400,000/- general damages for pain, suffering and loss of amenities.
16. In Peace Kemuma Nyang'era v Michael Thuo and another [2014] eKLR the claimant sustained a fracture of the sacrum bone, fracture of the right pubic ramus of the pubic bone, fracture of the right ischium/inferior pubic ramus of the pubic bone, haematoma on both thighs and lumbo-sacral haematoma and was awarded Kshs. 2,500,000.00.
17. In Millicent Atieno Ochuoyo v Katola Richard [2015] eKLR, the plaintiff was awarded Kshs. 2,000,000.00 having suffered pelvic injuries with fracture of the right pubic ramus and diastasis of the symphysis pubic, small abdominal wall haematoma and minimal haemoperitoneum.
18. In Wanjohi v Kuria & another [2023] KEHC 23375 (KLR), the plaintiff sustained fractures of both inferior pubic ramii of the pelvis, fracture of the left tibia, blunt impact injuries to the chest, back and pelvis, multiple cuts to the left shin and massive swelling and scarring of the left shin. On appeal, the award of Kshs 700,000/= for general damages was substituted with an award of Kshs 1,500,000/=.
19. In the cited cases, the awards range from Kshs 1,500,000/= to Kshs 2,500,000/= for similar injuries. The award by the trial court is not only reasonable but it falls squarely within the established range. This Court finds no basis to interfere with the award for general damages.
20. Regarding future medical expenses, the award is directly supported by the expert medical evidence on record. Dr. Karanja's report explicitly states that the estimated cost of removal of the implants would be Kshs 50,000/=. This was corroborated by Dr. Ichamwenge's report. This evidence was not challenged or controverted by the Appellant. The award was, therefore, properly pleaded and strictly proved. This ground of appeal is without merit.
21. On the issue of special damages, the Respondent pleaded a sum of Kshs 11,955/=. The trial court erred slightly by awarding Kshs 11,965/=: a difference of Kshs 10/=. The Respondent produced receipts to prove the claim. Once again, this Court finds that this ground is without merit.
22. In short, the Appellant has not presented any reasonable argument that would compel this Court to interfere with the determination by the trial court. Therefore, the appeal is unsuccessful. The same is dismissed with costs to the Respondent assessed at Kshs 65,000/=.

DATED AND DELIVERED AT THIKA THIS 30 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered virtually in the presence of:

For Appellant: Mr. Njuguna h/b Kabita

For Respondent: Ms. Mungai

Court Assistant: Lucy Mwangi

