



Mwangi & 2 others v Elmi & 3 others (Civil Case 39, 40, 41 & 42 of 2013 & 45 of 2023 (Consolidated)) [2025] KEHC 13498 (KLR) (Civ) (25 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 39, 40, 41 & 42 OF 2013 & 45 OF 2023 (CONSOLIDATED)
JN MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

CHRISTINE NJERI MWANGI PLAINTIFF

AND

MOHAMMED ABDI ELM I 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 40 OF 2013

BETWEEN

CHRISTINE NJERI MWANGI (SUING AS MOTHER AND NEXT FRIEND OF KWG) PLAINTIFF

AND

MOHAMMED ABDI ELM I 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO. LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 41 OF 2013

BETWEEN



ANTHONY NDEGWA MWANGI PLAINTIFF

AND

MOHAMMED ABDI ELMI 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 42 OF 2013

BETWEEN

PRINCE KELI PLAINTIFF

AND

MOHAMMED ABDI ELMI 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 45 OF 2023

BETWEEN

RUTH WANJIRU MWANGI PLAINTIFF

AND

MOHAMMED ABDI ELMI 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

JUDGMENT

1. Christine Njeri Mwangi, the Plaintiff in Nairobi Milimani HCCC No. 39 of 2014, Christine Njeri Mwangi (suing as mother and next friend of) Kimberly Wangechi Githinji, the Plaintiff in Nairobi Milimani HCCC No. 40 of 2014, Anthony Ndegwa Mwangi, the Plaintiff in Nairobi Milimani HCCC No. 41 of 2014, Prince Keli, the Plaintiff in Nairobi Milimani HCCC No. 42 of 2014 and Ruth Wanjiru Mwangi, the Plaintiff in Nairobi Milimani HCCC No. 45 of 2014 vide their corresponding complaints dated 04/02/2013 and amended on 26/10/2018 sued Mohamed Abdi Elmi, Mega Wholesalers Ltd and Mega Transporters Co. Ltd (hereafter the 1st, 2nd & 3rd Defendant/ Defendants) seeking to recover damages and costs following a road accident that occurred on 21/04/2011 along Nairobi-Mombasa Highway at Ndi.



2. The aforesaid suits were consolidated alongside Nairobi Milimani HCCC No. 156, 155, 154 of 2014 and Nairobi Milimani HCCC No. 43 of 2013, with the latter being selected as the Court lead file. Nairobi Milimani HCCC No. 43 of 2013 was heard and determined on the question of liability, wherein the court found and held the Defendants 100% liable, jointly and severally for causing the accident in question.
3. This decision on liability holding the Defendants wholly liable for the accident shall apply to these five (5) suits presently before the Court and similarly to others in the series. The duty of the court here is therefore to assess and determine the quantum of damages, if any, to each of the Plaintiffs in the five suits.

Assessment on Quantum of Damages

4. On 03/02/2025, parties took directions in respect suits before this Court to dispose of the question of quantum by way of documents filed in evidence and written submissions by each of the plaintiffs. As at writing of this judgment only the Plaintiffs complied with directions on filing on written submissions, of which this Court has duly considered.
5. With the above in reserve, regarding this Court's role in assessing quantum of damages, it is useful at the outset to restate the applicable principles on assessment of damages. The exhortation by the English court in *Lim Poh Choo v Health Authority* (1978) 1 ALL ER 332 as echoed by Potter, J.A in *Tayab v Kinany* (1983) KLR14, quoting dicta by Lord Morris Borth-y-Gest in *West (H) v Shepherd* (1964) AC 326, at page 345 stated as follows-;

“But money cannot renew a physical frame that has been battered and shattered. All the courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process, there must be the endeavor to secure some uniformity in the method of approach. By common consent, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said and done, it still must be that amounts which are awarded are to a reasonable extent conventional.” (Emphasis added).

See also *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* [2013] KECA 528 (KLR)

6. More recently, the Court of Appeal in *SJ v FrancESCO D. Nello & Another* [2015] eKLR rendered that -;

“.....Damages must be within limits set out by decided cases and also within limits the Kenyan economy can afford. Large awards are inevitably passed on the members of the public, the vast majority of whom cannot afford the burden in the form of increased costs of insurance or increased fees. Over time, courts have held that damages should not be so inordinately low or so inordinately high as to be a wholly erroneous estimate of damage.”(emphasis added).

7. Therefore, applying myself to the above wisdom, the Court proposes to independently address the respective claims as hereunder:



HCCC No. 39 OF 2013 – Christine Njeri Mwangi

8. At the risk of repetition, pursuant to directions on disposal of the question of awardable damages, the parties hereto agreed to adduce the medical report in respect of Christine Njeri Mwangi by Dr. Ndeti dated 08/10/2016 by consent. That said, by her amended plaint, she particularized her injuries as being -; bruising on the head and face; soft tissue injuries; & fracture on the right thigh. The medical report by Dr. Ndeti that was adduced into evidence captured a variety of injuries sustained by the Plaintiff to constitute soft tissue injuries, fracture of the left ulna - distal aspect, fracture of the radius bone - distal aspect, and fracture comminuted supracondylar left femur and fracture comminuted supracondylar right femur.
9. Dr. Ndeti's opinion and prognosis was that as a result of the injuries, the Plaintiff would not be able to attend to her routine duties prior to the accident whereas the injuries have resolved with permanent deformities assessed at 45% on her of both upper and lower limbs.
10. In urging the Court to award damages to the tune of Kshs. 5,000,000/-, the Plaintiff relied on the decisions *Fatuma Diyay Farah v Abdirahman Ali Galgalo & another* [2021] KEHC 961 (KLR) wherein the claimant had sustained a fracture of the fibula & tibia, degloving injury on the right leg, blunt injury on her pelvis, blunt injury on her chest, blood loss, trauma and 35% permanent incapacitation, was awarded Kshs. 3,500,000/- as general damages; and the decision in *George William Awuor v Beryl Awuor Ochieng* [2020] KEHC 1103 (KLR) wherein the claimant had sustained fractures of the right femur and left tibia fibula, was awarded Kshs. 1,200,000/- as general damages, on appeal.
11. As earlier stated the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
12. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to her injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries.
13. By the medical report, P3 and treatment notes from Aga Khan Hospital the Plaintiff must have endured much pain in the period of morbidity after the accident including other particulars of injuries and trauma not pleaded in the plaint. Further, the injuries appear to have left her with attendant sequela to wit, the Plaintiff failed to plead as a well.
14. Comparing her injuries with those in the decisions relied on, and the award in *Fatuma Diyay Farah* (supra) where fairly similar injuries were sustained, this Court reasonably believes an award in the sum of Kshs.1,500,000/- in general damages for pain and suffering would be sufficient in the circumstance.
15. On special damages, the Plaintiff pleaded the sum of Kshs. 2,500/- being the amount spent towards preparation of the medical report. It is trite that parties are bound by their pleadings whereas this Court can only proceed to pronounce itself on issues running through the respective parties' pleadings. See: *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91 and *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] KECA 586 (KLR).
16. The law on special damage within our jurisdiction is now fairly settled. *Chesoni, J* (as he then was) in the case of *Ouma v Nairobi City Council* (1976) KLR 304 held that -:

“ Thus, for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence.....”



From the bundle of documents produced by consent the Plaintiff tendered a receipt for Kshs. 3,000/- in respect of the medical report. This Court is bound by the parties' pleadings. Accordingly, the Court is only inclined to allow the claim for special damages to the tune of Kshs. 2,500/- as pleaded in the amended plaint.

17. In the end, Christine Njeri Mwangi's claim succeeds in the following terms;
 - a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 1,500,000/- to accrue interest at Court rates from date of this judgment until payment in full.
 - c. Special damages – Kshs. 2,500/- to accrue interest at Court rates from date of filing suit by the amended plaint dated 26/10/2018 until payment in full.
 - d. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates.

HCCC No. 40 OF 2013 - Christine Njeri Mwangi (next Friend) – Kimberly Wangechi Githinji

18. Similarly, in the instant matter, disposal of the question of awardable damages was premised on documents adduced by the Plaintiff by consent. That said, by her amended plaint dated 26/10/2018, the Plaintiff's injuries were particularized as being -; bruising on the head; soft tissue injuries; & fracture on the left thigh. The medical report by Dr. Ndeti dated 08/10/2016 that was adduced into evidence captured a variety of injuries sustained by the Plaintiff to constitute bruises on the scalp, blunt injury to the chest, compound fracture of the left femur, compound fracture right femur and soft tissue injuries to the lower limbs. His opinion and prognosis on the Plaintiff was to the effect that she suffered severe soft tissue and skeletal injuries with her degree of permanent incapacitation in the lower limbs being assessed at 10%.
19. In urging the Court to award damages to the tune of Kshs. 1,500,000/-, the Plaintiff relied on the decision in George William Awuor (supra) wherein the claimant had sustained fractures of the right femur and left tibia fibula, was awarded Kshs. 1,200,000/- as general damages on appeal and the decision in Mwangi v Siloma & Another [2023] KEHC 26140 (KLR) wherein the claimant had sustained traumatic radial palsy of the left hand, fracture of distal end of the right tibia & fibula, bimalleolar fracture of the left ankle with an average permanent incapacitation of 23% premised on two (2) medical reports on the claimant therein. On appeal the claimant was awarded Kshs. 1,200,000/- as general damages.
20. As earlier stated the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
21. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to her injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries. According to the medical report, P3 and treatment notes from Aga Khan Hospital the Plaintiff must have endured much pain in the period of morbidity after the accident. Further, the injuries appear to have left her with attendant sequela, to wit, the Plaintiff failed to plead.
22. Comparing her injuries with those in the decisions relied on the Court notes that the claimant in Mwangi v Siloma (supra) sustained somewhat similar injuries to the Plaintiff herein and this Court reasonably believes an award in the sum of Kshs. 1,500,000/- in general damages for pain and suffering would be sufficient in the circumstance.



23. On special damages, the Plaintiff pleaded the sum of Kshs. 2,500/- being medical report fees pleaded in her plaint. It is duly awarded on the rational stated above.
24. In the end, Kimberly Wangechi Githinji's claim (then a minor) succeeds in the following terms-;
 - a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 1,500,000/-; to accrue interest at Court rates from date of judgment until payment in full.
 - c. Special damages – Kshs. 2,500/-; to accrue interest at Court rates from date of filing the Amended Plaint until payment in full.
 - d. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates.

3. HCCC No. 41 OF 2013 – Anthony Ndegwa Mwangi

25. Correspondingly, in the instant matter, disposal of the question of awardable damages was premised on documents adduced by the Plaintiff by consent. That said, by his amended plaint, the Plaintiff's injuries were particularized as being -; dislocation of the wrist; deformation of both thighs; & broken femur. The medical report by Dr. Ndeti dated 08/10/2016 that was adduced into evidence captured a variety of injuries sustained by the Plaintiff to constitute soft tissue injuries to the right upper limb, fracture/dislocation radio ulna bones, dislocation of right elbow, fracture right femur – distal aspect, fracture left femur & soft tissue injuries to the lower limbs. His opinion and prognosis on the Plaintiff was to the effect that he suffered severe soft tissue and multiple skeletal injuries. That the injuries have resolved with deformities, which are permanent. He assessed his degree of permanent incapacitation at 30%.
26. In urging the Court to award damages to the tune of Kshs. 1,500,000/-, the Plaintiff relied on the decision in *Otieno v South Sioux Farms Ltd* [2023] KEHC 21083 (KLR) wherein the claimant who had sustained compound fracture of the right tibia & fibula, fracture of the left ulna & radius, chest contusion and blunt trauma to the back with an average permanent incapacitation of 40%, was awarded Kshs. 3,000,000/- as general damages on appeal and the decision in *Joshua Ouma Ouko v Raymond Olendo* [2021] KEHC 13651 (KLR) wherein the claimant had sustained fracture of the right femur (comminuted), fracture of the right ulna, right maxillary sinusitis, fracture of the left radius and contusion of the neck. On appeal the claimant was awarded Kshs. 3,000,000/- as general damages.
27. As earlier stated the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
28. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to his injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries. By the medical report, P3 and treatment notes from Kenyatta National Hospital the Plaintiff must have endured much pain in the period of morbidity after the accident. Further, the injuries appear to have left him with attendant sequela, to wit, the Plaintiff failed to plead.
29. Comparing his injuries with those in the decisions relied on the Court notes that the claimant in *Otieno v South Sioux Farms Ltd* (supra) sustained somewhat similar injuries to the Plaintiff herein and this Court reasonably believes an award in the sum of Kshs. 2,800,000/- in general damages for pain and suffering would be fair and reasonable in the circumstance.



30. On special damages, the Plaintiff pleaded the sum of Kshs. 3,000/- being the amount spent towards preparation of the medical report and Kshs. 124,520/- expended towards medical expenses. It is trite that parties are bound by their pleadings whereas this Court can only proceed to pronounce itself on issues running through the respective parties' pleadings.
31. From the bundle of documents produced by consent the Plaintiff tendered a receipt for Kshs. 3,000/- in respect of the medical report and receipts in medical expenses from Kenyatta National Hospital, Maria Immaculata Hospital & Moi District Hospital - Voi totaling Kshs. 124,520/-. Thus, applying myself to the dicta in *Ouma v Nairobi City Council* (supra), *Wareham* (supra) and *North Kisii Central Farmers Limited* (supra) this Court is bound by the parties' pleadings. Accordingly, the Court is only inclined to allow the claim for special damages totaling Kshs. 127,520/- as pleaded in the amended plaint.
32. In the end, Anthony Ndegwa Mwangi claim succeeds in the following terms;
 - a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 2,800,000/-; to accrue interest at Court rates from the date of judgment until payment in full.
 - c. Special damages – Kshs. 127,520/-; to accrue interest at Court rates from date of filing suit by the amended plaint until payment in full.
 - d. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates

4. HCCC No. 42 OF 2013 – Prince Keli

33. Likewise, in the instant matter, disposal of the question of awardable damages was premised on documents adduced by the Plaintiff by consent. That said, by his amended plaint, the Plaintiff's injuries were particularized as being -; minor cuts and bruises on the face; cuts and bruises on the upper limbs; soft tissue injuries; & fracture thumb. The medical report by Dr. Ndeti dated 10/10/2016 that was adduced into evidence localized the injuries sustained by the Plaintiff to constitute blunt injuries to the anterior chest wall, blunt injury to the lower back and dislocation of the right thumb. His opinion and prognosis on the Plaintiff was to the effect that he sustained soft tissue injuries of moderate severity whereas the injuries had since resolved with slight deformity of the right thumb and residual permanent scars.
34. In urging the Court to award general damages to the tune of Kshs. 500,000/-, the Plaintiff relied on the decision in *Blue Horizon Travel Co Ltd v Kenneth Njoroge* [2020] KEHC 8431 (KLR) wherein the claimant who had sustained various soft tissue injuries and a fracture, was awarded Kshs. 400,000/- as general damages on appeal and the decision in *Edwin Otieno Japaso v Easy Coach Bus Company Limited* [2016] KEHC 3398 (KLR) wherein the claimant had fracture on the right small finger and on the hip bone head and pelvic bone with a degree of permanent incapacitation of 25%. On appeal the claimant was awarded Kshs. 500,000/- as general damages.
35. As earlier stated the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
36. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to his injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries. By the medical report and P3 the Plaintiff did not endure much pain in the period of morbidity after the accident. Further, the injuries do not seem to have left him with any attendant sequela.



37. Comparing his injuries with those in the decisions relied on the Court notes that the claimant in Blue Horizon Travel Co Ltd (supra) and Edwin Otieno Japaso (supra) sustained relatively severe injuries as compared to those sustained by the Plaintiff herein. By the medical evidence, the Plaintiff sustained a dislocation and soft tissue injuries. Therefore, this Court reasonably believes an award in the sum of Kshs. 350,000/- in general, damages for pain and suffering would be sufficient in the circumstance.
38. On special damages, the Plaintiff pleaded the sum of Kshs. 2,500/- being the amount spent towards preparation of the medical report.
39. From the bundle of documents produced by consent the Plaintiff tendered a receipt for Kshs. 3,000/- in respect of the medical report. Applying myself to the dicta in Ouma v Nairobi City Council (supra), Wareham (supra) and North Kisii Central Farmers Limited (supra) this Court is bound by the parties' pleadings. Accordingly, the Court is only inclined to allow the claim for special damages to the tune of Kshs. 2,500/- as pleaded in the amended plaint.
40. In the end, Prince Keli's claim succeeds in the following terms;
 - a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 350,00,000/-; to accrue interest at Court rate from the date of judgment until payment in full.
 - c. Special damages – Kshs. 2,500/-; to accrue interest at Court rate from date of filing suit by the amended plaint until payment in full.
 - d. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates.

5. HCCC No. 45 OF 2013 – Ruth Wanjiru Mwangi

41. Finally, in the instant matter, disposal of the question of awardable damages was premised on documents adduced by the Plaintiff by consent. That said, by her plaint, the Plaintiff's injuries were particularized as being -; deformation of both thighs; fracture of the femur; & soft tissue injuries. The medical report by Dr. Ndeti dated 08/10/2016 that was adduced into evidence localized the injuries sustained by the Plaintiff to constitute soft tissue injuries to right & left lower limb and comminuted fracture of right & left femur. His opinion and prognosis on the Plaintiff was to the effect that he sustained severe soft tissue injuries and multiple skeletal injuries. That the injuries have resolved with deformities rendering the Plaintiff with permanent incapacitation of 15%.
42. In urging the Court to award damages to the tune of Kshs. 2,000,000/-, the Plaintiff relied on the decision in Denshire Muteti Wambua (supra) wherein the claimant whom had sustained multiple fractures involving the right femur, left femur and left scaphoid bones; dislocation of left elbow joined associated with a fracture of the radial head; dislocation of left lunate bone and bruises parietal scalp, was awarded Kshs. 1,500,000/- as general damages on appeal and the decision in Regina Mwikali Wilson v Stephen M. Gichuhi & another [2015] KEHC 6809 (KLR) wherein the claimant sustained multiple fractures of the right side involving the 3rd, 4th, 5th and 6th ribs, comminuted fractures of the right radius bone; fracture of the femur involving the neck; shaft and supra condoler region which was severely comminuted in many pieces; fractures of the right tibia and fibula bones on the same leg with a degree of permanent incapacitation of 20%. The claimant was awarded Kshs. 2,500,000/- as general damages.
43. As earlier stated the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.



44. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to his injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries. By the medical report, P3 and treatment notes from Kenyatta National Hospital the Plaintiff appears to have endured much pain in the period of morbidity after the accident meanwhile the injuries seem to have left her with attendant sequela.
45. Comparing her injuries with those in the decisions relied on, the Court notes that the claimants in Denshire Muteti Wambua (supra) and Regina Mwikali Wilson (supra) sustained relatively severe injuries as compared to those sustained by the Plaintiff herein. Therefore, this Court reasonably believes an award in the sum of Kshs. 1,500,000/- in general damages for pain and suffering would be sufficient in the circumstance.
46. On special damages, the Plaintiff pleaded the sum of Kshs. 2,500/- being the amount spent towards preparation of the medical report.
- Accordingly, the Court is only inclined to allow the claim for special damages to the tune of Kshs. 2,500/- as pleaded in the plaint.
47. In the end, Ruth Wanjiru Mwangi claim succeeds in the following terms-
- a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 1,500,000/-; to accrue interest at Court rates from date of judgment until payment in full.
 - c. Special damages – Kshs. 2,500/-; to accrue interest at Court rate from date of filing suit of the amended plaint until payment in full.
 - d. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025.

.....
JANET MULWA.
JUDGE

