



**Matara v Nobel Trading Company Ltd & another (Civil Appeal
E136 of 2024) [2025] KEHC 13471 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E136 OF 2024
HI ONG'UDI, J
SEPTEMBER 19, 2025**

BETWEEN

JOHN GATHIRU MATARA APPELLANT

AND

NOBEL TRADING COMPANY LTD 1ST RESPONDENT

BENJAMIN KIBEI KEMBOI 2ND RESPONDENT

(Being an appeal from the Judgment and decree of Hon. Nathan Lutta Obura (Chief Magistrate) in Naivasha CMCC No. E105 of 2023, delivered on 30th October, 2024)

JUDGMENT

1. The appellant herein was the plaintiff in the lower court while the respondents were the defendants. The appellant in the plaint dated 13th March 2023 sued the respondents claiming general damages, special damages kshs. 164,960/= together with costs of the suit plus interest. This was as a result of the injuries he sustained when he was hit while crossing the Gilgil-Nakuru road by motor vehicle registration number KCR 519K owned by the 1st respondent on 22nd June 2022.
2. The trial magistrate delivered his judgment on 30th October, 2024 after parties entered a consent on liability in the ratio of 85:15 in favour of the appellant against the respondent. Further, the court awarded general damages of kshs. 400,000/= and special damages of kshs. 164, 960/=. The appellant was also awarded costs of the suit plus interest.
3. The appellant being aggrieved by the judgment on quantum lodged this appeal dated 13th December, 2022 setting out the following grounds: -
 - i. The learned magistrate gravely erred in law and in fact in making a finding that the appellant prayed for future medical expenses of kshs. 250,000 but however did not plead the same and therefore refused to award the same thereby arriving at an erroneous conclusion.



- ii. The learned magistrate failed to make a finding that the appellant pleaded for future medical expenses in paragraph 6A of his amended plaint dated 6 June, 2024 and therefore should have been awarded kshs. 250,000 as future medical expenses.
 - iii. The learned magistrate award of Kshs 400,000/= in general damages was excessively low and not adequate compensation for the nature of injuries that were suffered by the appellant.
 - iv. The learned magistrate ignored the submissions of the appellant and gave excessive weight to the respondent's submissions on quantum thereby arriving at an erroneous conclusion.
 - v. The learned trial magistrate misapprehended the law and facts and arrived at an erroneous conclusion.
 - vi. The learned magistrate went on a frolic of his own disregarding the pleadings, evidence and submissions and as a result arrived at an erroneous conclusion.
4. The appeal was canvassed through written submissions.

Appellant's submissions

- 5. These were filed by Muigai-Gatei advocates and are dated 20th March, 2025. Counsel identified two issues for determination.
- 6. The first issue is on whether the appellant pleaded and prayed for future medical expenses of kshs. 250,000/=. Counsel submitted that by a notice of motion application dated 6th June, 2024, the appellant sought to amend his plaint to include a claim for future medical expenses. The application was allowed by consent on the 27th July 2024 and the orders adopted by court. He further submitted that the trial court failed to consider the amended plaint dated 6th June, 2024 in which future medical expenses were pleaded at paragraph 6A and prayed for in prayer No A1.
- 7. Additionally, that the said medical expenses were supported by Dr. Omuyoma's medical-legal report dated 27th October, 2022 that indicated the appellant would require future medical expenses at the cost of Kshs. 250,000/= and the same was produced as Pexbt 7. Thus, the trial magistrate gravely erred in law and in fact in making a finding that the appellant did not plead the same thereby arriving at an erroneous conclusion.
- 8. He placed reliance on the decision in Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR where the held as follows;

“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”.
- 9. On whether the court should disturb the award of Kshs 400,000/= as general damages, counsel reiterated the decision in Kennedy Oganda Vs Dennis Bosire Nyangena Nakuru Civil Appeal No. 79 of 2017(Consolidated with 75 of 2017). In the said case the respondent sustained a compound fracture of the left femur, displaced fracture of the right radius and fractures of two upper incisor teeth. The appellate court revised the general damages from kshs. 600,000/= to Kshs 1,000,000/= in general damages. See also; Bajber Stores Ltd v Mvunga Civil Appeal E024 of 2021
- 10. He urged the court to substitute the award of kshs. 400,000/= by the trial magistrate with kshs. 900,000/=.



Respondent's submissions

11. These were filed by O'bang Law advocates and are dated 15th April, 2025. Counsel identified two issues for determination.
12. On whether the appellant pleaded for future medical expenses of kshs. 250,000/=, counsel cited the decision in Mbogo and Another vs. Shah [1968] EA 93 where the court stated as follows:

“That this Court will not interfere with the exercise of judicial 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 failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

See also;

 - i. Peters v Sunday Post Limited [1958] EA 424
 - ii. Kenya Bus Services Limited v Jane Karambu Gituma Civil Appeal Case No. 241 of 2000.
13. Counsel submitted that the trial court's decision was reasonable and meritorious and the same should not be disturbed. He reiterated the submissions filed by the respondents in the trial court.
14. On whether the court should disturb the award of kshs. 400,000/= as general damages, counsel submitted that no degree of permanent capacity was noted and therefore the trial court applied the correct principles and correctly exercised its discretion in assessing quantum at KES 400,000/= and so the same should not be disturbed. He placed reliance on the decision in Francis Wachiuri Murage & Another v P.G.K (Minor suing through P.MG as next Friend) [2016] eKLR, where the plaintiff suffered cut wounds on the left forehead and eyebrow, pelvic fractures involving left superior and inferior pubic rami, fracture of the right olecranon-elbow, and blunt object injuries to the abdomen with tenderness, and an award of KES. 400,000/= was made in general damages.

See also; Kenya Power & Lighting Co. Ltd v Benson Aseka Anyanzwa [2017] eKLR and Civion Limited v Richard Njomo Omwoncha & 2 others [2019] eKLR.
15. He urged the court to dismiss the appellant's appeal with costs to the respondents as the same is unmerited.

Analysis and determination

16. This being a first appeal this court has a duty to re-evaluate and re-consider the evidence afresh and arrive at its own conclusion. It also has to bear in mind that it did not see or hear the witnesses and ought to give an allowance for that. See *Selle & another V Associated Moto Boat Co Ltd & another* [1968] E.A 123.
17. Having carefully considered the evidence on record, grounds of appeal, submissions and cited authorities by both parties, I find the following issues falling for determination.
 - i. whether the trial magistrate erred in law and in fact in failing to award the appellant future medical expenses of kshs. 250,000/=.
 - ii. whether the award of kshs. 400,000/= as general damages was inordinately low.



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18. It is the appellant's case that the trial court failed to consider the amended plaint dated 6th June, 2024 in which future medical expenses were pleaded at paragraph 6A and prayed for in prayer No A1. The respondents on the other hand reiterated the submissions filed in the trial court where they argued that the future medical expenses amounting to kshs. 250,000/= was high. They supported their argument with two high court decisions.
19. I have perused the lower court file and I note that indeed on 24th July 2024, the application dated 6th June 2024 referred to by the appellant seeking to amend his plaint to include future medical expenses was allowed by consent. The said consent was adopted as an order of the court. Looking at the parties' submissions they both submitted on the same meaning the inclusion of the same as a claim was not disputed. The trial court having adopted the consent by the parties ought to have considered the said award in her judgment. I therefore find that the trial magistrate erred in failing to consider the future medical expenses in her judgment.
20. Having found that the appellant pleaded for future medical expenses amounting to kshs. 250,000/=, I now proceed to determine whether the said award was proved. It is trite law that special damages ought to be specifically pleaded and proved. In *Mbaka Nguru & Another -v- James George Rakwar* [Civil Appeal No. 133 of 1998 (UR). the Court cited with approval Lord Goddard, C.J. in *Bonham Carter -v- Park* [1948] 647 T.L.R. 177 and continued:
- “It will suffice to say that plaintiffs who do not plead their damages properly and who then do not prove the same do so at their own risk. They will not get those damages however sympathetic the court may feel towards them. The rules of pleading and modes of proof must be adhered to. In the absence of any pleading as to damages claimed under this head, we are constrained to disallow the whole of that award and we set it aside wholly.”
21. In the medical report dated 27th October 2022 by Dr. Obed Omuyoma, it is stated that the appellant's implant would be removed in future at a cost of kshs 200,000/= and kshs. 50,000/= for a denture to replace the lost teeth. It is not disputed that the appellant sustained injuries due to the accident and the doctor's report is a clear indication of what would be required to facilitate his total recovery. Further, the respondents did not file any medical report challenging that of Dr. Omuyoma.
22. In view of the above, this court awards future medical expenses at kshs. 250,000/=.

whether the award of kshs. 400,000/= as general damages was inordinately low.

23. It is trite law that an award is a discretionary exercise by the trial court. A superior court on appeal will only interfere with that discretion if it finds that the trial court considered irrelevant factors and/or did not consider relevant factors as it made the award. This was the holding in the case of *Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini V A. M. Lubia and Olive Lubia* (1985) I KAR 727 where the Court of Appeal stated:
- “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 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 so inordinately low or inordinately high that it must be a wholly erroneous estimate of the damage”.

24. It is evident from paragraph 4 of the plaint what injuries the respondent sustained. The trial magistrate in his judgment noted that the cases cited by the plaintiff on quantum, had more severe injuries compared to those in his case. He proceeded to consider *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] eKLR, cited by the defendant which had comparable injuries to those in the appellant’s case. He found the award of Kshs.400,000/= to be appropriate.
25. This court takes note of the fact that at no point would two accidents ever result in exactly similar injuries or similar set of injuries. In the instant case, having considered the decisions relied on by both parties in the lower court, I find that the injuries sustained in the case of *Civicon Limited v Richard Njomo Omwancha & 2 others* [2019] eKLR relied on by the respondents were almost similar in nature and related well with the injuries sustained by the appellant unlike those in the cases relied on by the appellant. In the *Civicon Case* (supra) an award of Ksh 500,000/= was made.
26. Considering all the circumstances of this case I find no reason why the trial Magistrate decided to reduce the award in respect of the appellant. I therefore set aside the award of Ksh 400,000/= and substitute it with Ksh 500,000/= as general damages.
27. The upshot is that the appeal succeeds. The lower court Judgment is hereby set aside and substituted with a Judgment in the following terms:
 - i. Liability at 85:15 in favour of the appellant is confirmed.
 - ii. General damages Ksh 500,000/= less 15% (Ksh 75,000) = Kshs 425,000/=.
 - iii. Special damages – Kshs 250,000/=
 - iv. Costs of the suit both in the lower court and high court plus interest go to the appellant.
28. Orders accordingly.

DELIVERED, VIRTUALLY DATED AND SIGNED THIS 19TH DAY OF SEPTEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

