

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E029 OF 2025

**LASTEL INVESTMENT LIMITED a.k.a LASEL
INVESTMENT.....APPELLANT**

=VERSUS=

**HUSSEIN ALI BULEH aka HUSSEIN ALI.....
.....RESPONDENT**

**(Being an appeal from the Judgment of Hon. A. M. Obura (CM)
in Voi CMCC No. E027 of 2024 delivered on 4th April 2025)**

JUDGMENT

1. The Respondent **HUSSEIN ALI BULEH** alias **HUSSEIN ALI** sued the Appellant, **LASTEL INVESTMENT LTD** alias **LASEL INVESTMENTS** seeking general damages for pain and suffering and special damages of Kshs. 6,100/= together with costs and interest for injuries the Respondent sustained on 6th March 2024 when he was lawfully travelling motor vehicle registration No. KDM 380X along Mombasa - Nairobi Highway.
2. The Respondent's case in summary was that he was travelling in motor vehicle registration KDM 380X on the material day and upon reaching Voi Area, the Appellant's authorized driver so

negligently managed and/or controlled the said motor vehicle registration No. KDD 004U/ZD 5192 that two unfastened tyres came off and collided with motor vehicle registration KDM 380X and as a result of the collision the Respondent sustained injuries.

3. The Appellants filed a defence dated 11th April 2024 denying the Respondent's case.
4. The Respondent testified as PW2. He called Doctor Jacks Nthanga who testified as PW1 and CIP Michael Mbugua who testified as PW3.
5. The Respondent's evidence was that the tyres of motor vehicle registration No. KDD 004U/ZD 5192 collided with motor vehicle registration KDM 380X in which the Respondent was travelling.
6. The Respondent sustained the following injuries:-
 - (i) **Blunt injury to the neck.**
 - (ii) **Blunt injury to the lower lip.**
 - (iii) **Blunt injury to the lower incisor teeth.**
 - (iv) **Blunt injury to the chest.**
 - (v) **Blunt injury to the right knee.**
 - (vi) **Blunt injury to the nasal ridge.**
 - (vii) **Blunt injury to the right shoulder.**
7. The Appellants called one witness, **FRANCIS KILONZI LELU** who testified as DW1.

8. DW1 said he was driving motor vehicle registration No. KDD 004U/ZD 5192 belonging to the Appellant.
9. He said the two right rear 3rd axel tyres suddenly came off and collided with motor vehicle registration No. KDM 380X.
10. He said that the Respondent's injuries were occasioned by his own failure to take evasive steps to prevent the collision.
11. The trial court found that the Respondent was a passenger in motor vehicle registration No. KDM 380X and he did not cause the accident.
12. The trial court held the Appellant 100% liable and assessed the award of damages as follows:-

(i) Liability	100%
(ii) Special damages	Kshs. 6,100/=
(iii) General damages	<u>Kshs. 300,000/=</u>
Total	<u>Kshs. 306,100/=</u>

13. The Appellant has appealed against the said judgment on the following grounds:-

- (i) The Learned Honourable Trial Court erred in law and fact and as a result misdirected itself by relying on the wrong principles of the law when assessing the damages that were awarded to the Respondent.**
- (ii) The Learned Honourable Trial Court erred and misdirected itself by failing to apply precedents and**

tenets principles of the law applicable in awarding general damages and as a result arrived at a wrong/erroneous award of general damages.

(iii) The Learned Honourable Trial Court erred and misdirected itself by failing to apply the precedents and/or tenets/principles of the law applicable in assessing general damages for loss of earning capacity and as a result arrived at a wrong and/or erroneous award.

(iv) The Learned Honourable Trial Court erred and misdirected itself by awarding excessive amounts with respect to general damages for pain and suffering and loss of earning capacity thereby occasioning a miscarriage of justice on the part of the Appellant.

(v) The Learned Honourable Trial Court erred and misdirected itself by ignoring and/or failing to consider the Defendant's submissions on record hence arriving at a wrong decision in awarding damages.

(vi) The Learned Honourable Trial Court erred and misdirected itself by failing to adequately evaluate the evidence and exhibits on records and thereby

arrived at a decision untenable and/or unsustainable in law.

(vii) The Learned Honourable Trial Court erred and fact in assessing damages and failed to apply the principles applicable in awarding damages of comparable awards made for analogous injuries and as a result, arrived at a wrong decision.

14. The parties filed written submissions as follows; The Appellant, Lastel Investment Limited, appeals the judgment of the trial court on the primary ground that the award of Kshs. 300,000 in general damages for the Respondent's injuries was excessive and based on erroneous principles.

15. The Respondent, Hussein Ali Buleh, sustained multiple soft tissue injuries to the neck, lip, teeth, chest, knee, nasal bridge, and shoulder, which were confirmed by a medical report indicating he would heal without any permanent disability.

16. The Appellant contends that such multiple soft tissue injuries with no resulting incapacity typically attract awards ranging between Kshs. 100,000 and Kshs. 200,000, as supported by the precedent set in **Chemwolo & another vs. Chirchir [2024]**.

17. Furthermore, the Appellant argues that the trial magistrate disregarded its submissions, which proposed an award of Kshs.

100,000 based on recent and comparable authorities, and instead relied on a case cited by the Respondent involving more severe injuries.

18. Consequently, the Appellant urges the High Court to set aside the trial court's award and substitute it with a reasonable sum of Kshs. 100,000, finding the appeal merited and seeking costs.

19. The respondent submitted that the trial court's award of Kshs. 300,000/- in general damages should be upheld.

20. The appeal is confined to quantum, and the respondent contends that the appellant has failed to demonstrate any valid grounds for this Honorable Court to interfere with the trial magistrate's discretion.

21. The respondent emphasizes that the role of a first appellate court is to re-evaluate the evidence with due caution, acknowledging that it did not witness the testimony firsthand.

22. It is a settled principle, as established in authorities such as **Peter vs Sunday Post Limited and Hellen Waruguru Waweru vs Kiarie Shoe Stores Ltd**, that an appellate court should not disturb an award of damages merely because it would have arrived at a different figure.

23. The award can only be altered if it is shown to be inordinately high or low, representing an erroneous estimate because the trial

judge proceeded on wrong principles, misapprehended the evidence, or considered irrelevant factors.

24. The respondent argues that the trial magistrate correctly applied the principles for assessing damages, taking into account the nature and extent of the multiple blunt injuries sustained, which affected the neck, hip, teeth, chest, knee, nasal ridge, and shoulder.

25. In seeking comparable awards, the respondent cites **Patrick vs Ajak**, where similar soft tissue injuries that had not fully healed were compensated, and **Mwangi & Another vs GKM**, where an award of Kshs. 250,000/- was sustained on appeal for a lesser set of injuries predominantly involving bruises.

26. The respondent distinguishes the appellant's reliance on **Chemwolo & Another vs Chrichir**, noting that its broad suggestion for a range of damages for soft tissue injuries was a generalization and not based on injuries comparable in severity to those in the present case.

27. The respondent concludes that the appellant has not met the legal threshold to warrant appellate intervention, as the award falls within a reasonable range for the injuries suffered.

28. Consequently, the respondent urges the court to find the appeal without merit and to dismiss it with costs.

29. This is a first appeal, and the court's duty, as consistently enunciated in authorities such as *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123, is to re-evaluate the evidence on record and draw its own conclusions while bearing in mind that it did not have the advantage of seeing and hearing the witnesses.

30. The sole issue for determination in this appeal is whether the quantum of general damages awarded by the learned trial magistrate is erroneous.

31. The principles guiding an appellate court in interfering with an award of damages are well settled. As was articulated by the Court of Appeal in ***Mbogo v Shah* [1968] EA 93**, an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate, or unless the trial court demonstrably acted on wrong principles, misapprehended the evidence, or took into account irrelevant considerations.

32. The Respondent sustained multiple blunt injuries, comprehensively listed as injuries to the neck, lower lip, lower incisor teeth, chest, right knee, nasal ridge, and right shoulder.

33. The medical evidence, as presented by PW1 Dr. Jacks Nthanga, confirmed these as soft tissue injuries with an expectation of full recovery without any permanent residual disability.

34. The Appellant's contention is that for such a cluster of soft tissue injuries, the conventional award should range between Kshs. 100,000 and Kshs. 200,000, relying principally on the decision **in Chemwolo & another vs. Chirchir [2024] eKLR.**
35. The Respondent, on the other hand, submits that the award of Kshs. 300,000 is reasonable and within the discretionary range of the trial court, citing **Patrick vs Ajak and Mwangi & Another vs GKM.**
36. Upon re-evaluation, I find that the learned trial magistrate, in arriving at the award of Kshs. 300,000, exercised her discretion but did so without sufficient reference to comparable awards for analogous injuries.
37. The authorities cited by the Respondent, while instructive, do not provide a precise alignment.
38. More pertinent is the guidance from recent decisions of the High Court which emphasize moderation in awards for soft tissue injuries with no permanent incapacity.
39. While the Appellant's proposed figure of Kshs. 100,000 is, in my view, on the lower end of the spectrum given the multiplicity of injury sites enumerated, the award of Kshs. 300,000 is disproportionate and constitutes an erroneous estimate.

40. The injuries, though painful and involving several parts of the body, were consistently described as blunt and soft tissue in nature, with a positive prognosis for full recovery.
41. No permanent disability or loss of function was proved. In such circumstances, and guided by the principle of maintaining consistency in awards so that similarly situated litigants receive comparable compensation as underscored in **Butt v Khan [1981] KLR 349**, I find that a fair and reasonable award for general damages for pain, suffering and loss of amenities would be Kshs. 200,000.
42. Concerning the grounds on loss of earning capacity, I note that the trial court's judgment, as extracted from the record, does not contain a distinct award under this head.
43. The global sum of Kshs. 300,000 was explicitly stated as "general damages."
44. The pleadings and evidence did not establish any claim for diminished earning capacity as a separate head of damages, as there was no evidence of permanent disability or vocation-specific impairment.
45. Therefore, the Appellant's grounds on this issue are misconceived.

46. On the special damages of Kshs. 6,100, the same were specifically pleaded and proved by production of receipts, and have not been challenged on appeal. They are hereby upheld.

47. In the final result, the appeal partially succeeds on quantum. The judgment of the trial court dated 4th April 2025 is hereby set aside and substituted with an award in favour of the Respondent as follows:

(i) Liability: 100% against the Appellant.

(ii) Special Damages: Kshs. 6,100.

(iii) General Damages for Pain and Suffering: Kshs. 200,000.

Total: Kshs. 206,100.

48. The said sum shall attract interest at court rates from the date of judgment in the trial court until payment in full.

49. Since the appeal succeeded partially, each party shall bear its own costs of the appeal.

**Dated, signed and delivered this 19th day of December 2025
virtually via MT Teams at Voi High Court.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the Appellant**

.....**for the Respondent**

ORIGINAL