



**Mutie v China Road and Bridge Corporation Kenya (Civil Case
59 of 2018) [2025] KEMC 326 (KLR) (23 December 2025) (Judgment)**

Neutral citation: [2025] KEMC 326 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 59 OF 2018
YA SHIKANDA, SPM
DECEMBER 23, 2025**

BETWEEN

MICHAEL MUTUA MUTIE PLAINTIFF

AND

CHINA ROAD AND BRIDGE CORPORATION KENYA DEFENDANT

JUDGMENT

The Claim

- 1 Michael Mutua Mutie (hereinafter referred to as the plaintiff) filed this suit on 13/3/2018 vide a plaint dated 5/3/2018. The plaintiff sued China Road and Bridge Corporation Kenya (hereinafter referred to as the defendant) on account of an industrial accident that allegedly occurred on 8/7/2016 at Kathekani SGR site, while the plaintiff was in the course of his employment with the defendant. The plaintiff averred that on the material day he was crushed in between slippers moulding machine, thereby occasioning the plaintiff injuries. The plaintiff pleaded particulars of breach of contract and/or statutory duty against the defendant or its agents but owing to the consent on liability entered herein, I will not reproduce the particulars of injuries.
- 2 The plaintiff further pleaded the particulars of injuries sustained as well as those of special damages and prayed for judgment against the defendant for:
 - a. General damages;
 - b. Special damages for Ksh. 3,500/=;
 - c. Costs of the suit and interest.



The Defendant's Defence

3 The defendant entered appearance on 24/4/2018 and filed a statement of defence on the same day. The defendant denied the allegations contained in the plaint. The defendant averred that the plaintiff was fully compensated by a payment of Ksh. 83,081/= and that there was no valid claim against the defendant. In the alternative, the defendant averred that the said payment be offset against that which may be found payable to the plaintiff. The defendant prayed that the plaintiff's suit be dismissed with costs.

Consent On Liability And Evidence

4 On 4/8/2025 the parties herein recorded a consent which was adopted as an order of the court in the following terms:

- a. Judgment on liability be entered in the ratio of 20% against the plaintiff and 80% against the defendant;
- b. The medical reports be admitted in evidence without calling the makers.

The evidence

The Plaintiff's Case

5 Following the consent, only the plaintiff testified and produced several documents in support of his case. The plaintiff admitted that he signed a document for Ksh. 83,081/= but stated that he was paid Ksh. 76,199/= which comprised of his salary and refund for the medical expenses he had incurred. The plaintiff denied that he was paid damages for the injuries.

The Defence Case

6 The defendant called one Paul Mutua as a witness. He adopted his statement as part of his evidence in-chief. The witness testified that he was a Human Resource Assistant at the defendant company. He confirmed that the plaintiff sustained injuries on 8/7/2016 while in the employment of the defendant. That the plaintiff was paid Ksh. 83,081/= for the injury that he sustained.

Main Issues For Determination

7 In view of the consent, the main issues for determination are as follows:

- i. Whether the plaintiff was fully compensated for the injuries sustained;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

The Plaintiff's Submissions

8 The plaintiff submitted that he was paid Ksh. 76,199/= being salary for the days he had not worked. He further submitted that the discharge voucher indicated a wrong total of Ksh. 83,081/= yet the workings amounted to Ksh. 76,199/=. The plaintiff argued that the second document from CIC General Insurance Company relates to a different employee and not the plaintiff herein. The plaintiff urged the court not to deduct Ksh. 83,081/= from the award of general damages.



9 On quantum, the plaintiff submitted a sum of Ksh. 700,000/= in general damages and relied on the following authorities:

1. Jackson Mbaluka Mwangangi v Onesmus Nzioka & another [2021] KEHC 2360 (KLR)

The plaintiff and respondent in the appeal herein sustained a blunt injury to the right shoulder and fracture of the left femur. The trial court awarded Ksh. 350,000/= in general damages on 21/8/2019. On appeal, the award was enhanced to Ksh. 600,000/= on 10/11/2021.

2. David Kimathi Kaburu v Dionisuis Mburugu Itiria [2017] eKLR.

The plaintiff and respondent in the appeal herein sustained a fragmental fracture of the mid-shaft femur and intertrochanteric fracture of the femur. The trial court awarded Ksh. 630,000/= in general damages on 18/2/2015. On appeal, the award was affirmed on 15/11/2017.

The plaintiff further prayed for special damages of Ksh. 3,500/= as well as costs of the suit and interest.

The Defendant's Submissions

11 The defendant proposed as sum of Ksh. 300,000/= in general damages and relied on alleged authorities whose copies were not annexed. It is not the duty of the court to go out and dig for the authorities relied upon by a party. The defendant maintained that the Ksh. 83,081/= paid to the plaintiff was for injuries sustained and that the same should be offset from any award of general damages. The defendant argued that the plaintiff had testified that he was paid his salary while on sick leave and that the medical expenses were paid by the defendant. As such, the sum of Ksh. 83,081/= could not have been paid as salary. The defendant had no issue with the special damages claimed.

Analysis And Determination

12 I have carefully considered the evidence on record and given due regard to the submissions made by the parties. I will begin by addressing the issue of payment of Ksh. 83,081/= to the plaintiff. The plaintiff admitted that he was paid Ksh. 76,199/=. According to the plaintiff, the money was for his salary for the days he had not worked and refund of the medical expenses that he had incurred. On the other hand, the defendant states that the amount was compensation for the injuries sustained. The defendant relies on a work injury discharge voucher produced in evidence. The voucher displays a figure of Ksh. 83,081/= at the top and beneath it, the workings are shown. The workings indicate that the plaintiff was paid Ksh. 60,389/= as salary for the days he did not work and Ksh. 15,810/= as medical expenses. The voucher further indicates the total as Ksh. 76,199/=. That is the correct total. It is not clear why the workings would reveal a total of Ksh. 76,199/= yet at the top a figure of Ksh. 83,081/= is displayed.

13 I will go by the plaintiff's version that he received Ksh. 76,199/= only since that is the correct figure from the workings. In the case of Kamau v Kevian Kenya Ltd [2023] KEELRC 627 (KLR), the court held that:

“In law, a duly executed discharge voucher is equated to a contract. It has a binding effect on the parties unless it is impugned on the usual grounds of vitiating a contract. Unless successfully assailed, a discharge voucher has the effect of closing the matter it addresses and may constitute a bar to further claims on the issue.”



14 In *Trinity Prime Investment Ltd v Lion of Kenya Insurance Co Ltd* [2015] KECA 793 (KLR), the Court of Appeal observed:

“The execution of the discharge voucher, we agree with the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

15 A similar position was held by the Court of Appeal in the authority of *Coastal Bottlers Limited v Kimathi Mithika* [2018] KECA 523 (KLR).

In essence, a discharge voucher is sufficient proof of the contents therein, unless it is established that the same was executed through fraud, misrepresentation or is tainted by anything that would vitiate a contract. What was the plaintiff being paid for? I have already pointed out the conflicting reasons advanced by the parties concerning the payment. The voucher bears the acronym “PTD”. In relation to labour law, PTD stands for Permanent Total Disability and refers to a workers’ compensation status for employees severely injured at work, meaning they are permanently unable to perform any gainful employment, entitling them to long-term financial support to cover lost earnings.

16 The defendant argues that the compensation was made under the *Work Injury Benefits Act*. Section 10 of the Act provides that an employee who is involved in an accident resulting in the employee’s disablement or death is subject to the provisions of the Act, and entitled to the benefits provided for under the Act. The section further stipulates that an employer is liable to pay compensation in accordance with the provisions of the Act to an employee injured while at work. How is compensation provided for in the Act? Section 22(1) of the *Work Injury Benefits Act* provides that an employer shall report an accident to the Director of Occupational Safety and Health Services in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.

17 According to section 23, the Director will then do an inquiry into the accident necessary to decide upon any claim or liability. A reading of section 26 of the Act reveals that a claim for compensation is to be lodged with the Director. A careful reading of the Act will show that any compensation under the Act is to be determined or approved by the Director. Section 30(1) of the *Work Injury Benefits Act* provides:

“Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.”

18 There is no evidence to show that the accident was reported to the Director and that the amount of money paid to the plaintiff was determined or approved by the Director. The defence witness stated that the claim was presented to the insurer. Regardless of how the discharge voucher is drafted, it cannot be said to be compensation under the *Work Injury Benefits Act*. There is no evidence to show that the procedure under the Act was followed. I now go back to the question on the purpose of the payment. The plaintiff produced in evidence a copy of his payslip for January, 2016 which indicates that he earned a net salary of Ksh. 21,300.50/=. There is also another payslip for June, 2016 with a net salary of Ksh. 30,508.30/=.

19 The plaintiff alleged that Ksh. 60,398/= was salary for the days that he was on sick leave and could not work. When he was cross-examined by counsel for the defence, he stated that he was unable to work for close to one year. Judging from the payslips produced in evidence, there is no way Ksh. 60,389/= would



be salary for a period of almost 12 months. The figure is quite on the lower side. When the plaintiff was cross-examined by counsel for the defendant, he admitted that the defendant continued paying him his salary even after he got injured. The plaintiff further admitted that the medical expenses were paid by the defendant. There is no evidence to show that the plaintiff catered for his medical expenses which were later reimbursed. That even explains why there is no claim for medical expenses in the plaint.

- 20 The discharge voucher, although poorly drafted, indicates that the plaintiff was being compensated for the injuries sustained as a result of the accident. In the authority of Coastal Bottlers Limited (supra), the Court of appeal rendered itself thus:

“Whether or not a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/agreement; and secondly, whether the same was voluntarily executed by the concerned parties.”

- 21 However, the workings in the discharge voucher are confusing. In cross-examination, the defence witness who prepared the discharge voucher stated that he arrived at the figure of Ksh. 83,081/= by considering the rate per hour, house allowance and 6% disability as assessed by the doctor. On the other hand, the workings show that what was considered was salary for the days that the plaintiff was unable to work as a result of the injury and medical expenses. As already pointed out, the workings add up to Ksh. 76,199/= whereas the voucher talks of Ksh. 83,081/=. It is not clear whether the workings referred to a different payment from the sum of Ksh. 83,081/=. Furthermore, the voucher reads that the plaintiff “accepted to receive” the sum of Ksh. 83,081/=. It is not clear whether it means the same thing as “received.”

- 22 The phrase “accept to receive” means to willingly agree to take, have or allow something offered, implying consent, approval or taking something into your possession. The interpretation of the discharge voucher would be that the plaintiff agreed to take the sum of Ksh. 83,081/= as full compensation for the injuries sustained in the accident and to discharge the defendant from any present or future claims arising out of the accident. It is not clear whether after accepting to receive, the plaintiff eventually received the money. The plaintiff denied having received Ksh. 83,081/= from the defendant but admitted having received Ksh. 76,199/= as appears from the workings. No documentary evidence was adduced by the defendant to prove that the plaintiff received Ksh. 83,081/= as opposed to Ksh. 76,199/=.

- 23 The defendant did not establish a link between the Ksh. 83,081/= and Ksh. 76,199/=. It is not clear whether the Ksh. 76,199/= was part of the Ksh. 83,081/= or the two were separate and distinct. In the circumstances, it is not clear what exactly the defendant was being discharged from. The discharge voucher is vague. Sir Charles Newbold P in *Damondar Jihabhai & Co Ltd and another v Eustace Sisal Estates Ltd* [1967] EA 153, held that:-

“The function of courts is to enforce and give effect to the intention of the parties as expressed in their agreement. In the English Court of Appeal case above - *Globe Motors Inc & Others vs TRW Lucas Electric Steering Ltd & Others* (supra) – Lord Justice Beatson stated as follows:-

'Absent statutory or common law restrictions, the general principle of the English law of contract is that parties to a contract are free to determine for themselves what obligations



they will accept. The parties have the freedom to agree whatever terms they choose to undertake, and can do so in a document, by word of mouth, or by conduct."

24 A meeting of minds is an essential component for the formation of an enforceable contract. Where the terms of the contract are vague, as in this case, it is difficult to tell the intention of the parties and whether there was a meeting of the minds. The discharge voucher was obviously drafted by the defendant. The ambiguity must be interpreted against the defendant under the contra-proferentem rule. There was obviously unequal bargaining power. In the authority of *Trans-National Bank Limited & 3 others v Kangwana & 5 others* [2025] KECA 1590 (KLR), the Court of Appeal held:

"The law has long recognized that partial performance strengthens the enforceability of an agreement, even where certain clauses might otherwise appear vague. Courts are reluctant to declare contracts void for uncertainty where the parties' conduct demonstrates mutual understanding of obligations."

25 The discharge voucher is uncertain as to whether the Ksh. 83,081/= meant to discharge the defendant from the plaintiff's claim was paid. It is also uncertain as to whether the Ksh. 76,199/= paid to the plaintiff was part of the Ksh. 83,081/= or not. I also find that there was misrepresentation that the payment was being made under the *Work Injury Benefits Act*, yet it was not. It is highly probable that there was no meeting of the minds. I find that there are sufficient grounds to declare the discharge voucher void for uncertainty. I so declare. This implies that the same cannot be enforced. However, any benefit gained by any party under the voucher must be taken into account.

Quantum

26 I have considered the medical evidence on record. The same indicates that the plaintiff sustained the following injuries following the accident:

- i. Fracture of the right tibia fibula; and
- ii. Cut wound on the medial aspect of the right leg.

27 The same injuries were pleaded in the plaint. There is no contrary evidence with respect to the plaintiff's injuries. There is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the fact that the defendant has been held 80% liable for the accident, the plaintiff is thus entitled to damages as against the defendant. It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts, although comparable injuries should receive similar awards. This Court has to bear in mind the principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd* [1964] AC 326 where Lord Morris said:

"But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, 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 it still must be that amounts which are awarded are to a considerable extent conventional".



28 I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington Area Health Authority*, [1979] 1, ALL ER 332 which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School* [2011] eKLR where Wendoh, J stated that:

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

29 The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;
- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;
- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

30 I have considered the injuries sustained by the plaintiff. I have further considered the submissions made by the parties on quantum as well as the authorities relied upon by the plaintiff. The authorities relied upon by the plaintiff related to fracture of the femur. On my part, I have considered the following authorities:

1. *Odhiambo v Obiero* [2024] KEHC 15700 (KLR).

The plaintiff and respondent in the appeal sustained swelling and tenderness on the head, tenderness of the neck, back injury, chest injury, cut wound on the right leg and fracture of the right tibia. The trial court awarded Ksh. 700,000/= on 7/12/2023. On appeal, the award was affirmed on 9/12/2024.

2. *Julie Akoth Onyango v Daniel Otieno Owino & another* [2020] eKLR.

The plaintiff and appellant in the appeal sustained a compound fracture of the tibia and fibula of the left leg, cuts on both legs, pain in the thighs and left hand. Ksh. 600,000/= was awarded in general damages on 19/6/2019. On appeal, the award was reduced to Ksh. 500,000/= on 29/5/2020.

31 Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 700,000/= in general damages, as proposed by the plaintiff would suffice. I award the same.

Special Damages

32 The plaintiff pleaded special damages as follows:



- a. Medical report.....Ksh. 3,500/=

It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani t/a Kisumu Beach Resort- v - Phoenix of East Africa Assurance Co. Ltd* the court said:

“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”

- 33 In *Ouma v Nairobi City Council* [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L. J’s Judgment on page 532 and 533 in *Ratcliffe v Evans* [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

- 34 The special damages were sufficiently proven. Consequently, I award Ksh. 3,500/= as special damages.

- 35 It was established that the plaintiff received Ksh. 76,199/= from the defendant. It is not clear what exactly the payment was for, but it was related to the accident herein. The plaintiff gave contradicting evidence on the purpose of the payment. He alleged that it was payment for his salary for the days that he did not work as a result of the injuries and reimbursement of the medical expenses that he incurred. However, the plaintiff, the plaintiff admitted that he was being paid salary while unable to work and that the defendant catered for his medical expenses. The position of the defendant is that the payment was for compensation for the injuries. In the circumstances, I am inclined to agree that the payment was related to the injuries. I further agree with the defendant that the same should be deducted or offset from the award. The proven payment is however Ksh. 76,199/=.

Disposition

- 36 In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the defendant. Consequently, I make the following awards:

1. General damages for pain, suffering and loss of amenities.....Ksh. 700,000/=
 2. Special damages.....Ksh. 3,500/=
- Total.....Ksh. 703,500/=
- Less 20% liability.....Ksh. 140,700/=
- Balance.....Ksh. 562,800/=
- Less amount paid to plaintiff.....Ksh. 76,199/=
- Balance due to the plaintiff.....Ksh. 486,601/=

- 37 The plaintiff is also awarded interest on the damages as well as costs of the suit. The guiding principles in respect of interest are set out in section 26 of the *Civil Procedure Act* which provides that:



- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
- (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

38 In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated that:

First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.

39 Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely:

- a. The period from the date the suit is filed to the date when the Court gives its judgment; and
- b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”

40 Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omunyokol Akol Johnson v Attorney General* (Civil Appeal No.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)

From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see *Jane Ovuyanzi Raphael* (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR). Consequently, interest on general damages shall accrue at court rates from the date of judgment/decree until payment in full whereas interest on special damages shall accrue from the date of filing suit to the date of judgment.

DATED, SIGNED AND DELIVERED VIA CTS THIS 23RD DAY OF DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

