



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**CIVIL APPEAL NO. E004 OF 2025**

**BETWEEN**

**PETER THAIRU MUNGAI..... APPELLANT**

**AND**

**WILSON KANOGA MUMIA..... RESPONDENT**

*(Being an appeal from the judgment in the Engineer Senior Principal Magistrate’s SPMCC No. E249 of 2022 by Hon. H. Adika – Senior Principal Magistrate.*

**JUDGMENT**

1. Peter Thairu Mungai, the appellant, was the defendant in Engineer Senior Principal Magistrate’s SPMCC No. E249 of 2022. He had been sued for a claim in general and special damages following a road traffic accident involving appellant’s motor vehicle KCX 646Q, which collided with the motor vehicle KCM 563F in which the respondent was a passenger.
2. The parties entered liability by consent. The appellant was to bear 80% of the liability. The learned trial magistrate awarded Kshs. 139,040.00 special damages and Kshs.1, 200,00.00 before factoring in contributory negligence.
3. The appellant was dissatisfied with the judgment and filed this appeal through Wamaasa, Masese, Nyamwange & Company Advocates. He presented the following grounds of appeal:
  - a) The learned trial magistrate erred in both law and fact by awarding the respondent general damages in the sum of Kshs. 1,200,000, which sum was manifestly excessive outside the confines of reasonableness compared to the cited authorities and not commensurate with the nature of the case and the injuries sustained by the respondent.
  - b) The learned trial magistrate erred in both law and fact by awarding the respondent special damages in the sum of Kshs 139,040/= the whole of which sum had already

been paid by insurance schemes, being NHIF, and as such, the award of the said special damages amounts to double compensation.

- c) The learned trial magistrate erred both in law and in fact by disregarding the written submissions filed by the appellant on the need to award only proven special damages, and proceeded to pronounce and make awards on special damages already paid by medical insurance.
  - d) The learned trial magistrate erred both in law and in fact by failing to thoroughly scrutinize documents adduced in evidence, thus wrongly evaluating the evidence on record and hence coming to the wrong conclusion.
  - e) The learned trial magistrate erred in law by failing to give a concise statement of the case, a concise statement of evidence adduced by parties, the points of determination, the decisions thereon and the reasons of his judgment pronounced on 22<sup>nd</sup> October, 2024.
4. The respondent was represented by Musa Machage & Company, Advocates. Although Mr Machage informed the court on 15th December that they had filed submissions, no submissions were filed.
  5. As the first appellate court, I recognise my responsibility to thoroughly examine all the available evidence, given that I did not have the opportunity to observe the witnesses during their testimony. The **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123** case sets the precedent that the first appellate court must review and assess the evidence presented in the trial court and draw its conclusions accordingly.
  6. The appellant appealed on quantum in general damages.
  7. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in **Nance vs British Columbia Electric Railways Co. Ltd. [1951] AC 601 on page 613**, where it stated:

***The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting***

*alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.*

8. The appellant raised some issues of discrepancies between the P3 form, which Dr Obed Omuyore relied on, and his report. It was pointed out that the P3 form did not indicate a fracture of the left mid femur shaft. Had the respondent sustained this injury, it would not have escaped the physician who completed the P3 form. I make a finding that the respondent sustained the following injuries:

- a) Fractured mid-shaft left tibia and fibula.
- b) Severe soft tissue injuries of the left leg.

These are the injuries he ought to have been compensated for.

9. In the trial court, the appellant proposed an award of Kshs. 700,000/=, citing the decision in **Patrick Kinyanjui Njama v Evans Juma Mukweyi [2017] eKLR**. The respondent sustained serious soft tissue and skeletal injuries, including a segmental fracture of the mid-shaft of the right femur, an open segmental fracture of the right tibia shaft, a fracture of the right fibula, and a fracture of the left third metatarsal bone. Full recovery was anticipated within approximately 1.5 years. Kshs.1, 500,000.00 was awarded as general damages.

10. He also relied on the decision in **David Mutembei v Maurice Ochieng Odoyo [2019] eKLR**. The appellant, who sustained a fracture of the right femur and a proximal fracture of the left tibia, was granted Kshs. 800,000.00 in general damages. I agree with the appellant that the award was inordinately high. I set aside the award of Kshs. 1,200,000, and the same is substituted with an award of Kshs.900,000.00 general damages.

11. The appellant challenged the award of special damages, arguing that N.H.I.F. had already fully settled the hospital bill. In **John Mwangi Munyiri & another v Paul Wachira Njuguna [2020] eKLR**, the court, commenting on section 43 of the NHIF Act, stated:

*It follows that if any sums paid by the Fund to the hospital were again paid to the respondent as compensation, then it is recoverable by the Fund. The respondent was therefore not entitled to claim the Kshs.107,800/- which had been paid to the Hospital by NHIF. It would amount to unjust enrichment to claim it.*

12. The respondent, having conceded that NHIF paid some money for his treatment, ought to have separated these monies from what he personally paid so that his claim can be ascertained. He failed to do so, and the court cannot be left to speculate. I therefore set aside the award in special damages and substitute it with an award of Kshs. 8,550, which is not in dispute.
13. The award on the head of future hospital expenses was not challenged. I will not disturb the same.
14. The appeal is successful to the extent I have indicated hereinabove. The appellant will have half the cost of the appeal.

**Delivered and signed at Nyandarua, this 3<sup>rd</sup> day of February 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**