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Deliferian v Maina (Civil Appeal E041 of 2025) [2026] KEHC 1585 (KLR) (10 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1585 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CIVIL APPEAL E041 OF 2025

DKN MAGARE, J

FEBRUARY 10, 2026

BETWEEN

NYANGERI DELIFERIAN .... APPELLANT

AND

EDWIN OMAYIO MAINA .... RESPONDENT

JUDGMENT

1. This is an appeal from the Judgment and decree of Hon. B.O. Omwansa, Senior Principal Magistrate, delivered on 11.2.2025 in Kisii CMCC No. E1020 of 2023. The Appellant was the defendant in the lower court. The court heard the matter and delivered judgment as follows:

   a. Liability 85:15 for the Plaintiff

   b. General damages Ksh. 1.250,000/=

   c. Future medical expenses Ksh. 350,000/=

   d. Special damages Ksh. 26,740/=

   e. Costs and interest of the suit.

2. The appeal is against the award of damages. However, the Appellant filed an 8-paragraph mammoth Memorandum of Appeal dated 10.3.2025. It is certainly not edifying for advocates to present 8 argumentative grounds of appeal, and end up arguing only one or two issues. This is anathema the provisions of Order 42 Rule 1 of the Civil Procedure Rules, which posits as doth: -

   1. Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.

2. The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

3. The Court of Appeal had this to say about compliance with Rule 86 of the Court of Appeal Rules (which is pari materia with Order 42 Rule 1 of the Civil Procedure Rules) in the case of Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat [2020] eKLR: -

   We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others [2013] eKLR) and Nasri Ibrahim v. IEBC & 2 Others [2018] eKLR. In the latter case, this Court lamented:

   We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs. The 18 grounds of appeal presented by the appellant, Robinson Kiplagat Tuwei against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues...

4. Repetitive grounds of appeal tend to cloud the key issues in dispute for determination by the Court. The same issue was addressed succinctly court of appeal in the case of Kenya Ports Authority v Threeways Shipping Services (K) Limited [2019] eKLR as follows:

   Our first observation is that the memorandum of appeal in this matter sets out repetitive grounds of appeal. The singular issue in this appeal is whether Section 62 of the *Kenya Ports Authority Act* ousts the jurisdiction of the High Court. We abhor repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the Court. In William Koross V. Hezekiah Kiptoo Kimue & 4 others, Civil Appeal No. 223 of 2013, this Court stated:

   The memorandum of appeal contains some thirty-two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memoranda of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better.

5. The grounds are thus ancillary, repetitive, prolixious and a waste of judicial time. This court will have to deal with whether the magistrate erred in the award of the general and special damages and the award for future medical expenses.

Pleadings

6. The Plaint dated 29.11.2023 claimed damages arising from injuries caused through an accident that occurred on 20.9.2023 involving the Respondent and the Appellants' motor cycle registration number KMGH 381X that occurred when the Respondent was walking along Kisii-Kilgoris road. The motor cycle was described to have veered off the road and hit the Respondent who was walking on the verge

of the road. The Respondent pleaded particulars of negligence on the part of the Appellant and also that he suffered the following injuries:

i. Compound right tibia fracture

ii. Compound right fibula fracture

iii. Blood loss

iv. Laceration on the hands

v. Chest contusions

vi. Psychological pains

vii. Blunt trauma to the neck

viii. Lacerations on the legs

ix. Soft tissue injuries.

7. The Appellant entered appearance and filed defence dated 18.1.2024 denying liability and injuries and blaming the Respondent for the accident.

Evidence

8. The appeal relates to damages only. On the injuries sustained, the Respondent produced the medical report dated 25.10.2023 by Dr. Morebu Peter Momanyi. The Appellant also produced the second medical report.

9. Dr. Morebu confirmed the injuries as stated in the plaint and described the injuries as grievous harm. He assessed the percentage of disability at 20% and suggested that Ksh. 350,000/= would be required for the fracture bone to be corrected with metal implants for proper bone alignment.

10. The injuries as pleaded were not disputed. The only point of divergence was on the medical report by Dr. Morebu that awarded 10% permanent disability and the second medical report by Dr. Malik that suggested that permanent disability could accurately be determined after 1 year to assess if at all there was any.

Submissions

11. The Appellant filed submissions dated 18.9.2025. It was submitted that the award of Ksh.1,250,000/= was inordinately high. In adducing cases that the Appellant considered to have commensurate injuries, the following authorities were cited to support the appeal:

    Karanja & Another v Mwachala & Another (2024) eKLR based on which it was submitted that the Plaintiff who sustained a compound fracture of the tibia and fibula among other soft tissue injuries was awarded Ksh. 900,000/= which was reduced to Ksh. 700,000/- on appeal.

    Kimita v Travel Budget Express & Another (2024) eKLR in which it was submitted Ksh. 800,000/= was awarded and upheld in similar injuries.

12. The Appellant submitted on special damages that a further list of witnesses was unprocedurally filed on 17.1.2025 and should be expunged. That only special damages of Ksh. 7,050/= were proved.

13. The Appellant submitted on future medical expenses. It was contended that the second medical report ought to be applied for it was prepared by a specialist- orthopedic surgeon as opposed to Dr. Morebu

who was a general practitioner. Therefore, that the award of future medical expenses was erroneous as Dr. Malik expressed the view that the Respondent would be able to walk after the clamps were removed and would fully recover.

14. The Respondent filed submissions dated 8.10.2025. It was submitted that the award of Ksh. 1,250,000/= was not inordinately high as the same was even inordinately low. Reliance was placed on the case of Otieno v South Sioux Farms Ltd (Civil Appeal E084 of 2022) EKLR where it was submitted that the Plaintiff suffered a compound right tibia fracture, compound right fibula fracture, left ulna fracture, left radius fracture, chest contusion and blunt trauma to the back. The court awarded him Kshs. 3,000,000/= in general damages for pain and suffering.

15. The Respondent also submitted that the receipts proved the special damages that were pleaded and the award thereof should not be interfered with.

16. On future medical expenses, it was submitted that the award of Ksh. 350,000/= was per the report of the medical doctor and was supported. The Respondent had also pleaded future medical expenses.

Analysis

17. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

18. The jurisdiction for this court to review the evidence in the lower court should this be done but with caution. In the cases of Peters vs Sunday Post Limited [1958] EA 424 , the court therein rendered itself as follows:-

> It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...

19. The duty of this court in the appeal is thus to reconsider the evidence, evaluate it itself and draw its own conclusions. In Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, this principle was enunciated thus:

> ...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...

20. On quantum, the Court of Appeal pronounced itself succinctly on the principles for disturbing award of damages in Kemfro Africa Ltd Vs Meru Express Servcie Vs. A.M Lubia & Another 1957 KLR 27 as follows: -

> The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant

one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.

21. For the appellate court to interfere with the award, it is not enough to show that the award is high or had I handled the case in the subordinate court, I would have awarded a different figure. The foregoing statement had been ably elucidated by Sir Kenneth O'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Council, that is, Nance vs British Columbia Electric Co Ltd, in the decision of Henry Hilanga vs Manyoka 1961, 705, 713 at paragraph c, where the learned Judge ably pronounced himself as doth regarding disturbing quantum of damages:-

> The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance…

22. Therefore, where damages are proved to be at large, they must be commensurate with similar injuries. The injuries that the Respondent suffered were as follows:

    i. Compound right tibia fracture

    ii. Compound right fibula fracture

    iii. Blood loss

    iv. Laceration on the hands

    v. Chest contusions

    vi. Psychological pains

    vii. Blunt trauma to the neck

    viii. Lacerations on the legs

    ix. Soft tissue injuries.

23. It is common reasoning that astronomical awards may lead to increased insurance premiums thus hurting the insurance industry as well as the economy. See the case of H. West and Son Ltd v. Shepherd [1964] AC.326 (supra) where it was stated that:

> …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 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 it still must be that amounts which are awarded are to a considerable extent conventional.….

24. With the above guide, if the award is inordinately high, then I will have to set it aside. If, however, it is just high but not inordinately high, I will not do so. For the appellate court to interfere with the award, it is not enough to show that the award is high or had I handled the case in the subordinate court I would have awarded a different figure.

25. The Appellants submitted that their medical report, the second medical report was the accurate report and not the Respondent's medical report. On expert evidence, it was held in Shah and Another vs. Shah and Others [2003] 1 EA 290 that:

> The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so.

26. Further, the Court of Appeal, on its part in Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko Civil Appeal No. 203 of 2001 [2007] 1 EA 139 held that:

> … such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.

27. The medical reports herein must thus be considered not as a standalone evidence, but together with other available evidence. In Parvin Singh Dhalay vs. Republic [1997] eKLR; [1995-1998] 1 EA 29, it was held that:

> It is now trite law that while the courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so. We will repeat what this Court said in the case of Elizabeth Kamene Ndolo vs. George Matata Ndolo, Civil Appeal No. 128 of 1995. There the Court said with regard to the evidence of experts:-
>
> The evidence of PW1 and the report of Munga were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held the evidence of experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not it believes the expert and give reasons for its decision. A court cannot simply say:- Because this is the evidence of an expert, I believe it….

28. Both medical reports were not tested in cross examination which diminished their probative value. However, the injuries that the Respondent sustained were not particularly disputed. The court is unable to fault the lower court on adopting the injuries. The medical records demonstrated that the Respondent suffered the injuries pleased and I so uphold them. I proceed to examine whether the award of damages was grossly low or high.

29. The Appellant submitted that a range of Ksh. 250,000-600,000/= would be adequate for the range of injuries that the Respondent sustained. The Respondent on the other hand submitted that even the award of Ksh. 1,250,000/= was inordinately low.

30. I proceed to determine similar fact cases in relation to damages as applicable to this appeal. Therefore, I find the following cases to present similar fact situations to the appeal herein.

31. In Godfrey Wamalwa Wamba & another v Kyalo Wambua [2018] eKLR, the Plaintiff suffered the following injuries and was awarded Ksh. 700,000/= in general damages in 2018:

    a. Compound fracture of the right distal tibia/ fibula

    b. Cut wound on the scalp

c. Cut wound on the chest

d. Cut on the lower lip

32. In Daniel Oduor Shieuda v Christopher Wambugu [2021] eKLR the court observed that the courts have been awarding damages ranging between Kshs.450,000/= to Kshs.1,300,000/= for fractures of tibia and fibular bones depending on the specific case and other injuries suffered by the same claimant in the accident. The appellant therein was awarded Kshs. 800,000/=.

33. In Kimita v Travel Budget Express & another (Civil Appeal E042 of 2022) [2024] KEHC 6435 (KLR) (4 June 2024) (Judgment) the High Court upheld an award of Kshs. 800,000/= for general damages to the Plaintiff who suffered the following injuries:

a. Fracture distal end of the left tibia and fibula;

b. Severe soft tissue injury of the left leg;

c. Deep cut wound on the forehead leading to severe soft tissue injuries;

d. Cut wound on the zygomatic area leading to severe soft tissue injuries;

e. Deep cut wound on the left arm leading to soft tissue injuries;

f. Fracture of the right tibia;

g. Compound fracture of the left tibia;

h. Deep cut wound on the chin.

34. The injuries that the Respondent suffered are largely similar to the above authorities. Fairness is achieved through awarding similar injuries with similar or relatively similar damages. The Court of Appeal in Odinga Jacktone Ouma V Moureen Achieng Odera [2016] eKLR stated that comparable injuries should attract comparable awards.

35. The principle on the award of damages is settled. In Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to:

i. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

ii. The award should be commensurate with the injuries sustained.

iii. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

iv. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

v. The awards should not be inordinately low or high.

36. Based on the above principles and similar fact cases, the award of Ksh. 1,250,000/= for general damages was inordinately high to warrant interference. An award of Ksh. 850,000/= for pain and suffering would be adequate compensation for the Respondent. I say so considering the lapse of time when the said cases were decided which brings in inflation and the fluctuating strength of the Ksh. The appeal is merited and the cross appeal is not merited.

37. On future medical expenses, the Respondent was under duty to plead even an approximate amount that would constitute future medical expenses. In the case of, Tracom Limited & Another vs. Hassan Mohamed Adan Civil Appeal Number 106 of 2006, the Court of Appeal stated:-

> We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require.

38. Future medical expenses as special damages should be pleaded and proved. As was held in the cases of Gulhamid Mohamedali Jivanji vs. Sanyo Electrical Company Limited Civil Appeal No. 225 of 2001 [2003] KLR 425; [2003] 1 EA 98 and Coast Bus Service Ltd vs. Sisco E. Murunga Ndanyi & 2 Others Civil Appeal No. 192 of 1992, while the cost of future medical expenses are special damages and whereas a claim for special damages should not only be pleaded but strictly proved what amounts to strict proof must depend on the circumstances, that is to say, the character of the acts producing damage, and the circumstances under which those acts were done.

39. The Respondent pleaded Ksh. 350,000/= as future medical expenses. The award of the lower court of Ksh. 350,000/= was based on the Respondent's produced medical report that suggested Ksh. 350,000/ = as the amount required to fix the metal implants that would facilitate proper bone alignment and healing. I am unable to interfere with the discretion the lower court as I find no basis to do so. The award was in my view commensurate and supported. In the case of Ramakant Rai vs. Madan Rai, Cr LJ 2004 SC 36, the Supreme Court of India rendered itself thus on the issue of judicial discretion:

> Judicial discretion is canalized authority not arbitrary eccentricity. Cardozo, with elegant accuracy, has observed:
>
> The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not a yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains.

40. On special damages, the amount of Ksh.62,190/= was pleaded and the lower court awarded Ksh. 62,190/=. With special damages, the rule is strict and somewhat mathematical. The court has to discern pleaded damages and proceed to find their proof. It is not based on estimates. The Court of Appeal in Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177 stated that:

> The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss

which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.

41. Special damages are thus very specific and constitute a liquidated claim which must be pleaded and proved. This court's task thus entails whether the trial court failed to award special damages that were pleaded and proved. In Joseph Kipkorir Rono vs. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003, Kimaru, J held that:

> In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred…Special damages and general damages are used in corresponding senses. Thus in personal injury claims, 'special damages' refers to past expenses and lost earnings, whilst 'general damages' will include anticipated loss as well as damages for pain and suffering and loss of amenities… Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Therefore in the instant case the loss of income as a direct consequence of this fraud would be both a general damage as well as a special damage. General damages particularly extent thereof would be unknown at the time of the trial and must await the conclusion of the case so that they may be assessed. Special damages on the other hand consist of those losses that could be calculated at the time of the trial. Special damages must be pleaded, but so must future pecuniary loss if it may lead to surprise. Non-pecuniary damage must not be quantified in a pleading…There ought to be a distinction between past pecuniary losses or expenses already incurred and could easily be calculated by say reference to receipts obtained and anticipated future pecuniary loss or expenses which is continuing and which though one may know the multiplicand you will not normally know how long the loss will take. Such an anticipated loss is general damage, which must of necessity await the completion of the suit to be assessed by the Court. Special damages on the other hand is calculable at the date of the trial out of which a round figure will be obtained. General damages are such as the law will presume to be the direct natural or probable consequences of the action complained of. Special damages on the other hand, are such as the law will infer, from the nature of the act. They do not follow in the ordinary course but are exceptional in their character and, therefore, they must be claimed specifically and proved strictly…Specific loss of profits consequential upon the loss of use of an article for a specific period to the date of the plaint is special damage, which must be pleaded. However, in certain circumstances loss of profits could be included within a claim for general damages… General damages consist of the nature of prospective loss of income while special damages consist of out of pocket expenses and loss of earnings or income incurred down to the date of trial and is generally capable of substantially exact calculation. Where damages has become crystallised and concrete since the wrong the defendant could be surprised at the trial by the detail of its amount.

42. I find that the amount pleaded was the amount proved. The Appellant's attempt to challenge the production of documents is rejected as an afterthought. No objection was raised in the lower court.

43. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:

    (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion

of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

44. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

> " It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

45. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR) as follows:

18. It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

46. There was marginal decrease in the amount awarded with loss on other limbs. The best order, therefore, is for each party to bear its own costs.

Determination

47. The upshot of the foregoing is that I make the following orders: -

a. Judgment for the award of general damages of Ksh. 1,250,000/= is set aside and substituted thereof with Ksh. 850,000/=.

b. The appeal against the award of future medical expenses is dismissed.

c. The appeal against the award of special damages is dismissed.

d. The cross appeal is dismissed.

e. Each party to bear its own costs.

f. 30 days stay of execution.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 10TH DAY OF FEBRUARY, 2026. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Nal for the Appellant

Ms. Bosire for Ms. Angasa for the Respondent

Court Assistant – Matiko/Michael