



**Hk Motors Kenya Limited & 2 others v Ruguru (Civil Appeal
E080 of 2023) [2026] KEHC 1131 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1131 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E080 OF 2023
MA ODERO, J
FEBRUARY 6, 2026**

BETWEEN

HK MOTORS KENYA LIMITED 1ST APPELLANT

SIMJAM LOGISTICS LIMITED 2ND APPELLANT

SAMUEL NDERITU KARURI 3RD APPELLANT

AND

ALEX WANG'OMBE RUGURU RESPONDENT

*(An appeal from the judgment of the Chief Magistrate's Court in
Nyeri CMCC No. E214 of 2022 delivered on 5th December 2023)*

JUDGMENT

1. Before this Court is the Memorandum of Appeal dated 19th December 2023 filed by the Appellants HK Motors Kenya Limited, Simjam Logistics Limited And Samuel Nderitu Karuri seeking the following orders:-

- “ 1. This appeal be allowed.
2. This Honourable Court do proceed and set aside the award of loss of future earnings since the same had not been pleaded.
3. This Honourable Court do proceed and set aside the award on general damages and assess the same afresh in line with case law.
4. The costs of the subordinate court and this appeal be awarded to the Appellant herein.”

2. The Respondent Alex Wang'ombe Ruguru opposed the appeal.



The matter was canvassed by way of written submissions. The Appellant filed the written submissions dated 6th June 2025 whilst the Respondents relied upon his written submissions dated 23rd June 2025.

Background

3. The Respondent filed in the Magistrates Court a Civil Suit being Nyeri CMCC No. E214 of 2022 vide a Plaint dated 25th July 2022 seeking the following orders:-

- “(a) General Damages for pain and suffering and loss of amenities, future medical expenses of Kshs. 400,000/=
- (b) Special damages.
- (c) Costs of the suit plus interest.”

4. The brief facts of the case were that on 25th July 2022 the Respondent was riding a motorcycle Registration KMEC 9205 along the Nanyuki - Naromoru Road heading towards Nanyuki direction. That an oncoming motor vehicle Registration KCE 663 U was being driven by the 3rd Appellant. That the driver of the vehicle drove negligently and attempted overtake when it was not safe to do so and in the process encroached into the lane where the motor cycle was being driven causing a collision. As a result of the accident the Respondent sustained serious injuries for which he claimed damages.

5. The Appellants filed a statement of defence dated 6th September 2022 in which they denied the allegations of negligence.

6. On 28th March 2023 the parties filed a consent on liability at 80:20 in favour of the Respondent. This consent on liability was duly adopted by the court on 28th March 2023. On 8th December 2023, Hon. F. Munyi Magistrate delivered a judgment finding in favour of the Respondent in the following terms:

- “1. General damages - Kshs. 1,000,000
 - 2. Future Medical Expenses - Kshs. 300,000
 - 3. Special Damages - Kshs. 550
 - 4. Loss of future earnings capacity - Kshs. 300,000
- Total - Kshs. 1,600,000/=
- 80% Kshs. 1,280,000/= Plus costs and interest at court rates.”

7. Being aggrieved by this judgment the Appellants filed this appeal which appeal was premised upon the following grounds:-

- “1. That the learned trial magistrate erred in fact and in law by awarding inordinately high general damages to the Respondent.
- 2. That the learned trial magistrate erred in fact and in law by failing to consider the appellant’s submissions and authorities on quantum hence arriving at an erroneous decision.
- 3. That the learned trial magistrate erred in fact and in law by awarding damages that were inordinately high to constitute a miscarriage of justice in the circumstances of the case.



4. That the learned trial magistrate erred in fact and in law by awarding loss of future earnings that had not been pleaded contrary to the decisions of superior courts.
5. That the learned trial magistrate's judgment was wholly not supported in law by evidence tendered in court by the parties."

Analysis And Determination

8. I have carefully considered this appeal, the record of Proceedings in the lower court as well as the written submissions filed by both parties.
9. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see Peters -vs- Sunday post limited [1958] E.A 424]
10. In *Selle And Another -vs- Associated Motor Boat Company Ltd & Others* [2968] 1 E.A 123 it was stated that:-

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”
11. Likewise in *Gitobu Imanyara & 2 Others -vs- Attorney General* [2016] eKLR, the Court of Appeal stated as follows:-

“An appeal to this court is by way of a 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.”
12. Given that the parties entered into a consent on the question of liability this was not determined by the court. The court adopted the consent on liability at 80:20 in favour of the Respondent.
13. On quantum of general damages the Respondent told the court that as the result of the accident he suffered open segmental tibia/fibula fracture on the right leg and sustained permanent incapacity of 20% as assessed by his doctor. The Respondent also sought Kshs. 400,000/= for future medical expenses.
14. The trial court awarded general damages of Kshs. 1,000,000/= having taken into account the 20% permanent incapacity.
15. I am mindful of the fact that the measure of quantum lies at the discretion of the judicial officer hearing the case. In *Southern Engineering Co. Limited -vs- Musungi Mutia* [1985] KLR the Court held as follows:-

“The measurement of the quantum of damages is a matter for the discretion of the individual judge which was to be exercised judicially and with regard to the general conditions



prevailing in the country generally and to prior decisions which are relevant to the case in question.”

16. It is a principle in cases of assessment of damages that similar injuries ought to attract similar awards. [see Simon Taveta -vs- Mercy Mutitu Njeru [2014] eKLR]. I have taken into account other cases where similar injuries were suffered including the following:-
 - a) In George Riani Atungu v Moffat Onsare Aunga [2021] eKLR, Kshs. 650,000.00 was awarded for a fracture of the right tibia and fibula bones, a fracture of the left radius and ulna, and contusions to the chest and the pelvis.
 - b) In Nahson Nyabaro Nyandega v Peter Nyakweba Omboga [2021] eKLR, it was a compound fracture of the right tibia bone; cut wound on the right leg; and bruises on the face, and the court awarded Kshs. 650,000.00.
 - c) In Ndwigwa & another v Mukimba [2022] KEHC 11793 (KLR), the court awarded Kshs. 500,000.00 for fractures of the tibia and fibula, and tenderness and swelling on the left leg.
 - d) In Atunga v Mogambi [2022] KEHC 9854 (KLR), the injuries were fractures of the tibia and fibula bones; dislocation of the right hip joint; multiple lacerations on the lower limb; bruises, with multiple cut wounds, on the upper limbs; Dislocation of the right shoulder; chest trauma; and bruises on the frontal part of the head, and Kshs. 550,000.00 was awarded.
 - e) In Jitan Nagra vs. Abidnego Nyandusi Oigo [2018] eKLR, the injury was a compound fracture of the tibia and fibula bones, plus a segmental distal fracture of the femur, and an award of Kshs. 450,000.00 was made.
 - f) In Kiama vs. Mutiso [2024] eKLR the injuries suffered were a fracture of the left tibia bone (upper 1/3) and a blunt injury to the left leg and thigh, and the court awarded Ksh. 400,000.00.
 - g) In Barnabas vs Ombati [2022] eKLR The court upheld the trial court’s award of Kshs. 800,000/= for general damages where the plaintiff therein had sustained soft tissue injuries together with fracture of the right femur, right humerus and fracture of the pelvic bone which injuries are more severe than the injuries in this case.
17. An examination of the above cases reveals that the range of awards made for similar injuries is between Kshs. 400,000/= to Kshs. 650,000/=. In JAMES OKONGO -VS- ELMET SAWE OGEKA [2021] eKLR, where liability was assessed at 100% an award of Kshs. 800,000 was made.
18. It is my view that the award of Kshs. 1,000,000/= was in the circumstances excessive given the injuries suffered. As such I reduce the amount awarded for general damages under this heading to Kshs. 800,000/=.
19. The Respondent sought an award for loss of future earnings. This had not been pleaded in the plaint. It is trite that a party is bound by his/her pleadings.
20. However at paragraph 9 of the plaint there was a claim for loss of earnings. In Mumias Sugar Company Limited -vs- Francis Wanalo [2007] eKLR the Court of Appeal held that:-

“It is important to realize that there is a difference between an award for loss of earnings as distinct for loss of future earnings are awarded for real assess – able loss proven by evidence. Compensation for the diminution in earning capacity is awarded as part of general damages.”



21. Loss of earnings is a claim that must be specifically pleaded and Proved. In the case of Nyatogo -vs- Mini Bakeries Limited [2023] eKLR, the Court stated that

“.....loss of earnings must be specifically pleaded and proved. Usually, Loss of earning capacity is concerned with the effect of the injury on the person’s future earning ability as opposed to the present loss. However, it is the responsibility of the respondent to demonstrate by way of evidence.” [Own emphasis]

22. The Respondent claimed that he was earning Kshs. 20,000/= per month as a motor cycle rider. No evidence was tendered in court to prove this claim. I agree with the decision of the trial court not to make any award under this heading.

23. On loss of future earning capacity, the Court of Appeal in Mumias Sugar Company (supra) stated that Compensation for the diminution in earning capacity is awarded as part of general damages. The trial court awarded Kshs. 300,000 as part of the damages and cited Nyatogo v Mini Bakeries Limited (supra) and utilized a global sum approach in awarding under this heading which discretion shall not be disturbed. In Mumias Sugar Company (supra), the court stated:

The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award, when a plaintiff is employed, is to compensate the plaintiff for the risk that the disability has exposed him to either losing his job in the future or case he loses the job, his diminished chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability. [emphasis my own]

24. Under the limb of Special damages the trial court made an award of Ksh. 550/=. It is trite that a claim for special damages must be specifically proved. Although the Respondent made a claim of Kshs. 7,000 under this heading he only availed by way of proof a receipt for Kshs. 550/= in respect of a motor vehicle search. I am not inclined to interfere with this award.

25. Finally this appeal is partially successful. This court sets aside the award of Kshs. 1,000,000 under general damages made by the trial court and replaces it with an award of Kshs. 800,000. The other awards remain undisturbed. Therefore judgment will be entered in favour of the Respondent (the Plaintiff in the Lower Court) as follows:-

- (a) General damages - Kshs. 800,000
- (b) Future Medical Expenses - Kshs. 300,000
- (c) Special damages - Kshs. 550

Total - Kshs. 1,100,550

Less 20% liability on Appellant (the Defendant in the Lower Court.)

Final Award - Kshs. 880,440 plus costs and interest at court rates.



26. Each party to meet their own costs for this appeal.

DATED IN NYERI THIS 6TH DAY OF FEBRUARY 2026.

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MAUREEN A. ODERO

JUDGE

