



**Kithoka v Cook N’Lite Ltd (Appeal E233 of 2024)  
[2026] KEELRC 398 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 398 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E233 OF 2024  
K OCHARO, J  
FEBRUARY 19, 2026**

**BETWEEN**

**KYALO KITHOKA ..... APPELLANT**

**AND**

**COOK N’LITE LTD ..... RESPONDENT**

*(Being an Appeal from the judgment and decree of the Honorable R.N.Akee in Mombasa CMCC NO. 795 OF 2018, delivered on the 30th September 2024.)*

**JUDGMENT**

**Background**

1. Arguing that he was at all material times an employee of the Respondent, who suffered a workplace injury during the course of his employment, the Appellant initiated legal proceedings against the Respondent in the aforementioned matter, seeking both general and special damages.
2. The Respondent filed a Statement of Defence to the Appellant’s Claim out of the statutory period, but with leave of the court and by consent of the parties.
3. At the hearing, the Appellant testified and called a witness to support his case, while the Respondent presented no witness to testify in support of their defence against the Appellant’s case.
4. After considering the evidence before her and the parties’ submissions, the learned trial Court found in favour of the Appellant on both liability and quantum. Through this appeal, the Appellant challenges the quantum aspect of the judgment.

**The Appellant’s case before the trial Court.**

5. The Appellant’s claim before the lower court was straightforward and not complex to comprehend. He was at all material times employed by the Defendant as a machine operator.



6. It was an express or implied term of the contract between him and the Respondent that the Respondent shall take reasonable precautions for his safety while performing his duties, avoiding exposing him to injury and damage. Additionally, the Respondent was required to provide and maintain a safe working environment to ensure his safety.
7. On 8th November, 2017, while in the course of his duties, he was involved in a workplace accident that resulted in an injury to his person, namely, a cut to the extensor tendon of the right third [middle] finger. He attributed the accident and resultant injury to the negligence of the Respondent and or its servants, agents and or employees.

### **The Judgment by the Lower Court.**

8. By her judgment, the learned trial Magistrate found the Defendant wholly liable [100%] for the occurrence of the accident, and awarded the Appellant both general and special damages, KShs. 150,000 and KShs. 2000, respectively.

### **The Appeal**

9. Aggrieved by the Judgment, the Appellant assailed the Judgment, citing the following principal grounds;
  - a. That the learned trial Magistrate erred in law and fact in awarding general damages of KShs. 150,000, an amount that was inordinately low in the circumstances.
  - b. That the learned trial Magistrate erred in law and fact in failing to consider the nature and seriousness of the injuries suffered by the plaintiff.
  - c. That the learned trial Magistrate erred in law and fact in failing to consider in totality the Appellant's evidence on record in determining the issue of general damages for pain and suffering.
  - d. That the learned trial Magistrate erred in law and fact in failing to consider or properly consider the evidence on record and the plaintiff's submissions.

### **Analysis and Determination**

10. This Court, as a first appellate court, recognises its duty to re-evaluate, reassess, and re-analyse the material submitted to the lower court by the parties and to form its own conclusions. However, it must remember that it did not hear or see the witnesses testify and should make appropriate allowances for this. See *Abok James Odera t/a A. J. Odera & Associates v Patrick Machira t/a Machira & Co. Advocates* [2013] 2 EA 212.
11. I have carefully considered the grounds of appeal; they are not on both the learned trial Magistrate's decision on both liability and quantum, but on the quantum aspect of her judgment.
12. The Appellant's Counsel contends that the learned trial Magistrate granted general damages that were disproportionately low. This results from the failure to adequately consider the gravity of the injury sustained, its permanent effect, and the authorities cited in support of a higher quantum award.
13. The counsel representing the Respondent urges this Court to consider that the medical report dated 24th July 2023, authored by Dr. Ajoni Adede and presented as the Appellant's own exhibit, explicitly indicates that the injuries alleged by the Appellant—including the cut extensor tendon, stiffness, deformity, and loss of dexterity in the third right finger—were existing prior to the incident



and therefore not attributable to the event in question. The Appellant should not be permitted to intentionally rely on pre-existing conditions to deceive the court into awarding damages for injuries that did not directly result from the incident. To substantiate this argument, reliance is placed upon the case of *Simon Taveta v Mercy Mititu Njeru* [2014] eKLR.

14. Counsel further argues that the award of KShs. 150,000 made by the learned trial Magistrate was grounded in the correct appreciation of the nature of the injuries sustained, soft tissue injuries in nature, with no credible evidence of permanent incapacity attributable to the incident. Comparable decisions like *Boniface Waiti Murage v China Road and Bridge Corporation* [2021] eKLR and *Patrick Kinyanjui & Another v Hassan Mohammed* [2021] eKLR clearly demonstrate that for the soft tissue injuries suffered, the award of KShs. 150,000 was reasonable.
15. At this juncture, it is imperative to emphasise that the awarding of general damages for injuries sustained constitutes a discretionary judicial decision. When such an award is issued by a lower court, a superior court, exercising appellate jurisdiction, may only overturn the award if it is demonstrated that the damages awarded were excessively high or low, thereby constituting an erroneous assessment. See *Butt vs Khan* [1977] KLR.
16. In *Mahmud Salim Omar v M.A Bayusufu*, Mombasa CA No 48 of 2006, the Court of Appeal stated;

“We are being urged to interfere with the awards made by the superior court. As already indicated earlier in this Judgment, the appellant’s main complaint is that the award granted by the superior court was grossly inadequate. In *Kemfro Africa Limited vs Meru Express Service, Gathogo Kanini, V.-A. M. Lubia and Olive Lubia* [1982-88] 1 KAR 727 at P. 730 Kneller J. said:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into consideration irrelevant factor, 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 the damage.....”
17. I will follow these same principles.
18. Contrary to the Respondent’s Counsel’s submissions, considering the medical report by Dr Adede, dated 24<sup>th</sup> July 2023, holistically, his oral testimony, and the pleadings by the Appellant, I am not persuaded that the Appellant has attempted to use pre-existing condition[s] to mislead the court into awarding unjustified general damages.
19. I have carefully considered the case of *Duncan Mwenda & 2 others vs Silas Kinyua Kithela*, High Court of Kenya at Meru, Civil Appeal No. 9 of 2017, relied on by the Appellant to drive the position that the Learned trial Magistrate did not consider relevant authorities and that the general damages awarded were inordinately low, and note that in this cited case, the Respondent suffered, severe blunt head injury with intracerebral hematoma, damage to the extensor tendon of the left middle finger and soft tissue injuries on the chest wall. I further note that the Respondent was admitted for five months in an unconscious state for that period.
20. In my view, it would be unreasonable to assert that these injuries are comparable to those suffered by the Appellant in this matter.



21. Having said this, I am not persuaded that, given the injury suffered by the Appellant, the learned trial Magistrate made a grossly low award for general damages, based on the non-consideration of a relevant precedent, to warrant this Court disturbing the award.
22. In the upshot, I find the appeal lacking in merit. It is hereby dismissed.

**READ SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026.**

**OCHARO KEBIRA**

**JUDGE**

