

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E022 OF 2025 AND NO. E019 OF 2025
(CONSOLIDATED)

GEORGE

MBUGUA.....1ST

APPELLANT

VAULTS

LIMITED.....2

ND APPELLANT

VERSUS

KATE WANJIKU

**NYAKIO.....RESPONDENT/CROSS-
APPELLANT (Being an appeal from the Judgment and Decree of the Hon. Nathan
Lutta (CM) delivered on the 29/01/2025 in Naivasha Civil Suit No. 651 of 2017)**

JUDGMENT

Background of Appeal

1. Before this court are two appeals arising from the findings of the Chief Magistrate’s Court at Naivasha in Civil Suit No. 651 of 2017. The first appeal, designated as Civil Appeal No. E022 of 2025, was initiated by the 1st and 2nd Appellant’s (initially defendants at trial) against the Respondent challenging the assessed quantum of damages awarded.
2. The second appeal, Civil Appeal No. E019 of 2025, lodged by the Respondent/cross-appellant against the Appellants seeks to enhance the award for general damages made by the trial court with the contention that the same was inordinately too low.
3. Given that both appeals arise from the same trial and concern the same set of facts and legal determinations, the court having directed their consolidation, will proceed to render a consolidated judgement for the same as hereunder.

4. The dispute stems from a road traffic accident that is agreed to have occurred on 10th September 2016. The Respondent was pleaded to have been at the material time a lawful passenger traveling in motor vehicle registration number KCC 225Z along the Naivasha-Nairobi Highway. When the vehicle reached Delamere area, it was violently struck from the rear by motor vehicle registration number KBZ 943V, which was owned, controlled, or insured by the Appellants. Following the accident, the Respondent sustained multiple injuries, necessitating immediate medical intervention and prolonged hospitalization.
5. On the 04.09.2017, the Respondent instituted the suit in the lower court, seeking relief under several heads: general damages for pain, suffering, and loss of amenities; special damages for medical expenses already incurred; future medical expenses for expected surgeries and rehabilitation; and damages for the loss of earnings and earning capacity.
6. On 7th June 2019, the court entered an interlocutory judgment following the Appellants' failure to enter appearance or file a defense within the prescribed period. The same was subsequently set aside on conditions of payment of thrown away costs. Thereafter the defendants filed defense denying the occurrence of the accident and all the particulars of negligence and the extent of the injuries.
7. During the trial proceedings, the parties eventually reached a consensus on the issue of liability and recorded a consent at a ratio of 85:15 in favour of the Respondent against the Appellants. The court then proceeded to execute the duty of assessing damages and delivered its judgement on 29/01/2025. In the judgement, the learned trial court entered judgement in favour of the Respondent against the Appellant as follows: -
 - a. **Liability - apportioned by consent at 85%:15% in favour of the Respondent and against the Appellant.**
 - b. **Special damages - Kshs.283,692/-**
 - c. **General damages - Kshs.1,000,000/-**

- d. Future Medical Expenses - Kshs. 1,300,000/-**
- e. Costs of Domestic Helper - Kshs.6,480,000/-**
- f. Costs and interests**

The Appeal

8. In Civil Appeal No. E022 of 2025, the Appellants challenged the entirety of the quantum awarded, raising six specific grounds in their Memorandum of Appeal dated 26/02/2025. The grounds in summary contend that the learned trial magistrate erred in law and fact by granting an award that was manifestly excessive and failed to consider the evidence tendered before it. A primary point of contention in the appeal is the award of Kshs 6,480,000 for the costs of a domestic helper, which they argue was neither specifically pleaded in the Plaint nor proved to the required standard.
9. The Appellants also impugn the award of Kshs 1,300,000 for future medical expenses, characterizing it as inordinately excessive and speculative. They further object to the special damages award of Kshs. 283,692, asserting that the Respondent failed to satisfy the threshold of strict proof required for such liquidated claims. It is submitted that the trial court's failure to adhere to the principle of *stare decisis* led to a judgment that departed from established judicial trends without sufficient justification.
10. Conversely, the Respondent in Civil Appeal No. E019 of 2025, henceforth the cross-appellant, presents a single-ground of appeal focused on the inadequacy of the general damages. She maintains that the award of Kshs. 1,000,000 for pain, suffering, and loss of amenities was inordinately low given the severity of her injuries, the permanent nature of her 70% disability, and the persistent pain she continues to endure. She seeks an enhancement of this award to a figure that more accurately reflects the catastrophic impact of the accident on her life generally and business prospects in particular.

Summary of the evidence led at the trial.

11. PW1, Dr. Kiamba, testified that he examined the Respondent on 25/07/2017 to assess the injuries sustained in the accident of 10/09/2016. He detailed a history of the Respondent being severely injured and subsequently undergoing treatment at Naivasha District Hospital and Kenyatta National Hospital. He informed the court that the Respondent had suffered loss of consciousness and a fractured supraorbital bone, which healed, but left her with chronic headaches.
12. The witness highlighted the orthopaedic severity of the case, pointing to the fractured right femur, which had been fixed with an interlocking nail, and the posterior dislocation of the left hip joint, which required reduction and internal fixation by plating. He indicated that at the time of examination, the Respondent was confined to a wheelchair, unable to stand or walk without support. He assessed the respondent to have suffered 70% permanent disability.
13. He further testified that the Respondent would require future surgeries for the removal of implants, a total hip replacement, and plastic surgery to address the prominent hypopigmented scars and soft tissue loss on her face and thigh. He estimated the cost of these future treatments at no less than Kshs 1,000,000, with an additional Kshs 300,000 for the acquisition of an electric wheelchair.
14. PW2, the Respondent provided a chronological account of the incident and its aftermath, stating that on the day of the accident, she was traveling from Gilgil toward Naivasha. She described the violent impact from the Appellants' vehicle and her subsequent three-month admission to the hospital. The clinical presentation during her admission revealed a fractured left supraorbital bone with loss of consciousness, a fracture of

the right femur, a posterior dislocation of the left hip joint, and extensive degloving injuries across the face and the posterior aspect of the right thigh. Furthermore, the Respondent suffered a deep cut wound to the left ear lobe, the loss of two lower incisor teeth, and various soft tissue injuries to the chest and upper limbs.

15. Under oath, she clarified that she was earning Kshs 15,000 per month from selling shoes, before the accident, but her condition after the accident inhibited movement and necessitated a full-time domestic helper. She informed the court that she pays her helper a daily wage of Kshs. 500, a sum that is currently covered by her mother as she has no personal income. She expressed that her physical disfigurement and the inability to walk independently had led to a significant loss of amenities, ability to earn and mental anguish.
16. PW3 testified as the Respondent's helper, confirming that she has been providing daily assistance to the Respondent since her discharge from the hospital. She described the Respondent's state as one of total dependence, noting that the Respondent cannot perform household chores or move around without aid. She corroborated the Respondent's claim regarding her compensation, stating that she is paid Kshs. 500 per day by the Respondent's mother to assist with the Respondent's daily care and mobility.
17. On the other hand, the Appellants having called no witness to testify, on the basis of the consent on liability, argued in the written submissions that the Respondent's claims were grossly exaggerated and lacked the necessary evidentiary foundation. Specifically, the respondents attack the claim for loss of earnings and earning capacity, noting that the Respondent had failed to provide business records, bank statements, or any form of documentation to prove she was earning Kshs. 15,000 per month prior to the accident.
18. On the matter of future medical expenses, the Appellants contended that the medical report by Dr. Kiamba was not only excessive but was

also prepared by a general practitioner rather than an orthopaedic surgeon, thereby diminishing its authoritative weight regarding specialized surgical costs. They relied on a competing report by Dr. Malik, which, while acknowledging some future needs, suggested a significantly lower sum for such treatment. Regarding the domestic helper, the Appellants emphasized that this was a claim for special damages that must be pleaded with specificity, a requirement the Respondent allegedly failed to meet in her Complaint.

19. The Court directed that the appeal to proceed by way of written submissions and gave the parties herein timelines for filing their submissions. Both parties filed their respective submissions. The court has duly considered the rival submissions by the parties and gained due benefit therefrom.

Issues, Analysis and Determination

20. The court proceeds from the learning that the determination and assessment of damages for personal injury claims rests on the exercise of judicial discretion by the trial court as the first-hand trier of facts. However, the discretion is not absolute. The principle established in **Kemfro Africa Ltd t/a Meru Express Services v A.M. Lubia & Another [1987] KLR 27** dictates that an appellate court will only disturb an award of damages if it is satisfied that the trial judge acted upon wrong principles, overlooked relevant facts, or that the amount awarded is so inordinately high or low that it must be a wholly erroneous estimate of the damages. Further guidance is drawn from the case of **Waithaka v Kariuki [2017] KEHC 14052**, where the court emphasized the need for consistency and judicial predictability, noting that comparable injuries should ideally attract comparable awards to maintain stability in the legal system.
21. This being a first appeal, the court is required under Section 78 of the Civil Procedure Act and as was applied in the case of **Sielle v Associated**

Motor Boat Co. Ltd [1969] E.A. 123; to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate's Court and draw own conclusions while bearing in mind that it did not see or hear the witnesses when they testified.

22. Accordingly, the court has anxiously scrutinized the evidence adduced at the trial, the grounds of appeal, and the rival submissions filed herein. As a matter of fact, the appeal and the cross-appeal both challenge the assessment and award of quantum only and not the liability which was settled by consent.
23. Both parties in their respective appeals have presented compelling arguments for interference. The Respondent suggests a fundamental misapprehension of the severity of her multi-fracture injuries, while the Appellants point to a failure by the trial court to adhere to the rules of pleading and proof.
24. Consequently, the court must determine whether the trial magistrate's evaluation was grounded in the evidence and in tandem with the principles that comparable injuries ought to attract comparable award whether the final figures were arrived at through a rational and judicious exercise of discretion.
25. On general damages, the proceeds from the position that the assessment of general damages serves as a form of *solatium*, an attempt to place the injured party, as far as money can, in the position they would have been in had the injury not occurred. However, money can never truly compensate for the loss of a limb, the experience of agonizing pain, or the psychological trauma of permanent disfigurement. The object of an award is to alleviate the sense and feeling of loss by the victim of the tort.
26. In this matter, the trial court awarded Kshs 1,000,000 for the agreed position that the respondent sustained a fracture of the femur, a hip dislocation, facial degloving, and dental loss. The medical evidence of 70% permanent disability is a significant factor that the trial court seems

to have noted but perhaps under-weighted in its final decision assessing the award.

27. In **Peris Wanjiru Kahiga v Moses Kabata Mwangi [2020] eKLR**, cited by the lower court, a similar award of Kshs 1,000,000 was made for a femur fracture and hip dislocation. Even though the trial court exercised a judicial discretion as the trier of facts for which deference is called for, the court noted that the Respondent in this case suffered more extensive injuries, and not a fit comparison. The court specifically underscore the facial degloving and the loss of teeth and disfigurement of the earlobe as significant residual effects of the injury when regard is given to the young age and gender of the respondent. The court considers the same to have a significant bearing on her personal esteem and thus the need for corrective surgery. The court appreciates the injuries as very extensive with a unique dimension of pain, suffering and loss of amenities. For a 24-year-old woman, the aesthetic impact of facial scarring and dental loss cannot be categorized merely as orthopaedic trauma; it involves a profound loss of self-esteem and social amenity that warrants higher compensation.
28. A reading of the decision in **Gabriel Mwashuma v Mohammed Sajjad & another [2015] KEHC 4068 (KLR)** shows that for complex fractures of the femur and tibia, awards in the range of Kshs. 3,000,000 were considered appropriate. While the injuries in **Mwashuma** involved segmental fractures, the composite effect of the Respondent's injuries in the present case; specifically, the hip dislocation leading to immobilised state, the thigh and face degloving, and the 70% disability, is viewed by the court as incapable of commensurate compensation by an award of Kshs 1,000,000/=. The court adjudges the award as indeed inordinately low.
29. The court finds that the trial magistrate misdirected himself by comparing the injuries here to those in the decision in **Peris Wanjiru Kahiga** by only giving regard to the bone tissue injuries but without

sufficiently accounting for the facial disfigurement and the high permanent incapacity.

30. The court thus views the Appellants' proposal of Kshs. 600,000/= is rejected as wholly inadequate. Such a figure fails to recognize the reality of a 24-year-old being rendered wheelchair-bound with multiple facial and thigh scars.
31. After anxiously considering the current trends of inflation, past awards and the debilitating nature of the Respondent's physical and aesthetic losses, the court is convinced that an award of Kshs. 3,00,000/=, for general damages for pains suffering and loss of amenities, is more appropriate and commensurate with the injuries sustained. The court thus sets aside the award of Kshs 1,000,000 and in its place substitutes an award of Kshs 3,000,000/
32. On the claim for a domestic helper, the trial court's award of Kshs. 6,480,000 represents a significant portion of the total judgment which the Appellants objects to on the grounds that it was not specifically pleaded is a matter of profound legal importance. The rules of pleading, as articulated in **Raila Amolo Odinga & Another v IEBC & 2 others [2017] eKLR**, serve to define the boundaries of the dispute and ensure that the opposing party is not caught off-guard.
33. The claim for the costs of hiring a helper is inherently in the nature of special damages. It is a cost that can be calculated and quantified based on daily or monthly rates. It is a general principle that special damages must be specifically pleaded and strictly proved. In **Monyoro Mong'are Shem & another vs Rose Kebaki [2021] eKLR** , the court explicitly set aside an award for a helper because it was not prayed for in the plaint, regardless of the proof tendered through testimony.
34. A careful perusal of the Respondent's Plaint of 2017 shows that while she prayed for future medical expenses and operations and a helper, she did not set out the particulars of the daily cost of Kshs 500 or the total projected sum in the body of the pleadings. Even in the Amended Plaint of

2023, the quantification remained vague. The Appellants' argument that they were ambushed by a multimillion-shilling claim only during the testimonial stage may not be wholly unjustifiable.

35. It is of note to court that the Respondent and her helper testified to a payment of Kshs 500 per day, but no receipts, pay slips, or records of these transactions were produced. It is equally evident that the Respondent's 70% disability creates a need for assistance as a matter of substantial justice even when not specifically pleaded and proved as special damages.
36. The law allows for the need for care to be considered under general damages for loss of amenities if it is not successfully claimed as a special damage. Because of the level of evidence adduced and the duty of every litigant to mitigate own losses, the court finds the assessment by the trial court to be exaggerated and demonstration of an error in principle.
37. Even with the inelegance in the pleadings particularly failure to specifically pray for cost of a helper in the amended plaint, the court finds that there was a specific prayer for that expense which in any event was lower than the minimum wage applicable for Naivasha, a former municipality. The order sets the daily wages for such a general/domestic worker at 775.39. the award by the trial court adopting a multiplicand of Kshs 500, based on the uncontroverted evidence of the respondent and the helper cannot be legally faulted. With her state the need for a helper or aid is inevitable if the justice was to be served. The need for substantial justice must in such cases supersede and override the failure on the part of counsel to be a better draftsman. The court finds that the award was deserved but adopts the a multiplier of 30 years and not 36 by the rial court which is hereby set aside. That the court does owing to the vicissitudes of life and the accelerated payment affording to the respondent an opportunity to invest the awarded sum and earn from such investments. The choice of multiplier is set aside and substituted with a

multiplier of 30 years. The award under this head thus calculates: - **500 X 30 X12 X 30 X = 5,400,000**

38. On Future Medical Expenses, the Trial court based its award of Kshs. 1,300,000 on the medical report of Dr. Kiamba. The Appellants challenged this award on two fronts: that it was excessive and that Dr. Kiamba, as a general practitioner, lacked the expertise to give specialized surgical cost estimates.
39. there is also an assertion that the trial court ignored the second medical report prepared by Dr Malik and incorporated in the record of cross appeal at page 31. The court find two faults with such submission. The first is that the record does not show that the report was ever produced as an exhibit at trial. Even when filed, the record must be produced by a witness or by the consent of both parties. Without being produced as an exhibit, it remained a strange document which the court had no reason to consider.
40. The second difficulty is that the report establishes the gravity of the respondent's injury when it underscores that she was totally incapacitated for one years and thereafter remained 50% permanently incapacitated. It adds that the hip bone remained dislocated more a year after the injury, the fracture of the femur was infected and oozing pus. Even if the document was to be considered, had been produced as an exhibit, the effect would have been to aggravate the injuries thus enhance damaged awardable.
41. The court considers the inclusion of the report in the record as an abdication of duty to be candid in assisting the court perform its duty. Parties in preparing the document called a record of appeal ought to be candid and only include, besides the pleadings, proceedings and judgment of the trial court, only the document produced as exhibits because those are the document the court must use in its decision. It is also he courts view and position that where a pleading is amended, like in this case the plaint was, that amended pleading becomes the reigning

one and must be in the record. The original plaint may only be included if there be need to treat same as indispensable. This because the amended pleading subsumes that it amends and displaces it in whole.

42. While the court appreciates that the court in the case of **Hassan Noor Mahmoud v Tae Youn Ann [2001] eKLR** held that where injuries involve bone fractures, the reporting doctor should ideally be an orthopaedic consultant, the decision did not hold that a general practitioner's opinion is worthless.
43. Dr. Kiamba's estimates for hip replacement and implant removal are medically logical given the injuries and was never cogently challenged and disproved before the trial court. Not even on the basis of the lack of an itemized proforma from a surgical facility makes the figure of Kshs. 1,300,000. It was the only evidence placed before the trial court and this court finds the opinion to have proved that claim on a balance of preponderance.
44. In personal injury cases, future medical expenses are awarded for treatment that is shown to be necessary and whose cost can be reasonably estimated. Taking into account the costs associated with total hip replacement and the removal of internal fixation devices in modern Kenyan hospitals, the court finds that the claim was sufficiently proved and the award properly made. There is no demonstrated error to merit interference. It is upheld
45. On Special Damages, the trial court awarded special damages of Kshs. 283,692 under this head. The Appellants argue that only Kshs. 30,000 was proved, as the majority of the medical expenses were supported by invoices rather than receipts.
46. While the court appreciates the holding in **Zacharia Waweru Thumbi v Samuel Njoroge Thuku [2006] eKLR**, that special damages are a reimbursement for what a Respondent has actually spent, and proof requires actual receipts or invoices endorsed as "PAID", the court views that decision to be only persuasive and not binding.

47. To this court, strict proof is never synonymous with proof by way of receipts only. Invoices for services rendered or due to be rendered but not rendered on account of lack of fund, but remain necessary therapy, are sufficient proof of the expense. In this matter the respondent produced, with the consent of the appellants, a statement from Kenyatta national hospital, that the respondent incurred a bill of Kshs 253, 142/- the statement for bill already incurred is never a pro forma invoice.

48. This was thus not a case to properly apply the decision in **Super Metro Limited vs Angela Ndanu Kathuku Gitonga [2016] eKLR**, where the Court of Appeal court reduced special damages significantly because proforma invoices were wrongly accepted by the trial court as proof of payment. The court thus finds that the special damages were specifically pleaded and strictly proved in the sum of Kshs 283,692 as correctly awarded by the trial court. There is no justification to accede to the invitation to interfere.

49. The upshot of the foregoing is that both the appeal and cross appeal succeed partially. The summary of the determination of both is that the judgment of the lower court is altered by this court making the following orders: -

- a. Special damages - Kshs. 283,692/
- b. General damages for pains suffering and loss of amenities- Kshs.3,000,000/-
- c. Future Medical Expenses - Kshs. 1,300,000/
- d. Costs of domestic help- Kshs 5,400,000/

Gross Total award - Kshs 9,983,692/

Less 15% Contributory Negligence - Kshs. 1,497,553

Net Award Payable to Respondent - Kshs. 8,486,139

50. On the issue of costs, since both the appeal and the cross-appeal have succeeded in part, it is ordered that each party shall bear their own costs of the appeal.
51. The costs awarded in the lower court shall remain undisturbed as they follow the event of the suit.
52. Interest at court rates shall be payable on special damages from 14/09/2017, being the date of filing the suit while general damages shall attract interests at the same court rates from 29/01/2025 being the date of the trial court judgment, until payment in full.

Dated, signed and delivered virtually this 6th day of March, 2026



Patrick J O Otieno

Judge

Original