REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E062 OF 2025

MASH EAST AFRICA LIMITED……..

APPELLANT

=VERSUS=

FRANCIS MWANGI WANGARI…….

……RESPONDENT

(Being an appeal from the Judgment of Hon. F. M. Mulama (Adjudicator/RM) in Taveta SCCC No. E060 of 2025 delivered on 21st October 2025)

JUDGMENT

1. The Respondent was the Claimant in Taveta SCCC No. E060 of 2025 where he filed a claim dated 8th September 2025 seeking general damages for pain and suffering, future medical expenses of Kshs. 406,000/= and special damages of Kshs. 5,550/= for injuries the Respondent sustained on 2nd August

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2025 while travelling in motor vehicle registration number KBX 050S along Mombasa – Nairobi highway.

2. The Respondent averred that the motor vehicle which was being driven by the Appellant was driven so negligently that it rammed onto an oncoming truck while overtaking.
3. The Respondent sustained soft tissue injuries to the right shoulder and right knee.
4. The Appellant did not enter appearance within the statutory time and the case proceeded exparte after entry of interlocutory judgment on 13th October 2025.
5. The damages were assessed as follows:-

(i) General damages for pain and suffering Kshs. 500,000/=

(ii) Special damages Kshs. 5,550/=

(iii) Future medical expenses Kshs. 406,000/=

6. The total award payable was Kshs. 911,550/=
7. The Appellant has filed this appeal on the following grounds:-

(i) That the learned Adjudicator erred in law and in fact by awarding the Claimant the sum of Kshs.

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500,000/= (Kenya Shillings Five Hundred Thousand) as General Damages for pain, suffering and loss of amenities and which award was excessive in the circumstances and not in tandem with other similar, decided cases of equal gravity and magnitude as is the mandatory requirement under the applicable law regarding assessment of damages.

(ii) That the learned Adjudicator erred in law and inf act by relying on decided cases that were not on all fours with the facts and circumstances obtaining in the claim before him and thus arrived at an erroneous and excessive award of Kshs. 500,000/= (Kenya Shillings Five Hundred Thousand) for general damages for pain, suffering and for loss of amenities.

(iii) That the learned Adjudicator erred in law and in fact by awarding the claimant the sum of Kshs. 406,000/= (Kenya Shillings Four Hundred and Six Thousand) as costs of future medical expenses when the same has not been proved to the standard required for their awarding as special

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damages and thus unfairly enriching the Claimant in the circumstances.

(iv) That the learned Adjudicator erred in law and in fact by awarding special damages that were not strictly proved as required by law.

(v) That the learned Adjudicator erred in law and in fact by arriving at a decision that was wholly against the weight of the evidence before court and the applicable law.

8. The parties filed written submissions as follows:- The appellant, Mash East Africa Limited, submitted that they have appealed against the judgment of the Small Claims Court at Voi, which awarded the respondent, Francis Mwangi Wangari, Kshs. 500,000 in general damages for pain, suffering, and loss of amenities, plus Kshs. 406,000 in future medical expenses as special damages.
9. The appellant did not participate in the lower court proceedings and challenges only the quantum of damages, arguing that the awards are excessive and unsupported by the evidence.

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10. On the general damages, the appellant submits that the respondent's injuries, soft tissue injuries to the right shoulder and a right knee cruciate ligament injury, were not severe, and the medical report did not assign any percentage of permanent disability.

11. The appellant contrasts this with the case of **Mara Tea Factory v. Joshua Makworo Onkoba,** where a claimant with more serious injuries received Kshs. 300,000, and therefore argues that the adjudicator erred by relying on cases involving graver injuries, leading to an excessive award of Kshs. 500,000.

12. The appellant urges the court to substitute an award not exceeding Kshs. 300,000.

13. Regarding the future medical expenses, the appellant contends that the adjudicator relied solely on the report of Dr. Wisdom Njumwa, who did not testify, whose qualifications and expertise were not disclosed or verified, and whose report lacks probative value.

14. The appellant cites **Stephen Kanini Wang'ondu v. The Ark Ltd.,** noting concerns about expert witnesses acting as "hired guns," and points out that the doctor was paid for the report as evidenced by a receipt.

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15. The appellant further argues that special damages must be strictly proved, which was not done here, and thus the Kshs. 406,000 award should be set aside entirely.

16. In conclusion, the appellant asks the High Court to allow the appeal, set aside the lower court's award on quantum, and substitute it with a more reasonable assessment consistent with established legal principles and comparable cases.

17. The respondent in his written stated that the trial magistrate properly evaluated the evidence and reached a correct determination on quantum, which is the sole subject of this appeal.

18. The case arose from a road accident on 2nd August 2025, in which the respondent was a lawful passenger aboard the appellant's vehicle along the Nairobi-Mombasa highway.

19. The appellant was duly served but failed to enter appearance, leading to interlocutory judgment and a formal proof hearing that resulted in judgment against the appellant.

20. On quantum, the respondent submits that the trial court's award of Kshs. 500,000 as general damages for pain and suffering was not manifestly excessive, citing two comparable cases: **Makau & 2 others v Nandwa,** where Kshs. 1,000,000 was upheld for a fracture of the left tibia plateau, torn cruciate

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ligament, torn patellar tendon, bleeding into the knee, and loss of two upper incisor teeth; and the case of **Kinyua v Murage**, where Kshs. 600,000 was awarded for deep cut wounds, knee effusion, oedema, and a torn meniscus with cruciate ligament damage.

21. Regarding future medical expenses, the respondent points to Dr. Kumwa's uncontroverted medical report of 4th August 2025, which set the cost of orthopaedic follow-up, physiotherapy, medication, imaging, surgical intervention, and supportive devices at Kshs. 406,000.

22. The report was not challenged at trial, and the doctor's qualifications (MBChB and KMPDC registration) were provided.

23. Relying on **Daniel Otieno Owino & another v Elizabeth Atieno Owuor,** the respondent argues that an appellant cannot challenge medical evidence on appeal without having subjected the claimant to a second medical examination and produced a contrary report at trial.

24. The respondent submitted that the appeal is unmerited and should be dismissed with costs.

25. The jurisdiction of the High Court to entertain appeals from the Small Claims Court is circumscribed by Section 38(1) of the Small Claims Court Act, No. 2 of 2016, which provides that an

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appeal from the Small Claims Court to the High Court shall lie only on matters of law.

26. The Appellant's grounds of appeal, as enumerated in the Memorandum of Appeal, challenge the amount of general damages as excessive, the reliance on certain decided cases, the proof of future medical expenses, and the strict proof of special damages. These grounds are fundamentally challenges to the factual findings and the exercise of discretion by the learned Adjudicator on the quantum of damages.

27. An appellate court will not interfere with an award of damages unless it is shown that the trial court acted on a wrong principle of law, or that the award is so manifestly excessive or so inordinately low as to represent an entirely erroneous estimate.

28. The Appellant's submissions invite this Court to re-evaluate the medical evidence and compare the injuries with other cases, which is a factual inquiry beyond the scope of an appeal under Section 38(1) of the Small Claims Court Act.

29. The High Court's role in such an appeal is not to re-examine the weight of the evidence, as that would improperly convert an appeal on law into an appeal on facts.

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30. Consequently, the Appellant's entire appeal is incompetent and must be dismissed on this preliminary jurisdictional ground alone.
31. Notwithstanding the foregoing, even if this Court were to entertain the appeal on its merits, the Appellant would still fail.
32. The Appellant contends that the award of Kshs. 500,000/= in general damages for soft tissue injuries to the right shoulder and a right knee cruciate ligament injury is excessive.
33. The Respondent produced a medical report from Dr. Wisdom Njumwa, which was uncontroverted because the Appellant failed to enter appearance or participate in the proceedings.
34. The report detailed a cruciate ligament injury, which is not a trivial soft tissue injury but a significant internal derangement of the knee joint.
35. The Adjudicator relied on comparable cases, including **Makau & 2 others v. Nandwa [2021] eKLR**, where Kshs. 1,000,000/= was awarded for a torn cruciate ligament among other injuries, and **Kinyua v. Murage [2020] eKLR,** where Kshs. 600,000/= was awarded for a torn meniscus with cruciate ligament damage.

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36. In the context of these authorities, an award of Kshs. 500,000/= for a cruciate ligament injury without surgery is not manifestly excessive.

37. The Appellant's reliance on **Mara Tea Factory v. Joshua Makworo Onkoba** is misplaced, as that case involved different injuries and did not feature a cruciate ligament tear.

38. The Adjudicator acted within his discretion and on a correct legal principle by considering comparable injuries and awarding damages that are consistent with current market rates and inflationary trends in Kenya.

39. Regarding the future medical expenses of Kshs. 406,000/=, the Appellant argued that the doctor's report lacked probative value because the doctor did not testify and his qualifications were not disclosed.

40. However, in proceedings before the Small Claims Court, the strict rules of evidence under the Evidence Act, Cap 80 Laws of Kenya, are not applicable with the same rigidity as in the High Court. Section 30(2) of the Small Claims Court Act allows the court to admit any evidence that it considers relevant and necessary, including written reports.

41. The medical report dated 4th August 2025 clearly set out a breakdown of the costs for orthopaedic follow-up,

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physiotherapy, medication, imaging, surgical intervention, and supportive devices, totalling Kshs. 406,000/=.

42. The report was on record, and the Appellant did not challenge it by seeking a second medical examination or producing a contrary report at the trial stage.
43. Where a medical report is uncontroverted and the opposing party had the opportunity to subject the claimant to an independent medical examination but failed to do so, the trial court is entitled to rely on that report.
44. The Adjudicator was therefore correct to admit and rely on the report.
45. The Appellant's argument that the doctor was a "hired gun" is unsubstantiated and ignores the fact that all medical reports prepared for litigation are paid for; that alone does not vitiate their probative value.
46. The future medical expenses were proved on a balance of probabilities, which is the standard required in civil claims.
47. Future medical expenses are a form of special damages that must be specifically pleaded and proved, and this was done here through the itemized medical report.
48. Consequently, the award of Kshs. 406,000/= is upheld.

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49. Finally, the Appellant's attack on the special damages of Kshs. 5,550/= is equally unmeritorious.
50. The Respondent pleaded specific sums for the cost of the medical report, filing fees, and transport, and annexed receipts.
51. The law on special damages is that they must not only be pleaded but also strictly proved.
52. The appeal is therefore dismissed with costs to the Respondent.
53. Orders to issue accordingly.

Dated, signed and delivered this 30th day of April 2026 in open court at Voi High Court.

ASENATH ONGERI
JUDGE

In the presence of:-
Court Assistants: Millicent
……for the Appellant

……for the Respondent

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