

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**VOI LAW COURT**  
**CIVIL APPEAL NO. E032 OF 2025**

**PASCAL MBONDO KIMEU**

.....**APPELLANT**

**VERSUS**

**PAUL MWAKISHA MKANG'OMBE.....**

**RESPONDENT**

*(Being an Appeal from the Judgment of Hon. E.M. Mulama - RM delivered on 9<sup>th</sup> May 2025 in Voi Small Claims Court Civil Case No. E014 of 2025)*

**JUDGMENT**

1. The respondent was a lawful passenger in the appellant's motor vehicle, registration number KDD 665K, when the driver allegedly drove negligently at high speed, causing the vehicle to lose control and overturn, thereby injuring the respondent.
2. The respondent sustained a cut on the head, soft tissue injuries to the neck, chest, and lower back, and claimed future physiotherapy costs.
3. The appellant denied the accident occurred and that the respondent was negligent, and contended that the respondent had been sued for a wrong he did not commit.

4. The matter proceeded by way of documents and written submissions by consent of the parties.
5. The court found that the police abstract confirmed the accident and the respondent's involvement, and the medical treatment notes from 23rd November 2024 corroborated the injuries.
6. The appellant's denial was not sufficient to challenge the authenticity of the police abstract or the medical records.
7. The court held that the appellant had not provided evidence to controvert the respondent's account, and that the appellant's submissions about seat belts and third-party notices were inconsistent with his denial that any accident occurred.
8. The court reiterated that well-driven vehicles do not just get involved in accidents and that a passenger cannot be penalised for the driver's negligence.
9. Consequently, the court found the appellant 100% liable.
10. On quantum, the court considered the injuries and comparable authorities, rejecting the appellant's proposal of Kshs. 50,000 and the respondent's proposal of Kshs. 400,000, instead awarding Kshs. 200,000 in general damages.
11. The court allowed the future medical expenses of Kshs. 40,000 for physiotherapy as it was uncontroverted.
12. For special damages, the court allowed only those receipts post-dating the accident, totalling Kshs. 6,010, and rejected pre-accident receipts.

13. Costs and interest were awarded to the claimant from the date of judgment. The total award was Kshs. 246,010.
14. The appellant has appealed on the following grounds;
  - (i) First, he contends that the Honourable Adjudicator erred in law when assessing both general damages and future medical expenses by failing to apply the correct legal principles.
  - (ii) The Appellant argues that the Adjudicator took into account matters he ought not to have considered, while simultaneously failing to consider relevant matters, which consequently led to an erroneous assessment of the damages awarded.
  - (iii) Second, the Appellant argues that the Adjudicator further erred in law by making an award of general damages that was excessive, particularly when compared to existing case law which demonstrates similar or more serious injuries than those suffered by the Respondent.
  - (iv) The Appellant asserts that the Adjudicator thus failed to apply the established principle that comparable injuries should attract comparable awards.
15. The parties filed written submissions as follows; The appellant submitted that the appeal challenges the judgment delivered on May 9, 2025, in the Voi Small Claims Court, specifically contesting the quantum of damages awarded by the trial adjudicator.

16. The appellant contends that the trial court failed to apply proper principles in assessing general damages and future medical expenses, resulting in an award that was excessively high compared to established case law for similar injuries.
17. The appellant argues that the respondent's injuries, which included a head cut and soft tissue injuries to the neck, chest, and lower back, were minor and expected to result in a full recovery without permanent disability.
18. Regarding the Ksh 200,000 award for general damages, the appellant asserts that while the trial court cited inflation and the passage of time as justifications, the award deviates significantly from comparable judicial precedents where similar or more severe injuries attracted lower sums, such as Ksh 100,000 or Ksh 70,000.
19. The appellant in his submissions emphasize the legal principle that comparable injuries should attract comparable awards to ensure justice between parties.
20. Furthermore, the appellant disputes the Ksh 40,000 award for future medical expenses intended for physiotherapy.
21. He submitted that although this was mentioned in a medical report, the respondent failed to provide a detailed breakdown of costs or demonstrate that the treatment was a medical necessity for recovery.
22. He cited cases to maintain that future medical expenses are a special claim that must be specifically

pleaded and strictly proved, which the appellant contends was not achieved in this case.

23. Ultimately, the appellant requests that the High Court re-evaluate the evidence, set aside the original awards as excessive and unproved, and allow the appeal with costs.

24. The Respondent stated in his written submissions that this legal dispute originated from a road traffic accident on November 23, 2024, on the Voi-Mwatate road involving motor vehicle registration number KDD 665K, in which the Respondent was a lawful passenger.

25. The Respondent maintains that the trial magistrate properly evaluated the evidence and correctly determined the issue of quantum, which the Appellant is now challenging.

26. Regarding general damages for pain and suffering, the Respondent highlights that the claimant sustained a cut on the front temporal region of the head and soft tissue injuries to the neck, chest, and lower back, which had not fully healed by the time of the medical report. The trial court assessed these damages at 200,000/-.

27. To support the reasonableness of this award, the Respondent cites several precedents where similar or more severe soft tissue injuries resulted in higher awards ranging from 250,000/- to 350,000/-.

28. Given these comparisons and the impact of inflation, the Respondent argues the 200,000/- award was not excessive and should be upheld.

29. The respondent's submissions further address the award for future medical expenses, specifically 40,000/- for physiotherapy sessions for the neck and lower back as recommended by Dr. Hanif.
30. The Respondent contends that the Appellant failed to challenge this medical evidence at the trial level by filing a contrary medical report or conducting a second examination.
31. Relying on the authority of **Daniel Otieno Owino & another v Elizabeth Atieno Owuor**, the Respondent argues that in the absence of such a challenge or objection during the trial, the medical findings are proved on a balance of probabilities and cannot be contested on appeal.
32. Consequently, the Respondent concludes that the appeal lacks merit and should be dismissed with costs
33. This appeal arises from the Small Claims Court. Consequently, this court's jurisdiction is circumscribed by Section 38 of the Small Claims Court Act, No. 2 of 2016, which provides that appeals lie to the High Court on matters of law only.
34. The issues for determination in this appeal are as follows;
- (i) Whether the Appellant's grounds of appeal raise pure points of law or seek to disturb findings of fact.
  - (ii) Whether the Adjudicator erred in law in awarding Kshs. 200,000 in general damages for soft tissue injuries and a cut on the head.

- (iii) Whether the Adjudicator erred in law in awarding Kshs. 40,000 in future medical expenses (physiotherapy) without strict proof.
35. A. On the Jurisdiction of the High Court, the Appellant contests the quantum of damages, arguing that the trial court failed to apply correct principles, considered irrelevant matters, and arrived at an excessive award.
36. While the assessment of damages is a discretionary exercise of the trial court, an appeal on quantum may constitute a matter of law where it is shown that the trial court acted on wrong principles (e.g., taking into account irrelevant factors or failing to consider relevant ones) or that the award is so inordinately high or low as to represent an entirely erroneous estimate.
37. Therefore, while this court cannot re-evaluate evidence as a matter of course (as that would be an appeal on fact), it can review the principles applied by the Adjudicator.
38. The appeal is admissible on the limited ground that the Adjudicator may have applied the wrong legal principles in assessing damages.
39. On General Damages (Kshs. 200,000), the Appellant argues that Kshs. 200,000 is excessive for soft tissue injuries and a cut on the head, citing precedents of Kshs. 70,000 - 100,000.
40. The Respondent argues the award is reasonable, citing inflation and cases awarding between Kshs. 250,000 - 350,000.

41. The general principle is that comparable injuries should attract comparable awards. However, the court is guided by the principle that an appellate court will not disturb an award of damages unless it is so inordinately high or low that it represents a wholly erroneous estimate.
42. The Adjudicator considered the nature of the injuries (cut on the head, soft tissue injuries to the neck, chest, and lower back) and the submissions of both parties.
43. Considering the injuries sustained, the location of the injury (head), and taking into account the passage of time and inflationary trends since older precedents (e.g., the Kshs. 70,000 - 100,000 cases cited by the Appellant), this court finds that the award of Kshs. 200,000 is not inordinately high.
44. The Adjudicator did not take into account irrelevant matters or fail to consider relevant ones. He exercised his discretion properly.
45. The appeal on General Damages fails. The award of Kshs. 200,000 is upheld.
46. On Future Medical Expenses (Kshs. 40,000), the Appellant argues that the claim for Kshs. 40,000 for physiotherapy was not strictly proved (no breakdown of costs, no proof of necessity).
47. The law regarding future medical expenses is distinct from special damages.
48. Future medical expenses do not require "strict proof" in the same manner as special damages (which must be specifically pleaded and strictly proved). Once pleaded,

future medical expenses can be proved on a balance of probabilities, typically through medical evidence .

49. In this case, the Respondent relied on a medical report by Dr. Hanif recommending physiotherapy for the neck and lower back at a cost of Kshs. 40,000.
50. The Appellant did not challenge this medical report at trial by adducing a contrary report or cross-examining the author
51. Uncontroverted medical evidence is generally taken as proved on a balance of probabilities. The Adjudicator was therefore entitled to rely on it.
52. The appeal on Future Medical Expenses fails. The award of Kshs. 40,000 is upheld.
53. On Special Damages (Kshs. 6,010), the Appellant did not specifically contest the special damages of Kshs. 6,010 in the grounds of appeal provided.
54. The trial court correctly allowed only receipts post-dating the accident. This finding is factual and binds this court.
55. The upshot of the foregoing analysis is that the Appellant has failed to demonstrate that the Adjudicator of the Small Claims Court erred in law in assessing either general damages or future medical expenses.
56. The awards were reasonable, based on evidence, and consistent with comparable authorities.
57. Consequently, this appeal is dismissed in its entirety.
58. The Judgment of the Small Claims Court at Voi delivered on May 9, 2025, is hereby UPHELD.

59. The lower court's decree on the principal sum of Kshs. 246,010 plus interest from the date of judgment shall stand.
60. Each party to bear it's own costs of this appeal.
61. Orders to issue accordingly.

**Dated, signed and delivered this 12<sup>th</sup> day of May 2026  
virtually at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

Ms Wachira holding brief for Mr. Kiwiga for the Respondent

Ms Wambura for the Appellant