



REPUBLIC OF KENYA



**KENYA LAW**  
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**Arcon Works Limited v Muga (Civil Appeal E029 of 2023)  
[2025] KEHC 11584 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E029 OF 2023**

**RL KORIR, J  
JULY 31, 2025**

**BETWEEN**

**ARCON WORKS LIMITED ..... APPELLANT**

**AND**

**GITARI MUGA ..... RESPONDENT**

*(Being an Appeal and Decree against the Judgement of Hon. O. Kinyua (Resident Magistrate) delivered on 24th October 2023 in CHUKA CMCC NO. 123 OF 2022.)*

**JUDGMENT**

1. In the suit before the trial court, Judgement was entered in favour of the Plaintiff as follows:-
  - a. Kshs.2,000,000/- as general damages with interests at court's rate from date of the Judgement herein.
  - b. Kshs.6,520/- as special damages with interests at court's rate from the date of filing of the suit.
  - c. Kshs.1,100,000/- as future medical expenses with interests at court's rate from the date of filing this suit.
  - d. Costs of the suit to the Plaintiff with interests from the date of judgement herein.
2. The judgement triggered the present appeal on the grounds listed in the Memorandum of Appeal dated 15<sup>th</sup> November, 2023 as follows:-
  - i. That the Learned Magistrate erred in law and in fact by awarding Kshs.1,100,000/- for future medical expenses yet the same was not proved.
  - ii. That the Learned Magistrate erred in law and in fact by awarding General Damages that is inordinately high.



3. The Appeal was canvassed by way of written submissions. The Appellant's submissions are dated 6<sup>th</sup> June, 2024, while the Respondent's submissions are dated 29<sup>th</sup> January, 2025.
4. From the Appellant's Grounds of Appeal and the respective submissions of the parties, the only issues for my determination are whether the award for future medical expenses was merited and whether the award on general damages was inordinately high.
5. My duty as first appellate court is to carefully examine and evaluate the evidence which was presented before the trial court and come up with my own independent decision. This duty was explained in the case of *Kiilu & Another v Republic* [2005] 1 KLR 174 where the Court of Appeal stated:-

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions.

It is not the function of a 1<sup>st</sup> appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses.”

6. In considering this Appeal, I have also born in mind the all time principle that assessment of damages is at the discretion of a trial court and I should not interfere unless there was an error of principle or that the award was inordinately high or low. This was succinctly stated by the Court of Appeal in the case of *Kemfro Africa Express Service Gathogo Kanini v A.M. Lubia and Olive Lubia* [1982-88] 1 KAR 727 at P. 730, where Kneller J.A held thus:-

“the principle 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 account an 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.”

7. The Appellant has taken issue with the award of Ksh.1,100,000/- for future medical expenses. They submit that the medical Report prepared by Dr. Nicholas Nkonge did not specify what the cost was for and the doctor was not called to clarify the same. They submit that the trial court made an assumption to the prejudice of the Appellant. They urged the court to set the award aside.
8. The Respondent submitted on the principles which guide an appellate court in re-evaluating the award, being that the court would not interfere unless there was an error of principle or that the award was too high or too low.
9. With respect to future medical expenses, the Respondent submitted that Dr. Nkonge testified that the Plaintiff would require Kshs.3,000,000/- as he would require reconstruction and limb salvage surgeries in future and removal of the implants now in situ. That the Medical Report to that effect was produced by consent and there was no opposition by the Appellant.
10. The Respondent's submissions on the future medical expenses were contradictory. On the one hand he states that Dr. Nkonge testified that the Plaintiff would require Kshs.3,000, 000/- and on the other,



he states that the medical report was produced by consent, implying that the doctor was not called. I have looked at the record. It shows that the medical report was part of the Plaintiff's documents which were received into evidence as a bundle. The doctor did not testify as a witness. Secondly, the amount stated in the testimony of the Plaintiff was three hundred thousand shillings [Kshs.300,000/-], and not three million, shillings [Kshs.3,000,000.]

11. As correctly submitted by the parties, future medical expenses must be pleaded and proved. It is recognized however that it may not be easy to prove the exact expenses as they were subject to multiple variables including the nature of treatment, the place of treatment and the response of the patient to the treatment.
12. In *Tracom Limited v Hassan Mohamed Adan* [2009] eKLR the court stated that the claim for future medical expenses was a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it.
13. The Plaintiff testified that he suffered three fractures on the right hand, lower limb and right hand side upper limbs and that as a result he could not do his usual plumbing work. He said that the doctor had advised that it would cost Kshs.300,000/- to remove the implants. He maintained Kshs.300,000 in cross examination stated in re-examination that the doctor had proposed Kshs.1,000,000 as future medical expenses.
14. As earlier noted, the Plaintiff's statement and list of documents were admitted into evidence with the concurrence of the Defendant's Counsel.
15. I have looked at the Plaintiff's Exhibits. In the Complaint, he prayed for general damages for pain, suffering, loss of amenities and future medical expenses. In his Statement dated 6<sup>th</sup> June, 2022 he stated that he had incurred expenses in medical treatment, attaining medical report and demand notice. He stated that he had suffered disability on his legs and was still on pain killers.
16. The Plaintiff was examined by Dr. Nicholas Nkonge who prepared a report dated 19<sup>th</sup> May, 2022. Dr. Nkonge outlined the injuries and the treatment that the Plaintiff had received under the heading Management. He then placed an estimated cost of Kshs.1,100,000. In the conclusion he stated that "the sustained injuries still requiring him to undergo reconstructive and limb salvage surgeries in future and removal of implants in situ."
17. Dr. Nkonge's report was not clear as to whether the estimated cost of Kshs.1,100,000 was in reference to the management or treatment already undertaken or to future medical expenses.
18. The Plaintiff told the court that the doctor had advised him that it would cost Kshs.300,000/- to remove the implants. He only raised the figure of Kshs.1,000,000 in re-examination.
19. Having observed that the doctor's estimate of Kshs.1,100,000 lacked clarity as to whether it was the cost already incurred or an estimate of future medical expense, I find that there was no basis of assigning the same to future medical expenses.
20. In the opinion of the doctor, the suggested future treatment involved reconstructive limb salvage surgeries and removal of implants. The Plaintiff was categorical that his doctor had advised the cost of Kshs.300,000/-. I am persuaded that the cost of implant removal would be Kshs.300,000/- and not Ksh.1,000,000. I therefore award Kshs.300,000/- as a fair estimate taking into consideration the injuries sustained by the Plaintiff.



21. With respect to the award on general damages, the Appellant's contention is that the award of Kshs.2,000,000/- was inordinately high. The Respondents on their part have urged that the amount was comparable with other awards for similar injuries.
22. I have looked at the authorities cited to me by the parties. The Appellants cited:-
  - a. In David Kimathi Kaburu v Dionisius Mburugu Itari [2017] eKLR, the lower court's award of Kshs.700,000/- in general damages was awarded where the Plaintiff sustained fragmental fracture mid shaft femur and intertrochanteric fracture.
  - b. In Florence Njoki Mwangi v Peter Chege Mbitiru [2014] eKLR, the Appellant suffered broken femurs bilaterally, two degloving injuries on the right knee and the right ankle. The court awarded eight hundred thousand [Kshs.800,000/-.]
23. The Respondent on the other hand relied in the case of New Original Investments C0. Ltd vs Bernard Kimatu Muia [2019] eKLR where the High Court upheld the award by the lower court where it was awarded Kshs. 2,000,000/- where the Respondent had sustained fractures of the limbs which had been surgically managed by plating.
24. As already stated the Plaintiff suffered the following injuries:-
  - i. Mid-shaft comminuted femur fracture
  - ii. Proximal fibular fracture.
  - iii. Distal tibia transverse fracture.
  - iv. Proximal radial fracture loss of tissue and neurovascular tissues and lacerations.
25. The trial court considered multiple authorities cited by both the Plaintiff and the Defendant and concluded that an award of kshs.2,000,000 was fair in the circumstances of the case.
26. Other than the authorities cited by the parties, I have found the following authorities useful:-
  - i. Damaris Wamucii Kagechu v Joseph Kirui & Another 2019 KEFC 183 [KLR] , the court [Msagah J] awarded Ksh.1,500,000 as general damages for pain and suffering to the Plaintiff who had sustained bilateral company fracture of tibia and fabular.
  - ii. Franklin Chilibasi Spii v Kirangi Lisbon 2017 KEHC 675 [KLR], the court [Chitembwe J] awarded Kshs.1,800,000 in general damage and pain, and suffering where the Plaintiff had sustained compound and commuted fracture in the right distal libia, compound and commuted fracture of the right distal fibula, fracture of the distal right radius extending to the wrist joint among other injuries.
27. The above awards are fairly old and taking into consideration inflationary trends an award of Kshs.2,000,000 today would be fair.
28. I have found no reason to interfere with the award. It was neither too high nor too low and represents a fair estimate. I thus uphold the award of Kshs.2,000,000 for pain suffering and loss of amenities.
29. With respect to special damages, there was no contest on the amount of Kshs.6,520/- and I so uphold.
30. The award therefore shall be:-
  - i. General damages - 2,000,000/-
  - ii. Future medical expenses - 300,000/-



- iii. Special damages - 6,520/-
31. The Appeal therefore partially succeeds to the extent that the award is reduced from Kshs.3,100,000 to 2,306,520/-.
32. Costs of the suit remain as awarded by the trial court while each party will bear their costs in this appeal.
33. Orders accordingly.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**R. LAGAT-KORIR**

**JUDGE**

Judgment delivered in the presence of Mr. Ondiyo for the Appellant and in the absence of Mr. Kijaru for the Respondent. Muriuki Court Assistant.

