



D Light K Company & another v GK alias Baby GK (Suing Through The Next Friend And Mother, BCC) (Civil Appeal 48 of 2023) [2025] KEHC 11483 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL 48 OF 2023
JK NG'ARNG'AR, J
JULY 31, 2025**

BETWEEN

D LIGHT K COMPANY 1ST APPELLANT

AFRICAN LEGEND SAFARIS LTD 2ND APPELLANT

AND

GK ALIAS BABY GK (SUING THROUGH THE NEXT FRIEND AND MOTHER, BCC) RESPONDENT

(Being an Appeal from the Judgment of Chief Magistrate, Boke E. at the Chief Magistrate's Court at Bomet, Civil Suit Number 141 of 2022)

JUDGMENT

1. In the trial court, the Respondent (then Plaintiff) as the mother of GK sued the Appellants (then Defendants) for general and special damages that arose out of a road traffic accident that occurred on 27th June 2022.
2. The trial court conducted a hearing where the Respondent called one witness before closing her case. The Appellants closed their case without calling any witnesses.
3. In its Judgement dated 22nd August 2023, the trial court awarded the Respondent general damages of Kshs 1,100,000/= and special damages of Kshs 37,546/=
4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 21st September 2023 appealing against the quantum which he termed as excessive.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses



testify. This principle was espoused in the Court of Appeal case of Kiilu & Another vs. Republic (2005)1 KLR 174.

6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through her Complaint dated 29th August 2023, the Respondent stated that GK was a lawful pedestrian along Narok-Bomet road when he was knocked down by motor vehicle registration number KCT 430D.
8. The Respondent stated that the 1st Appellant was the beneficial owner of the said motor vehicle while the 2nd Appellant was its registered owner. The Respondent further stated that the driver of motor vehicle registration number KCT 430D was negligent in causing the accident. The particulars of the negligence were listed in paragraph 5 of the Complaint.
9. That as a result of the accident, the Respondent suffered the following injuries: -
 - i. Scalp lacerations.
 - ii. Right eye brow abrasions.
 - iii. Depressed skull fracture/right frontal skull fracture with depressed fragment.
 - iv. Bruising of both forearms.
10. Through her written submissions dated 13th March 2025, the Respondent submitted that the award of Kshs 1,100,000/= as general damages was reasonable. That for this court to interfere with the award, the Appellants had to demonstrate that the trial court based its assessment on the wrong principles. The Respondent further submitted that the trial court did not err when it awarded the general damages.

The Defendants'/Appellants' case

11. Through their Statement of Defence dated 26th September 2022, the Appellants denied that they were the beneficial and registered owner of motor vehicle registration number KCT 430D and further denied the Respondent was a lawful pedestrian along Narok-Bomet road.
12. The Appellants denied the particulars of negligence levelled against them. That if any accident happened, it was caused solely by the negligence of the Respondent. They particularized the negligence in paragraph 11 of their Defence.
13. Through their written submissions dated 16th May 2025, the Appellants submitted that the award of Kshs 1,100,000/= was excessive. That the trial court failed to take into account the recovery of the Respondent and they relied on *Denshire Muteti Wambua vs Kenya Power & Lighting Co. Ltd* (2013) eKLR. The Appellants further submitted that the injuries suffered by the Respondent did not cause permanent disability or cause long term complications. They relied on *Lavuta v Kalengo* (Civil Appeal E042 of 2021) [2022] KEHC 12990 (KLR).
14. The Appellants proposed an award of Kshs 500,000/= as sufficient for general damages. They relied on *Jeran General Contractors Ltd vs Amuomoi* (2023) eKLR, *Ndwiga & ano. vs Mukimba* (2023) eKLR and *Telkom Orange Kenya Limited vs I S O (minor)* (2018) eKLR.



15. I have gone through and carefully considered the Record of Appeal dated 17th September 2024, the Appellants' written submissions dated 16th May 2023 and Respondent's written submissions dated 13th March 2025. The singular issue for my determination was whether the award of general damages was excessive.

Quantum_

16. The Respondent through BC (PW1) testified that he was involved in a road traffic accident and suffered injuries. PW1 further testified that the Respondent was taken to Tenwek Hospital where he was admitted and treated. When PW1 was cross examined, she testified that the Respondent was fully treated at Tenwek Hospital and later on attended a dispensary within their village. PW1 produced a Discharge Summary, Radiology Report, P3 Form and a Medical Report as P. Exh 1, 2 a and b, 4 and 6a respectively.
17. I have looked at and considered the exhibits above. I have noted that the findings in the aforementioned exhibits confirm that the Respondents suffered the injuries he pleaded in the Plaint i.e. scalp lacerations, right eye brow abrasions, depressed skull fracture/right frontal skull fracture with depressed fragment and bruising of both forearms.
18. As earlier stated, the trial court awarded Kshs 1,100,000/= as general damages, an amount which the Appellants stated was excessive and the Respondent stated was sufficient and commensurate to his injuries.
19. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko* [2006] KECA 130 (KLR).
20. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. In addition to the Respondent's authorities, I have found the following cases quite helpful in terms of comparison: -
- I. In *Nyota Tissue Products v Charles Wanga Wanga & 4 Others* [2020] KEHC 6207 (KLR), the Plaintiff sustained head injury with open depressed frontal fracture court substituted an award of Kshs. 1,200,000/= with that of Kshs. 500,000/=.
 - II. In *Moiz Motors Limited & another v Harun Ngethe Wanjiru* [2021] KEHC 8702 (KLR), the Plaintiff sustained soft tissue injuries and moderate head injury and was hospitalized for three days. The trial court substituted an award of general damages of Kshs. 700,000/= with that of Kshs. 500,000/=.
 - III. In *Mbeva v Kenya Malik Limited & another* [2023] KEHC 23269 (KLR), the court reduced the award of Kshs 2,500,000/= to Kshs 500,000/= for calvarian and facial comminuted minimally depressed fractures, tension pneumocephalus, cerebral oedema, axillary and ethmoid hemo/CSF pneumosinuse, scalp and facial soft tissues oedema and emphysema, lacerations behind the left ear and above the right eye, recurrent headaches and loss of memory.
 - IV. In *Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N* [2018] KEHC 1915 (KLR), the court found that the child had sustained primarily a head injury and the doctor who testified only noted that there was a risk in the future but indicated



that there was no permanent disability. The court proceeded to award general damages at Kshs 500,000/=.

21. I have considered the authorities above and the nature of the injury suffered by the Appellant and I find that the Kshs 1,100,000/= awarded as general damages by the trial court was excessive and not commensurate to the injuries sustained. I hereby vacate the award of Kshs 1,100,000/= as general damages and substitute it with an award of Kshs 600,000/=.
22. Regarding special damages, I uphold the trial court's award of Kshs 37,546/= being receipts for payment of treatment at Tenwek Hospital (P. Exh 3), cost for the Medical Report by Dr. Nyameino (P. Exh 6b), Motor Vehicle Search (P. Exh 7b) and a postage receipt (P. Exh 8b).
23. The final computation is as below: -

General Damages Kshs 600,000/=

Add special damages Kshs 37,546/=

Kshs 637,546/=

Less 20% Contribution Kshs 127,509.20/=

Total* Kshs 510,036.80/=
24. In the end, the Memorandum of Appeal dated 21st September 2023 is allowed. Each party shall bear their own costs in this Appeal while the costs in the original suit shall remain as awarded by the trial court.
25. 30 days' stay granted.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 31ST DAY OF JULY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of Mabalau for the Appellant No Appearance for the Respondent. Siele and Susan (Court Assistants)

