



REPUBLIC OF KENYA



**Pelton Transporters Limited & another v Gaturuku (Civil Appeal
E027 of 2024) [2025] KEHC 12415 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E027 OF 2024
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

PELTON TRANSPORTERS LIMITED 1ST APPELLANT

ZEPHANIAHS SAUL OSANYU 2ND APPELLANT

AND

JOHN MUHIU GATURUKU RESPONDENT

*(Being an Appeal from the Judgment of Honorable S.M Nyaga (P.M)
delivered on the 14/3/2024 at Baricho PMCC No. E091 of 2023)*

JUDGMENT

1. By a plaint dated 31/5/2023, the Respondent sued the Appellants seeking general damages, special damages of Ksh. 3,000 and costs of the suit plus interest. The Respondent pleaded that on or about 18/6/2022, he was a lawful passenger aboard motor vehicle registration No. KCS 459 J along Karatina - Sagana road at Kibirigwa area, when the Appellants, their driver, servant and/or agent so negligently drove, managed and controlled Motor Vehicle Registration No. KBC 481 M that it rammed into the vehicle he was travelling in, as a result of which he sustained injuries.
2. The Appellants denied the claim vide their statement of defence dated 10/7/2023 and prayed for the Respondent's suit to be dismissed with costs.
3. The parties recorded a consent judgment on liability at the ratio of 10:90 in favour of the Respondent against the Appellants, and upon full hearing on quantum, the trial court awarded Ksh. 750,000 for pain and suffering, Ksh. 60,000 for dental care and special damages of Ksh. 3,000 together with costs and interest.



The appeal

4. On appeal, the Appellants vide their memorandum of appeal dated 8/4/2024 set out 6 grounds as follows:
 1. The learned trial Magistrate erred in law and fact by awarding excessive damages in quantum against the Appellants.
 2. The learned trial Magistrate erred in law and fact by overlooking overwhelming and compelling evidence rendered by the Appellant.
 3. The learned trial Magistrate erred in law and fact in failing to analyse exculpatory matters that were before the court before it arrived at the eventual determination.
 4. The learned trial Magistrate erred in law and fact in reaching a determination that was marred by a series of errors of fact.
 5. The learned trial Magistrate erred in law fact by failing to consider the submissions by the Defendants.
 6. The learned trial magistrate erred in law and fact by reaching a determination that was mainly influenced by bias.

Duty of the Court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).
6. The case was heard by way of written submissions and the Respondent's documents produced by consent.

Submissions on the Appeal

7. The Appellants urge that a sum of Ksh. 450,000 would suffice, and cite *Osebe v Njoroge* (Civil Appeal E408 of 2023) [2024] KEHC 9654 (KLR) (Civ) (30 July 2024) (Judgment), and *Mugo v Nyaguthii* (Civil Appeal 81 of 2019) [2023] KEHC 24186 (KLR) (25 October 2023) (Judgment). They cite *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR), *Kenya Ports Authority v Kuston (Kenya) Limited* (2009) 2 EA 212 and *Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] KECA 137 (KLR) on the duty of the first appellate court.
8. The Respondent urges that the award of Ksh. 750,000 together with the future medical expenses of Ksh. 60,000 were justified given the injuries he suffered, and cites *Ndungu & another v Munene* (Civil Appeal 31 of 2020) [2022] KEHC 3023 (KLR) (21 April 2022) (Judgment), *Peter Wainaina & another v Lucia Ndulu Muindi & another* [2021] KEHC 1986 (KLR) and *Kara Commodities Limited v Muyendi* (Suing as the administrator of the Estate of Onesmus Ndilivu Muyendi) (Civil Appeal E001 of 2021) [2024] KEHC 1237 (KLR) (7 February 2024) (Judgment).

Analysis and determination

9. From the grounds of appeal as framed, the issues for determination are whether the awards were excessive and whether the Appellants' submissions were considered.



Excessive damages

10. This court has previously considered the principles for appellate interference with an award of damages by a trial court in *Crown Bus Services Ltd & 2 others v BM (Minor suing through his mother & Next Friend) SMA* [2020] eKLR as follows:

“The well-known principles for interference of an award of damages by a trial court are laid down by the Privy Council in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601, 613 and applied in East Africa by Sir K. O’Connor (with whom Sir Alastair Forbes, V.-P. and Newbold, J.A. agreed) in *Henry H. Ilanga v. M. Manyoka* [1961] EA 705, 713 as follows: “The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking in some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell*, [1935] 1 K.B.), approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.”

11. The injuries sustained by the Respondent are particularized in the medical report of Dr. P.K Mwangi dated 12/9/2022 as fractures of the left Radius/Ulna bones, dental extraction of 7 upper teeth and loss of 4 incisors, 2 canines and 1 premolar, gum and buccal cavity injuries, deep cut wounds below the lower lip at the chin and below the right knee, blunt soft tissue injuries of both knees and a cut wound on the left arm. On examining the Respondent, the doctor noted that, he had a cut wound scar on the chin, 7 missing upper teeth, 2 canines, 4 incisors and 1 premolar, a cut wound scar on the left arm, the left arm was swollen, palpable callus at the fracture site and a cut wound scar below the right knee.
12. The doctor opined that the Respondent suffered fractures of the bones of the left arm, extracted and lost 7 teeth, multiple soft tissue injuries, severe physical pain and emotional stress, and he had responded fairly well to treatment. The doctor observed that, “He is incurring costs of the medication to relief the recurring pain. The affected bones will certainly suffer early osteoarthritis. Osteoarthritis causes chronic pain that requires indefinite use of medications [analgesics, calcium supplements etc] and physiotherapy. The extracted teeth require replacement with artificial dentures [teeth]. The cost of the procedure is estimated at kshs. 60,000.”
13. The injuries sustained by the Respondent were soft tissue in nature, save for the fractures of the bones of the left arm. In the circumstances of this case, the award of Ksh. 750,000 by the trial court was manifestly excessive, particularly because the Respondent had substantially recovered. There is therefore justification for interference by this court. See *Butt v Khan* [1978] KECA 24 (KLR) that (per Law JA):

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

14. In *Geoffrey Kamuki & another v RKN (Minor suing through her late father and next friend ZKN* [2020] KEHC 1175 (KLR), the court (Mumbua T. Matheka J) substituted a trial court’s award of Ksh.



600,000 with Ksh. 450,000 for a claimant who sustained blunt trauma to the scalp, periorbital region, right eye, right leg and chest, right swollen forehead, a dislocation of the wrist joint and fractures of the right radius and ulna.

15. In awarding Ksh. 750,000, the trial court relied on *Ndungu & another v Munene* (Civil Appeal 31 of 2020) [2022] KEHC 3023 (KLR) (21 April 2022) (Judgment), where the claimant in that case sustained multiple soft tissue injuries, blunt injury on the pelvis coupled with a fracture the distal end of the left radius bone. Significantly, the claimant in that case suffered an apparent deformity on the left wrist with protruding distal radius bone. While the injuries in the cited case and the case at hand appear comparable, they are in fact materially distinguishable.
16. This court is thus persuaded that an award of general damages of Ksh. 500,000 would sufficiently compensate the Respondent for the pain he suffered, taking into account the prevailing inflationary trends and other imponderables.
17. The estimated cost of artificial dentures of Ksh. 60,000 for all 7 teeth the Respondent evidently lost was not meaningfully challenged, and thus it was properly awarded.

Consideration of the Appellants' submissions

18. The Appellants fault the trial court for disregarding their submissions and authorities is misconceived because submissions are a mere guide to the court as they are not pleadings, and their non-consideration cannot in itself be a basis to overturn a trial court's decision. There is, in any event, no indication that the submissions were not considered in this case. And the Court may have considered them yet not be persuaded by the arguments.

Orders

19. Accordingly, for the reasons set out above, the Court finds the Appellants' appeal to be merited and it is allowed in the following terms:
 1. The trial court's award of general damages of Ksh.750,000 is hereby set aside and substituted with Ksh.500,000.
 2. The other awards remain unchanged.
 3. As the Appellant has only partially succeeded, there shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Situma for Mr. Busiega for the Appellant.

Ms. Bundi for Mrs. Waweru for the Respondent.

