



REPUBLIC OF KENYA



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**Pelton Transporters Limited & another v Maina (Civil Appeal
E030 of 2024) [2025] KEHC 12428 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E030 OF 2024
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

PELTON TRANSPORTERS LIMITED 1ST APPELLANT

ZEPHANIAHS SAUL OSANYU 2ND APPELLANT

AND

BENARD MAINA RESPONDENT

*(Being an Appeal from the Judgment of Honorable S.M Nyaga (P.M)
delivered on the 14/3/2024 at Baricho PMCC No. E087 of 2023)*

JUDGMENT

1. By a plaint dated 31/5/2023, the Respondent sued the Appellants seeking general damages, special damages of Ksh. 5,450 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 5/7/2023 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. 400,000 for pain and suffering and special damages of Ksh. 5,450 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 appellant.
 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. 200,000 would suffice, and cite *Kinyanjui v Wanyonyi* (Civil Appeal E117 of 2023) [2024] KEHC 15957 (KLR) (5 November 2024) (Judgment), and *Real Tilak Enterprises v Samuel Musembi Mutuku* [2019] KEHC 10062 (KLR). 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. 400,000 was justified as it took into account the inflation rate, 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 Onasmus 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 award of Ksh. 400,000 was 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 7th and 8th ribs of the right side, blunt soft tissues of the anterior chest, neck muscles, back and lacerations and swelling of the left leg. On examining the Respondent, the doctor noted that, the neck had some limitations of its normal neck movements, there was marked tenderness at the anterior chest especially at the level of the 7th and 8th ribs right side, and there was some tenderness at the mid back and healing lacerations on the left leg.
12. The doctor opined that the Respondent suffered 2 fractured ribs and multiple soft tissue injuries, severe physical pain and emotional stress, and he had responded fairly well to treatment. The doctor observed that, “He is still taking medications on/off and will continue so for sometime. The affected bones will certainly suffer early osteoarthritis. Osteoarthritis causes chronic pain that requires indefinite use of medications [analgesics, calcium supplements etc] and physiotherapy.”
13. There is no doubt that the injuries sustained by the Respondent were majorly soft tissue in nature, save for the 2 fractures of the 7th and 8th ribs of the right side.
14. In keeping with the principle that comparable injuries should, as far as possible, attract comparable awards, the court is counselled by Chesoni, Ag JA as he then was, in *Mariga v Musila* (1984) eKLR that;
- “No two cases of motor accident are exactly the same for one to form a suitable precedent of the other. The facts, the injuries or even degree of similar injuries and the effect of such injuries are usually so different that it is necessary to consider each case on its own merit and peculiar facts even where the country, venue and circumstances are the same. For this reason past decisions in this type of cases are of little assistance in determining the quantum of damages, especially the non-pecuniary damages on pain, suffering and loss of amenities.”
15. The court has considered the case of *Masinga Ndonga Ndonge v Kualam Limited* [2016] eKLR where the court (R.E. Aburili J) awarded Ksh. 150,000 for a claimant who sustained a crush injury of the left foot with a fracture of the 1st phalange- proximal end and pains, blood loss and soft tissue injuries.



16. Similarly in Peter Benard Makau v Prime Steel Limited [2018] eKLR the court (R. Nyakundi J.) upheld the trial court's award of Ksh.102,000 for a claimant who sustained a fracture to the right toe accompanied with soft tissue injuries.
17. In Michael Okello v Priscilla Atieno [2021] KEHC 7266 (KLR) the court (R.E Aburili J) substituted a trial court's award of Ksh. 500,000 with Ksh. 250,000 for a claimant who sustained blunt injuries to the head, forehead, neck, left shoulder, left upper limb, right upper limb, right lower limb and chest with fracture of the 1st anterior rib. Significantly, the court specifies that those awards were made in 2016, 2018 and 2021 respectively, and the recent inflationary trend should be considered.
18. This court thus finds that the award of general damages of Ksh.400,000 made herein was commensurate with the pain suffered by the Respondent, taking into account the rate of inflation and other imponderables.
19. The trial court relied on the case of West Kenya Sugar Company Limited v David Luka (2017) eKLR, cited by the Appellants herein, in reaching the decision it did, and the fault that it did not consider the Appellants' submissions is manifestly unfounded.
20. It is not enough that this court might have arrived at a different figure had it tried the matter itself. This court cannot substitute the discretion of the lower court with its own.
21. This court does not find on the facts of this case any error of law or principle by the trial court as would justify appellate interference with the exercise of discretion of the trial court.

Orders

22. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
23. The Appellant shall pay the costs of the appeal to the Respondents.

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.

