



REPUBLIC OF KENYA



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**Pelton Transporters Limited & another v Mureithi (Civil Appeal
E032 of 2024) [2025] KEHC 12406 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E032 OF 2024
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

PELTON TRANSPORTERS LIMITED 1ST APPELLANT

ZEPHANIAHS SAUL OSANYU 2ND APPELLANT

AND

NELSON MWANGI MUREITHI RESPONDENT

*(Being an Appeal from the Judgment of Honorable S.M Nyaga (P.M)
delivered on the 14/3/2024 at Baricho PMCC No. E084 of 2023)*

JUDGMENT

1. By a plaint dated 3/2/2023, the Respondent sued the Appellants seeking general damages, special damages of Ksh. 14,665 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.800,000 for pain and suffering, and special damages of Ksh.14,680 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. 450,000 would suffice, and cite *Pride Kings Security v Ekaalet* (Civil Appeal E009 of 2022) [2023] KEHC 20284 (KLR) (17 July 2023) (Judgment), and *Gladys Lyaka Mwombe v Francis Namatsi & 2 Others* [2019] KEHC 4800 (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. 800,000 was 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 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. 800,000 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 15/11/2022 as a fracture of the left tibia bone, bruises on the scalp, blunt soft tissue injuries of the anterior chest and swelling and lacerations on both legs. On examining the Respondent, the doctor noted that, he had scars on the scalp, tenderness of the anterior chest, scars on both legs, palpable callus at the fracture site, stiffness of the left knee joint, and he walked with the aid of crutches.
12. The doctor opined that the Respondent suffered a fractured bone of the left leg, multiple soft tissue injuries, very severe physical pain and emotional stress, and he had responded fairly good to treatment. The doctor observed that, “The recurring pain is getting relieved on taking analgesics. The joint stiffness affecting the left knee is assessed at 25% of the lost mobility of lower extremity – Using Permanent Functional Impairment Rating Schedule 2009).”
13. Undoubtedly, the injuries sustained by the Respondent were majorly soft tissue in nature, save for the single fracture of the left tibia bone. In the circumstances of this case, the award of Ksh. 800,000 by the trial court was manifestly excessive, particularly because the Respondent had substantially recovered. There is, therefore, justification for interference by this court.
14. In *Lyaka Mwombe v Francis Namtsi & 2 others* (Supra), cited by the Appellants, the Court (W. M Musyoka, J), upheld a trial court’s award of Ksh. 300, 000 for a claimant who sustained a cut wound on the anterior part of the scalp, a head injury, spinal cord injury, neck injury, fracture of the lower tibia and fibula and a cut wound on the face.
15. In *DG (Minor suing through her next friend MOR v Richard Otieno Onyisi* [2021] KEHC 7745 (KLR), the court (A.K Ndung’u J), awarded general damages of Ksh. 400,000, where the claimant sustained a chest contusion, left tibia fracture, bruises on the left foot and bruises on the left leg.
16. Significantly, those awards were made in 2019 and 2021 respectively, and the Court should factor the recent inflationary trends.



17. Taking into account the prevailing inflationary rate and other imponderables, this court finds that an award of general damages of Ksh. 500,000 would be commensurate with the pain suffered by the Respondent.
18. The court finds that the special damages of Ksh.14,680 were not only specifically pleaded but also strictly proved.
19. There is no merit in the complaint that the appellant's submissions were not considered, as submissions are a mere guide to the court not being pleadings or evidence, and their non-consideration cannot in itself be a basis to overturn a trial court's decision; and it is well probable that the Court duly considered the submissions but was unpersuaded by the arguments.

Orders

20. Accordingly, for the reasons set out above, the Court finds that the Appellants' appeal to be is partly merited and it is allowed in the following terms:
 1. The trial court's award of general damages of Ksh.800,000 is hereby set aside and substituted with Ksh.500,000.
 2. The other awards remain unchanged.
 3. As the appeal is only partly successful, there shall be no order 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.

