



**Pelton Transporters Limited & another v Mwangi (Civil Appeal
E029 of 2024) [2025] KEHC 12401 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E029 OF 2024
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

PELTON TRANSPORTERS LIMITED 1ST APPELLANT

ZEPHANIAHS SAUL OSANYU 2ND APPELLANT

AND

JOHN KAMAU MWANGI RESPONDENT

*(Being an Appeal from the Judgment of Honorable S.M Nyaga (P.M)
delivered on the 14/3/2024 at Baricho PMCC No. E088 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 general damages of Ksh. 180,000, 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 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 an award of Ksh. 90,000 would suffice, and cite *Rege v LA (Minor suing through her father and next father and next friend GAA)* (Civil Appeal E111 of 2021) [2022] KEHC 16634 (KLR) (20 December 2022) (Judgment) and *Nyarangi v Chelule* (Civil Appeal E092 of 2024) [2024] KEHC 16297 (KLR) (Civ) (18 December 2024) (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. 180,000 was justified, and cites *Wachira & another v Gechore & another* (Civil Appeal E033 & E032 of 2023 (Consolidated)) [2024] KEHC 1814 (KLR) (28 February 2024) (Judgment) and *Francis Omari Ogaro v JAO (minor suing through next friend and father GOD)* [2021] KEHC 2358 (KLR) and *Ndungu & another v Munene* (Civil Appeal 31 of 2020) [2022] KEHC 3023 (KLR) (21 April 2022) (Judgment).

Analysis and determination

9. From the grounds of appeal as framed, the issues for determination are whether the award of Ksh. 180,000 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 a deep cut wound on the frontal scalp and a frontal swelling, blunt soft tissue injuries of the right ankle joint and a deep cut wound on the left foot. On examining the Respondent, the doctor noted that, he had a cut wound scar on the frontal scalp, the right ankle joint had limitations of its normal joint movements and there was a cut wound scar on the left foot.
12. The doctor opined that the Respondent suffered multiple soft tissue injuries of the head, ankle joint and foot, severe physical pain and emotional stress, he had responded fairly well to treatment, and the injuries would resolve with time, leaving residue scars.
13. Undoubtedly, the injuries sustained by the Respondent were solely soft tissue in nature. The Respondent was admitted at P.C.E.A Tumu Tumu Hospital for 5 days, where he underwent a surgical toileting procedure, and antibiotics were initiated.
14. In *Nyarangi v Chelule* (Supra), cited by the Appellants, the claimant, who sustained bruises and tenderness on the left hip joint, bruises on the left leg and a swollen left leg, was awarded Ksh. 100,000. While the claimants in the cited case and the present one purely sustained soft tissue injuries, the distinguishing feature between the two is the head injury with frontal swelling sustained by the Respondent herein.
15. This court thus finds that the award of general damages of Ksh. 180,000 was a proper estimate of the pain suffered by the Respondent.

Consideration of the Appellants’ submissions

16. The Appellant’s fault on 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 or evidence, and their non-consideration cannot in itself be a basis to overturn a trial court’s decision, and it is probable that the Court duly considered the submissions but was unpersuaded by the arguments.



17. 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

18. Accordingly, fore the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.

19. 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.

